

November, 1947

POPULAR GOVERNMENT

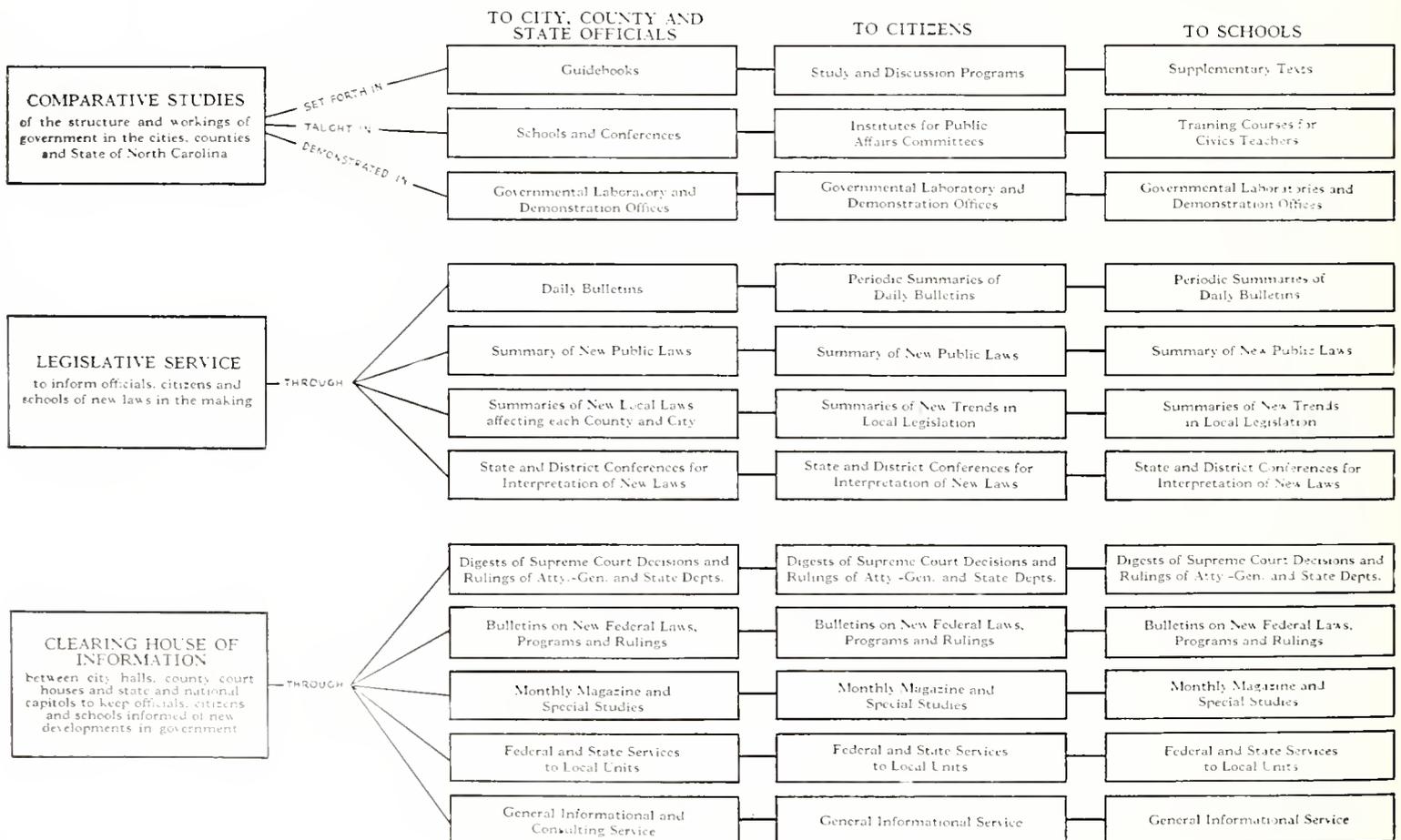


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GOVERNMENTAL LABORATORY BUILDING INSTITUTE OF GOVERNMENT



INSTITUTE OF GOVERNMENT SERVICES



THE CLEARINGHOUSE

Digests of the Minutes, Ordinances and Resolutions of the Governing Boards of the Counties, Cities and Towns of North Carolina

Cities and Towns

City Manager Plan Election

Winston-Salem—After studying resolutions and petitions from numerous local civic groups endorsing the idea, the board of aldermen voted to call an election on the question of adopting the city manager form of government. The election will be held November 4, simultaneously with the election on the question of issuing \$4,000,000 of city bonds to finance the enlargement, extension and improvement of the water supply system.

Employment of Non-Residents

Greensboro—After a statement by City Manager J. R. Townsend that he had on hand applications from three well-qualified persons living outside the city to fill vacancies existing in the city personnel, whom he was unable to employ because of restrictions in the city code in this respect, the council adopted an ordinance amending the code so as to waive for a period of one year the provision that persons living outside the city may not be employed by the city.

Electric and Water Deposits

Louisburg—A new ordinance adopted in October provides that every new water and electric service customer must deposit with the town a sum which in the judgment of the Superintendent of Light and Water will be sufficient to protect the town from loss in case the customer fails to pay for the services, with the maximum deposits for residential customers being set at \$25 for electric service and \$5 for water service. The ordinance also provides that when service has been discontinued for non-payment, a restoration charge of \$2 in the case of electric service and \$1 in the case of water shall be made.

Office Hours

Farmville—Beginning on November 1, the town office will be closed on Saturday afternoons, on a trial basis.

(Continued on page 2)

Prepared by
W. M. COCHRANE
Assistant Director
Institute of Government

COVER PICTURE

During the last 15 years, it has been standard operating procedure for Institute staff members to learn their governmental lessons from the men and women doing the job in the county courthouses and city halls of North Carolina. In October, in keeping with this tradition, staff members began their apprenticeship in the offices of Charlotte and Mecklenburg County. In the months to come they will go to school to every city and county official. They will study every department of city and county government there. And the lessons they learn will go into a report to the City Council and the County Commissioners, who jointly invited the study so that they might determine the extent to which, if any, city and county functions might be consolidated.

The study began with separate meetings of the staff with county and with city officials. The cover picture shows the meeting with the County Commissioners. Seat-
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Counties

Tax Supervisors

Alamance—After December 1, all deeds offered for record in the county must be stamped by the tax supervisor, showing the transfer of title for purposes of tax listing. The board also decided to require the tax supervisor to keep a record of such transfers.

Tax-Delinquent Property

Rowan—It was decided by the board of commissioners that all property taken in for taxes should be registered with the register of deeds, and that the register of deeds should advise real estate firms regarding the same. At a later meeting it was ordered that an inventory be made of all real estate owned by the county, and that the county attorney sell at public auction all lands not used by the county.

The Blind

Rowan—The board voted to allow the Salisbury Lions Club to insert a card in each 1947 tax notice, asking for the address of all blind persons in the county.

County-City Cooperation

Lenoir—In response to a request made by Kinston Police Chief Marion Haskins, the commissioners voted to appropriate \$75 monthly toward the salary of the city police department's fingerprint expert, beginning November 1. The board took no action on the Chief's request that the county agree to pay death compensation in cases where city police are killed while assisting the sheriff outside the city.

Uncollectible Personal Property Taxes

Alamance—The board voted to consider personal property taxes for 1941 which had not been collected on July 1, 1947, as insolvent and uncollectible, and ordered that the books as to these taxes be closed.

Fee for Municipal Prisoners

Warren—The board set the fee for care of prisoners of the Town of Warren.
(Continued on page 2)

Cities and Towns

(Continued from page 1)

Taxicabs

Greensboro—Upon recommendation of the taxicab committee of the council, the following change in policy regarding issuance of certificates of convenience and necessity for the operation of taxicabs was adopted by the council: "That no certificates be transferred or assigned from one person to another; that if a certificate is not in use that it be cancelled; and that applications for approval of new certificates to replace those cancelled be given by the council, provided that the number in effect does not exceed 175, the number set by the council."

Privilege License Taxes

Sanford—The board of aldermen voted to levy a privilege license tax of \$5 on those selling apples within the town.

Emergency Water Ordinance

Greensboro—Greensboro's drastic water conservation ordinance, which was in effect during the recent "serious emergency. . . due to the breaking of the dam at Lake Brandt, the source of the city's water supply, and the flooding of the water pumps of the city and the further fact that a very limited supply of water. . ." was available, contained the following provisions:

" . . . It shall be unlawful for any person, firm, or corporation using city water to use such water for purposes other than cooking, drinking, food processing, and toilet flushing; except that operations affecting the public health and where required by this ordinance; provided that the fire department shall continue to function as usual; provided further that the provisions of this ordinance shall be effective only during the present acute emergency and the mayor or mayor *pro tem.* . . . is hereby authorized and empowered to declare said emergency at an end when in his opinion conditions with respect to the use of water warrant such action."

Water Works Operation

Louisburg—For a period of 12 months, Civil and Sanitary Engineer Andrew Gutierrez of Chapel Hill will spend one day each week at the Louisburg water works, aiding in instruction of the operators, inspecting the plant for efficiency, and advising the board concerning its condition and operation. The board agreed to pay \$50 monthly for this service, plus mileage expenses.

Parking

Farmville—Parking of dual wheel trucks and tractor trucks with semi-trailers is now forbidden in the business district of Farmville, and is limited to one hour both during the day and at night. Parking of such vehicles in loading zones for purposes of loading and unloading, however, is permitted under the new ordinance.

Parking Meters

Wilmington—Under an ordinance adopted by the council, parking meters in the city are now operated from 8 a.m. to 6 p.m. on Monday through Friday, and from 8 a.m. to 7 p.m. on Saturdays. The meters are not operated at all on Sundays.

COVER PICTURE

(Continued from page 1)

ed are Albert Coates, Director of the Institute; S. Y. McAden, Chairman of the Board of Commissioners; Henry W. Lewis of the Institute staff; and Commissioners Arnie D. Cashion and Carl McEwen. Standing are Terry Sanford, W. M. Cochrane and L. W. Allen, all of the Institute staff. Not present for the picture were Commissioners J. Caldwell McDonald and S. G. Porter. (Photograph courtesy The Charlotte News.)

Counties

(Continued from page 1)

renton, in the county jail, at \$1.50 per day.

Medical Care

Lenoir—Representatives from all civic organizations in the county appear before the commissioners with a request that an election be called on the question of a bond issue in excess of \$744,000 in amount, less such an amount as might be salvaged from the Memorial General Hospital property, for construction of a county hospital. The commissioners went on record as favoring the medical care program and the building of a county hospital, subject to an election to be called in the near future.

Washington—After hearing a report from the committee named to work out plans for a county hospital under the State Medical Care Commission, which report showed much county-wide interest in the project, the board of commissioners named a 14-member board of trustees to work with state officials toward this objective.

Bladen—A bond order authorizing issuance of \$100,000 worth of bonds for the erection of a county hospital was adopted by the board of commissioners, the order to take effect if favored by the voters in an election to be called later.

Warren—The commissioners voted to order an election for November 22 on the question of a bond issue for construction of a county hospital.

Pitt—After canvassing the returns of a special election held September 16, the commissioners declared the results of the election to be overwhelmingly in favor of issuance of not more than \$352,500 of bonds for the erection of a county hospital, and in favor of levy of an annual tax not in excess of 5c on the \$100 valuation for maintenance and support of the hospital. Of 3,383 citizens qualified to vote in the election, 2,888 voted for the bonds and 51 against them; 2,752 favored the tax and 110 voted against it.

Airports

Durham—An appropriation of \$20,000 for capital improvements at the Raleigh-Durham Airport was voted by the commissioners, conditioned upon a like appropriation from each of the other three units which jointly own the airport—Wake County, Raleigh, and the City of Durham. The Durham County appropriation is to come from A.B.C. funds.

County Purchases

Scotland—After hearing the views of a committee representing the retail druggists in the county, the board ordered that a schedule be worked out so that each drug store might share in sales to the county. Beginning November 1, each store will receive the county's business for a period of two months.

Fire Equipment

Durham—The board approved a contract with the Mack Corporation for purchase of a fire truck at the price of \$13,945.85, F.O.B. Durham.

Fire Insurance

Orange—The board of commissioners ordered that the amount of fire insurance carried on the county jail building be increased from \$28,000 to \$56,000.

Insect Control

Bladen—A delegation of women came before the board requesting that a county-wide program be put on, beginning next April, to have every home in the county sprayed with DDT. Action on the request was deferred until a later date.

(Continued on page 9)

Can Your Car Pass The Test?

North Carolina's Motor Vehicle Inspection Program Gets Underway on January 1st, and in This Article the Mechanical Inspection Division Tells How It Will Be Carried Out

The State—your State—of North Carolina has one of the most outstanding Highway Safety programs in effect in the world today.

One of the most vital provisions of this program is the provision for periodic mechanical inspections of all motor vehicles registered in this state. The inspection law was passed by the 1947 General Assembly and will go into effect next January 1. It provides that every North Carolina motor vehicle must be inspected once during 1948 and twice a year thereafter.

The purpose of periodic vehicle inspection is to discover any maladjustment in the vehicle that might become a link in a cycle of events leading to an accident, and by removing the link to prevent the accident.

While broken, missing or defective parts may not necessarily lead to accidents, they are potential hazards and must be considered in determining the safe mechanical condition of vehicles.



Arthur T. Moore, Director of the Mechanical Inspection Division of the Department of Motor Vehicles, who is in charge of the state's vehicle inspection program.

Statistics show that 65 per cent of all vehicles are found to be unsafe if their upkeep is left to the individual owner. Around 17 per cent of all traffic accidents are traceable to faulty equipment. Unnecessary operational cost of each vehicle due to unsafe mechanical conditions amounts to millions of dollars each year.

Motorists in other states where inspection laws are already in effect have testified to the fact that it is generally less expensive to have their cars checked regularly than to wait until a break-down occurs.

You should appreciate the service to be offered you by your State in providing the mechanical inspection "safety lanes" to assist you in keeping your car mechanically safe, thereby greatly reducing the probability of your being involved in an accident due to faulty equipment.

Safety Lanes

This service will be brought relatively close to you. Forty "safety

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<p>WHEEL ALIGNMENT</p> <p>SIDE SLIP FEET PER MILE</p> <p>IN OUT</p>				<p>HEADLIGHTS</p> <p>When Punch Is Not In Center Square Headlight Is Incorrectly Aimed</p>				<p>FRONT BRAKES</p> <p>LEFT RIGHT</p>			<p>REAR BRAKES</p> <p>RIGHT LEFT</p>																																																									
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lanes" will be established throughout the State on the basis of motor vehicle population. They will be moved from place to place, and the time and place of each station will be publicized, making the service easily available to you. A fee of \$1.00 will be charged during 1948 and 1949, and thereafter 75 cents will be collected for each inspection.

How the Inspection Lanes Will Operate

As your car or truck enters the safety lane, which is approximately 160 feet long, an inspector will be at the entrance to check your operator's or chauffeur's license and vehicle registration card. It is necessary to show these credentials before an inspection can be made. You will then pay your \$1.00 inspection fee and the inspector will fill out an "inspection card," which will be checked throughout the lane for all types of mechanical defects. This inspection card becomes your personal property, and will be used later to aid garages and repair shops in correcting defects on your car.

You then proceed with the inspection card to the wheel alignment and steering tester. It is very important that these vital mechanisms of your car be kept in good condition at all times. You will be asked to drive the front wheels of your vehicle across the wheel alignment tester, and the reading will be recorded on your inspection card. Then the front end of the vehicle will be jacked up to check the wheel bearing and steering mechanisms. After that, the car is dropped from the jack, and the rear wheel alignment is recorded.

At this second post the inspector will also check the tie rod, drag links, mountings, joints, tires, horn, windshield wiper, rear view mirror, windshield and other glass, license plates, muffler, and brake drag to see that they all come up to the minimum requirements.

When this check is completed, you will proceed to post number three where the lighting equipment will be checked. The inspector will test your parking and driving lights, lenses and reflectors, headlights, stop light, tail light, and signal lights. Special equipment will be provided for testing lights.

After the lights have been thoroughly checked and the inspection card has been punched accordingly, you will proceed to the brake tester, where your hand and foot brakes will be

checked, and the grading will be recorded on the inspection card.

Final Grading

Now your vehicle is ready for its final grading. So you drive to the end of the safety lane, where an inspector will examine your inspection card and tabulate the results. If your vehicle measures up to the minimum requirements, a bright blue approval seal in the shape of the State of North Carolina will be stuck in the corner of the windshield. You can drive away happily, knowing your car is in good, safe operating condition.

However, if a vehicle fails to measure up to the minimum standard requirements, its owner will be given a red, diamond-shaped sticker, bearing in black letters these words: "This vehicle must be delivered to a N. C. Mechanical Inspection Station on or before (date)." This vehicle must not be operated or parked on any street or highway after the date shown unless it carries an approved safety inspection sticker.

Once a vehicle has been rejected, it is then up to the owner to take it to a garage or repair shop and get its defects corrected. If the owner is a mechanic or has the ability, he may

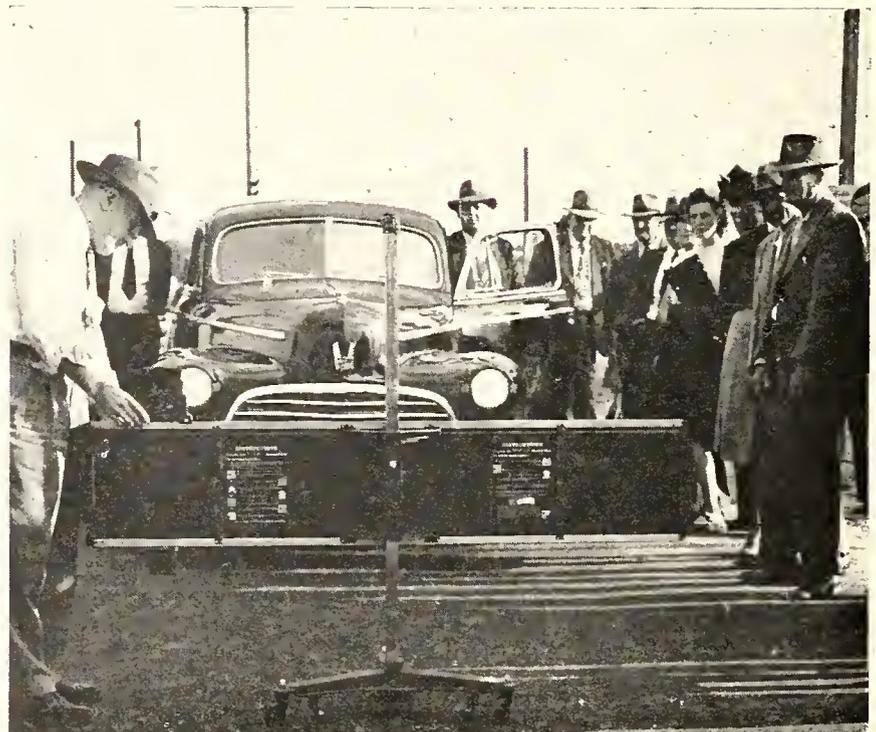
make the repairs himself. When the defects have been corrected, the owner then returns to the inspection station for another test, and if the car is found to be in good order, its owner will be issued an "approved" sticker. On this second visit, only the part that failed to pass inspection the first time will be checked, and there will be no additional fee.

Your inspectors will be as lenient as possible at the beginning of the inspection program. They realize that due to the recent war, automobiles and parts have been hard to get.

Condemned Vehicles

However, if they occasionally inspect a vehicle that is in such unsafe condition that it is definitely a hazard to life and property, they will tag the windshield with a large 8 by 10 inch yellow sticker, bearing a red cross, labeling that vehicle CONDEMNED. Printed on the sticker will be these words: "This vehicle is unsafe and must not be operated or parked on roadways or any public places." CONDEMNED vehicles cannot be driven away from the inspection stations. They must be towed away.

(Continued on page 9)



What the headlight-testing equipment looks like is shown in the picture above, which was made at the inspection lane demonstration set up at the State Fair in October. Standing at the car's door is G. I. Dail, supervisor of the eastern zone, who is in charge of inspection in 38 counties, with 10 traffic lanes.

How to Increase Tax Dollar Mileage

The public purchasing agent's position is so vulnerable to attack and criticism that, to paraphrase Gilbert & Sullivan, "taking one consideration with another, a purchasing agent's lot is not a happy one." Nevertheless, we all take great pride and pleasure in our task of increasing the mileage of the tax dollar and our reward is in the respect of our employers and fellow purchasing agents and in the personal satisfaction that comes from having accomplished our duties in an energetic, intelligent, forthright, trustworthy and exemplary manner.

Fire-fighting Equipment

The first item in this report represents millions of dollars invested annually by our communities and therefore deserves a good share of our attention. I refer to fire fighting apparatus. For a number of years some large cities, including ours, have purchased fire pumping engines and aerial ladder trucks on standard specifications and competitive bids awarding contracts to the lowest competent bidders. Equipment purchased in this manner has exceeded Board of Fire Underwriters' minimum requirements and has proven eminently satisfactory over many years of service. Thousands of dollars have been saved by this competitive system of bidding. There is no reason why this fire fighting equipment should be purchased on sales talk at much higher prices. We don't buy sewereductors, air compressors, garbage packers, cranes, power shovels, or other commonly used utility equipment that way. Fire fighting equipment is no different from other types of well engineered and complex mechanical equipment. Moreover, there is no sound reason why fire fighting equipment should be tailor-made. Other types of utility equipment in general use by tax-supported communities are usually standard stock items which are built on assembly lines, sold on competitive bids and delivered out of stock.

I recently examined a fire pumping engine on which the assembly was almost completed according to the whims and fancies of one fire chief and which was then rebuilt to follow



POPULAR GOVERNMENT presents herewith the first part of an address by Joseph W. Nicholson, Purchasing Agent for the City of Milwaukee, Wisconsin, which he delivered at the annual conference and products exhibit of the National Institute of Governmental Purchasing, held in New York in September. The remainder of Mr. Nicholson's address will be printed in the December issue.

the ideas of a new fire chief. I have never seen such a clumsy monstrosity in my life. The last I heard of it was that they were considering removing all of the fire fighting equipment, mounting a truck body and hoist, and using it to haul garbage. That is all it is good for now, and thousands of the taxpayers' dollars have been poured down a rat hole, because fire fighting equipment has not as yet become standardized. Why hasn't it? Here is one good reason:

The July 15th issue of the U. S. Municipal News published by the United States Conference of Mayors states that two fire engine manufacturers were found guilty by the federal court and received stiff fines because they agreed between them upon terms of sale and prices for fire engines and also agreed to use their influence to have special specifications drawn to bar bids from other

companies. On a recent request for bids on a 75-foot aerial ladder truck, Milwaukee received a declination from one of these concerns and I quote from their letter: "Our factory management informs us that your specifications and requirements diverge from our standard construction and procedure to the extent that a bid from us is not possible." As a matter of fact our specifications were wide open and any firm could bid if they had cared to. Let's get this straight. We are all spending our taxpayers' money, and they are entitled to receive full value for every dollar. The adoption of standards and suitable specifications is our responsibility. We prepare them to meet certain conditions and to conform to suitable existing commercial standards, if available. We prepare them as open as possible so that full competition can be obtained from responsible firms. We also provide adequate safeguards in these specifications to prevent the purchase of unsuitable and untried equipment. In this particular instance, this manufacturer will not quote unless we adopt his specifications. To do so would eliminate all competition. He is accustomed to disposing of his product on the basis of claims of superiority over others. To accept such claims "whole cloth" is to surrender to high-pressure salesmanship. Some call it "political buying." There are many ramifications of this problem, but a competitive open type of bid is the only proper procedure to follow if the taxpayers' interests are to be protected. This eliminates "backdoor," high-pressure, political selling; makes for intelligent purchasing, and results in saving hundreds of thousands of dollars. Many a public purchasing agent has had to battle this problem so that a competitive bid basis can be established in the purchase of this kind of equipment. It takes everlasting vigilance to prevent a high priced, high-pressure "deal" from being put over at the expense of the taxpayers.

Proposal

Edward E. Wischer, chief engineer, Milwaukee Fire Department, a fine gentleman who has my deepest re-

spect, has made a lifetime study of fire fighting and understands thoroughly all of the intricacies of fire equipment and its effective use. He has proposed a United States Technical Fire Fighting Service with national control to embrace fire protection service throughout the country. The following is a quotation from his recent report on the subject: "All fire fighting apparatus and equipment should be standardized so that it could be used by fire departments in neighboring cities interchangeably, thereby avoiding any delay in combatting the mutual enemy of fire when necessity demands. At present, in most instances, the fittings, hose connections and threads are not of a single pattern, which fact alone virtually eliminates any practical benefit from aid offered by nearby fire departments in cases of extensive fires. At present there are communities whose security is based on apparatus and equipment which is absolutely of no practical value, because the apparatus and equipment was sold through 'slick' salesmanship or bought with insufficient knowledge of all factors involved. As the result, the residents of such communities are living in false security and their property is a potential source of catastrophe."

Standardization Is Possible

A progressive and enlightened fire apparatus manufacturer commented on Chief Wischer's suggestions as follows: "Regarding standardization, we think this is a splendid idea, and it will reduce the cost of apparatus considerably. However, we do have standard chassis models for all sizes of pumps and aerials, but standardization is needed on the bodies and upper structure. Every city has its own idea of about how its equipment should be built, which makes each job very special, and runs up the cost quite high. Regarding standardization of color * * * if all cities would use the same color to make it uniform throughout the country, there would be quite a saving in the paint shop." If these recommendations for the standardization of fire apparatus are carried out, fire fighting equipment will be constructed efficiently and economically and will be designed primarily for the effective fighting of fires instead of for display at firemen's picnics and parades. So much for fire equipment.

Collusive Bidding

Taxpayers' money can be saved by reporting suspected collusive bidding. As a result of such reports of public purchasing agents, federal complaints are now pending against manufacturers of fire alarm, mimeograph and chlorinating equipment; also against manufacturers of surgical dressings and business forms. Edward P. Hogges, special assistant to the United States attorney general recommends that public purchasing officials do all they can to forestall monopolies. "They should," he said, "investigate all identical bids and be suspicious when only one bid is received." "Specifications," he said, "should be drawn by disinterested parties and care should be taken to prevent insertion of language which has the effect of excluding all but one concern from bidding. Bidders should be required to name the manufacturer to expose fictitious bids." I recommend that suspected collusive bidding be immediately reported to the executive director of our institute, Albert H. Hall, at N.I.G.P. Washington headquarters, giving tabulations of bids in duplicate plus all pertinent data. Mr. Hall will refer these to the proper authorities for investigation and appropriate action.

Fire Hose

Fire hose is another substantial item on which large savings can be realized if purchases are made on specifications. For years many cities including my own have purchased fire hose on sealed bids using Board of Fire Underwriters' specifications. Our fire hose has given excellent service and lasts from 13 to 15 years. It is necessary to take proper care of it, however, as the most expensive hose will soon deteriorate if neglected. It must be filled with water, dried and folded frequently to prevent cracking and sticking of the rubber lining and mildewing of the cotton jackets. Any short-sighted, misled fire chief who advances the time-worn and hackneyed argument that he will not be responsible for results at fires unless he gets the make of branded hose he wants should be fired. An intelligent and honest fire chief wouldn't make such a silly statement. There is more than meets the eye in this kind of ultimatum which is all too frequently made and taken seriously by gullible public officials. Public purchasing agents are fully aware of this type of back-door sales pressure.

Small towns are more susceptible to it than large ones because as a rule they have no purchasing agent. Legitimate firms welcome an opportunity to submit competitive bids and to earn their business on this basis. Many thousands of dollars can be saved if this procedure is followed.

Special Equipment

In connection with the acquiring of special automotive, shop or other mechanical equipment, it is desirable for the purchasing department to have on its staff or available on call a good all-around mechanical engineer so that money can be saved by purchasing equipment completely suited for the work required of it. Our staff mechanical engineer designs all special equipment on which there are no accepted national standards. One of his designs covers a combination police ambulance and patrol with two-way radio. This type of vehicle takes the place of two vehicles and has served so satisfactorily that several others have since been purchased. It not only represents a large saving in first cost by eliminating the cost of one vehicle, but also in maintenance, in operators and in space occupied by emergency vehicles. Other cities have also shown an interest in it.

He also designed an engineer's field car which utilizes a standard 5-passenger car fitted with accurately proportioned spaces, boxes and holders for all field equipment. This saves about \$1,000 per vehicle over the former cumbersome truck style, and provides better and cheaper transportation.

Still another of his designs is an emergency rescue squad body mounted on a standard bus type chassis. This body is designed to hold each piece of equipment in a special place where it will be protected against damage and still be readily accessible. Many lives have been saved with the use of this equipment because the crew can lay its hands on any item required instantaneously. I commend these designs to our institute's committee on standards and specifications.

Obtaining Competition

At times you are required to spend large sums for other special types of mechanical equipment. The problem is to obtain competition on suitable specifications which will prevent the inclusion of unsatisfactory equipment; moreover, each manufacturer of spe-

cialized equipment may accomplish desired results in a different way and the comparative cost of operation is often an important factor. Here is one illustration of the purchase of special automotive equipment on a competitive basis: our city recently decided to purchase 46 mobile garbage collection units having a capacity of not less than 12 cubic yards each. To save money, we decided to buy the special bodies separate from the chassis. General specifications were prepared for these bodies, and bid forms were sent to five experienced responsible firms known to manufacture this type of equipment. Because of the fact that this type of equipment is somewhat new we arranged for a 30-day field test, giving each concern an opportunity to collect and haul garbage under exactly the same conditions for that period. Before starting the tests each firm was given a copy of the proposed procedure and such changes as were deemed advisable were then made at an open meeting in order to make the tests equitable and fair to all concerned and to forestall complaints. Each firm then filed a letter agreeing upon test procedure. When the tests were conducted observers for both the city and the manufacturers of the equipment followed the equipment and independently recorded all necessary data. Only two concerns participated and the recorded tests proved that each of these two makes of equipment would do the same work at approximately the same cost. When the formal sealed bids were opened, one bidder was \$571 per unit lower than the other. Bidders were given a week to study the tabulated data gathered by the city and to check with their records before the award was made. The award was then made to the lowest bidder. A purchase of this type and magnitude could have easily developed into a political football, with no holds barred. Instead, the purchase was made on the basis of an intelligent approach to a scientific problem. Suitable equipment was obtained on competitive bids and a saving of \$26,289 or approximately 20% was made.

Consolidated Purchasing

A state purchasing agent reports that his agency is purchasing gas stoves and other gas consuming equipment at a discount of 25%, whereas the usual discount is only 12%. He attributes this additional

saving to the fact that he has combined the requirements of all of the using agencies of the state and has entered into a contract with one company. Annual purchases of this type of equipment approximate \$100,000 and he has therefore effected a yearly saving for the taxpayers of approximately \$13,000.

Temperature Adjustment Clauses

A county purchasing agent states: "For many years fuel oil was delivered to our county hospital in tank trucks by the contractor. (We use approximately 2,500,000 gallons per year.) The contract carried no 'temperature correction clause.' As a result fuel oil was being delivered on a straight cost per gallon basis at temperatures ranging from 100° to 130°. The normal A.S.T.M. standard of acceptance is 60°. Until I discovered this fact our county was losing thousands of dollars per year by not requiring adjustment for difference in temperature. In 1944 alone the county saved \$6,000 by revising its specifications to include temperature adjustment clauses."

Short Weight

"Another item which we discovered was the delivery of 100-lb. sacks of potatoes to our institutions which were short in weight. Potatoes are packed in 100-lb. bags and if the bag looks full the natural assumption is that it contains 100 lbs. Even though our institutions have scales the receiving clerks figured that if a bag designated 100 lbs. the marking was correct. I, too, was fooled until I learned that the bags did not contain 100 lbs. When the bags were delivered they were placed flat on the floor and gave the appearance of being full. When examined we found they could be rolled down about six inches and were one to two pounds short in weight. We overcame this by giving instructions that all bags must be stood on end, and in storing, all bags shall be weighed, regardless of the label."

Complete Specifications

"The lack of complete specifications makes the job harder. We are again reviewing our specifications to block loopholes that we have discovered by close observation to receipt of merchandise."

Printed Matter

"Packaging of printed matter also has been a headache. Printed matter

has been delivered in packages of 500. We have used the weighing process to ascertain an approximate count. This was not completely satisfactory. We are now using calibrated boxes. Calibrated boxes assure full measure and are designated as 500 units per box of 16-lb. paper and 480 units of 20-lb. paper 8½x11 or 8½x14. This has been most helpful."

Another county purchasing agent recommends that purchasing agents specify that cuts and dies furnished and used by printers in job printing become the property of the purchaser so that on future purchases of these forms, one printer does not have a 10% or 15% advantage over another, as each printer could then base his price on the same specifications.

Another purchasing agent states: "In the purchase of sterilized rags and wipers, there were twenty pounds of tare representing useless wrappers and baling wire on a 215-pound bale of these rags. Sponges should be purchased by the piece instead of by weight, to insure full value. When these are bought by weight too much is paid for shells, sand and salt. Castings should be purchased by the piece instead of by weight. When purchased by weight, the castings usually weigh more than they should."

Cash Discounts

Cash discounts represent a very potent means of saving tax dollars. These discounts should always be requested when obtaining quotations and bid forms should include a statement that the cash discount is considered in determining the lowest responsible bidder. If you specify that cash discount is to be quoted on the basis of tenth proximo from the receipt and acceptance by your agency of the goods, you have an opportunity to examine these goods before acceptance and still take the cash discount. While private companies, in dealing with responsible long established sources, frequently pay invoices before goods are received, it is usually illegal for state, county, municipal and other public agencies to do so. The goods must usually be in the possession of the purchaser before payment can be made. You are entitled to a cash discount even if the vendor fails to make complete delivery within the specified time. The discount can be taken on or before the 10th proximo after the last satisfactory delivery.

Tax Supervisors Meet November 5

The annual meeting of the Tax Supervisors' Association will open with registration at the Institute of Government in Chapel Hill at noon on Wednesday, November 5th. Sessions will get under way at 2 P.M. that day, and will continue through noon on Thursday, November 6th.

Supervisors planning to attend should notify the Institute of Government immediately so that room reservations may be made for them. As usual, supervisors are urged to bring with them their county attorneys and any interested members of their boards of commissioners.

It is easy to understand why an unusually large attendance is expected for this meeting. Listing and assessing time is rolling around again, and this time with renewed vigor. Taking into account the latest Machinery Act amendments it appears that 1949 is the latest year in which quadrennial reassessments may be held. As a result a number of counties are already busy making plans for the work entailed in a reassessment, and almost all the counties are beginning to think about how they will handle the problem. The need for advice is great, and in the face of unprecedented land prices, the high cost of competent list takers and assessors, and a general feeling that something should be done toward greater equalization, supervisors are naturally looking forward to meeting for mutual discussion and council.

Officers Meeting

Late in September Eugene Irvin, Tax Supervisor of Rockingham County and President of the Association, M. L. Laughlin of Edgecombe County and Troy Short of Guilford County, first and second vice-presidents of the Association, met with representatives of the Institute of Government and other Association members to work out plans for this Fall's program. There was general agreement on the main objectives of the program: (1) Tax supervisors all over the State should be given the benefit of the experience gained by those counties which have most recently conducted large-scale reassessments, and (2) the large number of supervisors who have taken office most recently should be given special attention. To meet the first objective it is planned to have supervisors from those counties which have done reassessment jobs recently go

By HENRY W. LEWIS

Assistant Director

Institute of Government

into detailed explanations of just how the work was done. This discussion will follow the general outline printed as Part 2 of the program below. To meet the needs of all supervisors and new ones in particular, there will be a panel discussion between old and new supervisors along the lines outlined in Part 3 of the program printed below. Naturally these discussions will not be cut and dried, but will be open to all supervisors for questioning and comment.

In addition it was felt that in view of the present inflationary condition of land values it would be well to have some expert advice on how a county should go about setting "value" for assessment purposes. This is to be covered in Part 1 of the program. And then, to keep the supervisors up to date on legal matters of interest, Part 4 of the program will be devoted to legal reminders and a summary of important 1947 changes in *ad valorem* tax law.

The annual dinner with distinguished guests will break the business sessions on Wednesday night.

The Program

- Part 1. *Setting tax value, true value, market value, or any other standard value for ad valorem tax purposes*
- Part 2. *How to conduct a quadrennial reassessment*
 - I. Preliminary Decisions to be made by the Board of County Commissioners
 - A. Deciding what form the reassessment will take
 - B. The kinds of reassessment permitted under the Machinery Act
 - 1. Actual appraisal
 - 2. Horizontal increases or reductions
 - 3. A combination of actual appraisal and horizontal increase or reduction
 - C. What the County Commissioners must think about in deciding on the kind of reassessment to be used
 - II. Preliminary Work of the Tax Supervisor
 - A. Selection and employment of assessing personnel
 - 1. Authorized personnel
 - a. Three list takers and assessors per township, with more than three for townships having incorporated towns if commissioners give approval
 - b. Where horizontal method used, less than three list takers and assessors per township allowed if commissioners so desire
 - c. One list taker and assessor per township with two appointed to serve for the whole county
 - d. Three assessors for the whole county
 - 2. Local assessors versus outside assessors
 - 3. Professional assessors
 - 4. The use of experts
 - a. In what kind of work they can best be used
 - b. How their advice should be used
 - 5. The use of "searchers"
 - 6. Clerical help for the supervisor
 - a. How many will be needed?
 - b. What should they be paid?
 - c. Where can they be obtained?
 - B. Preparing Forms
 - 1. Assessment card forms for various types of property
 - a. Rural real estate
 - b. Town residential property
 - c. Town commercial property
 - d. Personal property forms
 - (1) Inventory and confidential statement forms for businesses
 - (2) Inventory forms for household and kitchen furniture
 - (3) Inventory forms for agricultural and industrial machinery
 - 2. Forms for use in the tax supervisor's office
 - a. Preparation of the abstract
 - (1) What the Machinery Act requires it to contain
 - (2) What is usually included on this form
 - (3) How the form should be arranged
 - b. Preparation of the tax receipts
 - c. Other forms, notices and letters that can be prepared before listing time

C. Maps

1. Kinds of maps already available
2. Mapping the tax area—city maps; rural maps
3. How maps are used in listing and assessing property
4. Cost of mapping

D. Preparation of cost and depreciation schedules for personal property

1. Methods used in making up schedules
 - a. Use of cost figures—how they can be obtained
2. Sources of information
3. How such schedules are used in setting "value" for tax purposes

E. Setting land unit values

1. For urban property
 - a. Use of a typical lot per block
 - b. Use of "depth factor"
 - c. Taking care of corner lots and odd-shaped lots
 - d. Setting front foot price
 - e. Other considerations used in setting value
2. For rural property
 - a. Classifying types of acreage—how this is done
 - b. Setting standard values by types of land
 - c. Other considerations used in setting value

F. Setting the assessment ratio

1. Machinery Act requirement of 100% assessment
2. Things to be considered in setting an assessment ratio of less than 100%

III. The Process of Assessing

A. Field Work

1. Actual inspection of property—how much of this is done?
2. What can be handled on the spot
3. Gathering data and recording it in field
4. Measuring buildings—how is this done?
5. Questioning the taxpayer

B. Office Work

1. Computing on basis of field notes
2. Application of standard schedules
3. Equalizing work by the assessors

C. Tax Supervisor's review of assessments

1. What he should look for
2. How much power he has to make changes

IV. The Cost of Reassessment

- A. With maps prepared for the project
- B. With maps already available
- C. Without maps

V. Public Reaction to the Reassessment

Part 3. Panel Discussion: "Day to Day Problems in Listing and Assessing"

(Note: This will take the form of a roundtable discussion between a few of the new tax supervisors and a few of the experienced tax supervisors. It will touch on all phases of the tax supervisor's work in assessment matters, with emphasis on the points listed here.)

- I. The tax supervisor's role in preparing forms and in other work preliminary to the tax listing period—the need for planning
- II. Selection and pay of assessors and clerical help—qualifications, sources of personnel
- III. The tax supervisor's role as school teacher—methods of putting into effect the Machinery Act requirement that the supervisor instruct and advise with his list takers and assessors
- IV. The tax supervisor's power to review and change assessments—how this power should be exercised
- V. The tax supervisor's work as secretary and adviser to the county board of equalization and review
- VI. Weapons the tax supervisor can use in discovering unlisted property
- VII. Weapons the tax supervisor can use in raising the valuations on property already on the books
- VIII. The use of State and Federal Tax returns as a source of information
- IX. The valuation of timber and timberland

Part 4. Review of Recent Change in Ad Valorem Tax Laws and some Legal Reminders for Tax Supervisors

(Note: This discussion will touch on at least the following points:)

- I. The classification of tobacco kept in storage
- II. Penalties and Interest
- III. The situs of vending machines
- IV. Reports required to be submitted by chain stores to tax supervisor
- V. Statute of limitation on foreclosure actions
- VI. Remedies against personal property
- VII. Releases of taxes
- VIII. Listing and assessing of trucks and busses (in interstate commerce and otherwise)

Counties

(Continued from page 2)

Auditing Contracts

Orange—The commissioners approved a contract with the W. M. Russ Company of Raleigh for an audit of the county's accounts for the current fiscal year, at a price of \$1200.

Changes in Offices

Orange—Alonzo W. Kenion, Jr., who had served as county veterans' service officer since April, 1946, tendered his resignation, which was effective in September. The board of commissioners appointed Clarence H. Hines to the position of county fire warden, succeeding P. H. Johns, resigned. New clerk of Superior Court for Orange County is Ira A. Ward, who was appointed to fill out the unexpired term of G. W. Ray, now city manager of Chapel Hill.

Forsyth—Upon the resignation of Bryce Parker as assistant judge of the county's juvenile court, the commissioners appointed E. S. Heefner, Jr., to fill the vacancy.

Alamance—The board voted to employ J. W. Cole as county manager, at a salary of \$500 per month, with \$50 monthly for travel expense. Appointed as tax collector to replace M. A. Coble, resigned, was C. O. Smith, Jr.

Durham—John M. Markham was appointed tax collector succeeding W. T. Pollard, resigned.

Vehicle Inspection

(Continued from page 4)

A copy of the CONDEMNED report will be sent to local law enforcement officers, who may take what action they deem necessary. If the owner of such a vehicle wishes to have extensive repairs made to bring it up to the minimum requirements, he may have it towed to a garage and get a certificate from the person or firm making the repairs. He may then return to the inspection lane for another check-up.

The mechanical inspection program will be of great benefit to all motorists, for it will insure you of having your vehicle in good working condition at all times, and at the same time will lessen the possibility of your becoming involved in an accident with an unsafe vehicle.

You are invited to return for as many check-ups as you desire after the initial inspection. You, of course, will only be charged for the first inspection.

The Attorney General Rules

Digest of recent opinions and rulings by the Attorney General of particular interest to city and county officials.



I. AD VALOREM TAXES

A. Matters Relating to Tax Listing and Assessing

1. Exemptions—religious and educational organizations

To Robert D. Holleman.

Inquiry: A barber school makes a charge to students for instruction given, and in addition, the students are allowed to offer their services to the public, and the customers pay 10c for a shave and 25c for a haircut, with the money derived from such charges being used to defray the expenses of the shop. Is the personal property of such a school exempt from *ad valorem* taxation under G.S. 105-297(3)?

(A.G.) Subsection (3) of the section cited reads as follows: "(3) The furniture, furnishings, books, and instruments contained in buildings, wholly devoted to educational purposes, belonging to and exclusively used by churches, public libraries, colleges, academies, industrial schools, seminaries, or other institutions."

If the property in question meets the test set out in the above subsection, that is, that it is wholly devoted to educational purposes and that it belongs to and is used exclusively by the barber school, I am of the opinion that exemption would not be defeated by reason of the fact that the institution makes a charge to the public for services rendered. You will note that since the decision in the case of *Corporation Commission v. Oxford Seminary Construction Company*, 160 N.C. 582, was handed down in 1912, the language of the subsection has been somewhat altered, but I believe that that case is authority for allowing the exemption under the facts set forth in your letter. In that case, the Court said: "Both in the Constitution and in the statutes, it is the use to which the property is devoted which is made determinative, and not the presence or absence of consequential pecuniary benefit to the owner or proprietor. This being our view as to the meaning of the Constitution and statutes applicable, we may not approve the position that the exemption cannot be extended to cases where, as in this case, an incorporated college has for one of its objects the personal profit of the president and owner."

While formerly the subsection restricted exemptions to such property owned by incorporated institutions, the word "incorporated" no longer appears in the subsection and the



HARRY
McMULLAN
Attorney
General
of
North
Carolina

benefit of the exemption is extended to "industrial schools" or "other institutions," whether or not incorporated.

12. Exemptions—veterans'

To Bennet Nooe.

Inquiry: Should automobiles given to veterans of World War II who have lost the use of a limb in service be listed for taxation?

(A.G.) No. Inasmuch as the gift of the automobile is in the nature of compensation for the disability suffered while in the armed services, such automobile is exempt from taxation under G.S. 105-344.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

51. Clothing salesmen

To Mrs. Lucy A. Peterson.

Inquiry: Does the town have authority to collect a privilege tax from shoe and clothing salesmen who canvass the town from time to time, taking orders with a small down payment, the goods to be shipped later with the balance to be paid C.O.D.?

(A.G.) I do not think you have authority to collect such a privilege tax. This has been settled in the Supreme Court of the United States by such cases as *Nippert v. Richmond*, 327 U.S. 416, 90 L.ed. 760. See also *Real Silk Hosiery Mills v. Portland*, 268 U.S. 325; 69 L.ed. 982; and for comparison, see *Best & Company v. Maxwell*, 311 U.S. 454, 85 L.ed. 275. The last cited case is a North Carolina case.

Under the holdings of our own Supreme Court, it is very doubtful if you can collect any such privilege tax. See *Kenny Company v. Brevard*, 217 N.C. 269 and *State v. Christopher*, 222 N.C. 98.

IV. PUBLIC SCHOOLS

D. Powers and Duties of Present School Districts and Agencies

7. Attendance

To Paul A. Reid.

(A.G.) The compulsory school attendance law (G.S. 115-302) requires that every child between the ages of seven and sixteen years attend the schools of this state continuously for a period equal to the time which the public school in the district in which the child resides shall be in attendance. This office is of the opinion that the law applies to those children who have reached their seventh birthday prior to the opening of school as well as to those children who reach their seventh birthday after a term of school has begun. We are also of the opinion that the law does not apply to a child after he has reached his sixteenth birthday, even though the sixteenth birthday was reached during a term of school.

42. Liabilities for injuries to pupils

To R. M. Wilson.

Inquiry: Where a safety patrol in a city school is organized, with the members of the patrol to be appointed by the principal from the seventh and eighth grades, with supervision of the patrol to be under the principal, the Junior Chamber of Commerce and the police department, what would be

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the liability of the school board and of the school administrative officials in case of injury or death of the pupils so assigned?

(A.G.) I do not know of any statute which gives school boards or administrative officials authority to assign pupils to traffic duties, and it is my opinion that they do not have such authority. In case of injury to a pupil so assigned, or to a pupil being directed by him, the board members would not be liable in their official capacity. The committee, being an agency of the state, is not liable in tort. *Benton v. Board of Education*, 201 N.C. 653.

The general rule as to the *personal* liability of public officers for an injury caused by their official acts is that such liability will attach when the cause of action is based on failure to perform or the negligent performance of a ministerial duty, but when the duty is discretionary, the officer's conduct must be corrupt and malicious if there is to be any liability. *Betts v. Jones*, 203 N.C. 590; *Moffitt v. Davis*, 205 N.C. 565.

These principles, however, would not apply if recovery for an injury to a pupil assigned to direct traffic were sought. Assigning pupils to direct traffic being unauthorized, the act of the board and/or of the school officials would be neither ministerial nor discretionary.

In *Gurganious v. Simpson*, 213 N.C. 613, a coroner was held personally

liable for performing an unauthorized autopsy on a deceased person when there was no suspicion of foul play, Justice Devin for the Court saying:

"The general rule is that when an officer goes outside the scope of his duty he is not entitled to protection on account of his office, but is liable for his acts like any private individual."

Even though establishing a safety patrol on the plan outlined in your letter is highly desirable and laudable, I would hesitate to advise such until it has been authorized by statute.

F. School Officials

20. School district committeemen

To J. Warren Smith.

Inquiry: May a member of a local school committee accept employment as an assistant teacher on the Veterans Farmer Training Program?

(A.G.) Under the provisions of G.S. 115-132, no person while serving as a member of any district committee shall be eligible to be elected as a teacher of any public school; and should such person be elected to teach in any public school or private school receiving public funds before resigning as a member of the district committee, said election is void.

The above statute is applicable to the situation you describe, for the reason that the Veterans Farmer Training Program is under the control and direction of the Department of Public Instruction.

To George M. Bowman.

Inquiry: May a member of the Board of Education drive a school bus either in his own right, or as a substitute for his son, and may a member of a School Committee serve as janitor?

(A.G.) The answer to both questions is that, under our statute, G.S. 14-234, a member of the Board of Education cannot serve as a school bus driver or as a substitute for his son. Under the same principle, a member of a School Committee cannot serve as janitor of a school over which his Committee has supervision.

G. Poll Taxes, Dog Taxes, Fines and Forfeitures Accruing to Schools

35. What constitutes a penalty?

To W. C. Owens.

Inquiry: Should civil penalties collected for minor violations of traffic ordinances such as time limit in meter zones, double parking, etc., where no court action is had, be paid into the county school fund or to the municipality in which such minor traffic violation occurred?

(A.G.) The practice, I understand, is that the payment is used for the purposes provided by the statute, G.S. 160-200, or goes into the general fund of the municipality and does not go into the school fund. As this is not a fine or penalty imposed by law, I have some difficulty in being able to classify it, but it does have the backing of general practice in many

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municipalities throughout the State and is not treated as a fine or forfeiture going into the school fund under the constitutional provision. In other words, I think it gets by by what may be said to be main strength and awkwardness and in the absence of some challenge.

I. School Property

4. Leasing school property

To Arthur D. Gore.

(A.G.) You state that the board of education has an offer from a would-be tenant to lease abandoned school property for a term of years, with the property to be converted into a duplex apartment house. I agree with your opinion that the county board of education does not have authority to lease abandoned school property, as I can find no statutory authority for renting or leasing such property. You are familiar with G.S. 115-116 which provides for the sale of school houses which have been abandoned.

The board of education could convey the property to the county, however, and the county could then lease the property to the lessee.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

D. Sinking Funds

20. Use of sinking funds to retire other bonds of same unit

To C. D. Taliaferro.

(A.G.) You state that the county has outstanding \$300,000 in six per

cent refunding bonds which will fall due on November 1, 1950, and that the county now has a sinking fund more than adequate to retire these bonds, although the county still levies each year to service the interest payments. You further state that the county may have an opportunity to purchase some of these bonds for the account of the sinking fund at a figure considerably above par but still low enough that they would effect a saving of about \$1500. You inquire whether the county would have a right to purchase these bonds for the sinking funds at a premium, and you refer to and quote from G.S. 153-148.

I am of the opinion that there is nothing in G.S. 153-148 which would prohibit the county from purchasing the bonds at a premium for the sinking fund created for the retirement of these bonds. The provision in the statute that municipalities shall not be required to purchase such bonds for a greater sum than the face value thereof with accrued interest at the time of purchase would not, in my opinion, prevent the voluntary purchase by a municipality of its own bonds, when it is to its financial interest to do so at a premium.

As the statute cited authorized and "directed" the county commissioners having charge of sinking funds to purchase and retire the specific bonds for which the sinking fund was created, the statute later provided that the municipality would not be

required to purchase the bonds above par. I do not think this could be considered as intended to prevent them from purchasing the bonds at the market value.

It would be desirable, I think, to have the opinion of reliable dealers in these bonds to show that the purchase was made at the market price, in order that the officials of the county would be in a position to show that the purchase was made at the best price obtainable.

G.S. 159-25 authorizes the investment of sinking funds of a county, with approval of the Local Government Commission, and this statute provides that the securities shall not be purchased at more than "the market price thereof." You would not, however, be acting under the authority of this statute if you purchased the bonds for retirement under G.S. 153-148 and, in this event, it would not be necessary to have the approval of the Local Government Commission. You might, however, desire to have their approval in order to fortify your position as to the purchase of these securities.

H. Issue of Notes

20. Tax anticipation notes

To H. P. Warlick.

Inquiry: May a town borrow a sum on short-term notes to be paid out of anticipated ABC store revenues?

(A.G.) G.S. 160-399 prohibits municipalities from borrowing money or issuing bonds and notes, except as



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provided in that subchapter, or making an expenditure of money unless the money shall have been appropriated as provided in the Act, unless the same is a payment of the judgment or principal and interest of a bond or note of the municipality.

G.S. 160-373 provides that a municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year in anticipation of the collection of taxes and revenues of such fiscal year within the amount of the appropriation, and that the loan must be paid not later than the 10th day of October of the next succeeding fiscal year.

It therefore seems necessary that your board first make an appropriation in its budget before it may borrow money in anticipation of the collection of taxes or other revenue. If you have not already adopted your municipal budget, I suggest that you include within it an appropriation for the desired amount and include within the revenues to meet the appropriation the anticipated ABC funds.

However, before you may borrow money for any purpose, the loan must be approved by the Local Government Commission and the procedure prescribed must be fully met. I also call your attention to the fact that a municipality may not borrow money during any fiscal year in anticipation of the collection of taxes exceeding fifty per centum of such taxes due and payable within the fiscal year. (Article V, Section 4, of the Constitution).

J. Local Improvements

To W. E. Easterling.

Inquiry: What is the interpretation of the language found in G.S. 160-397 which provides that "All money derived from the collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements."

(A.G.) From a consideration of this section and the other related sections in the Municipal Finance Act, I am of the opinion that this language means that the money collected for special assessments shall be used to pay the principal and interest on the bonds or notes issued for the improvements for which the collection is made, or on bonds or notes of other local improvements for which bonds or notes had been issued. It does not mean, in my opinion, that the money collected for special assessments could be used to construct other special improvements or other local improvements but could be applied only upon bonds or notes issued for that purpose.

VII. MISCELLANEOUS MATTERS AFFECTING COUNTIES

- D. Liability for Tortious Acts and Negligence
2. Torts of employees

To Dr. M. C. Bonner.

Inquiry: Would the members of the board of directors of a county sana-

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torium be personally liable in the event of injury or death to an employee or patient as the result of accident by fire, etc.?

(A.G.) Under the Workmen's Compensation Act, any employee of the county who is injured or killed by accident arising out of or in the course of his employment would receive compensation in accordance with this law. This statute expressly writes out any right of an employee to recover at common law for injuries or death. Therefore, as to employees, the Workmen's Compensation Act would eliminate any personal liability on the part of the directors.

As to injury or death of a patient resulting from fire, the general rule is that the officers or directors of an institution operated by a county or the state would not be personally liable for injury or death of a patient in such institution, unless the injury or death was caused by corrupt or malicious action on the part of the trustees.

In the case of *Betts v. Jones*, 203 N.C. 491, certain school committeemen were sued individually because of a school bus accident resulting in the death of one of the pupils. The Supreme Court said: "It has also been held that where the powers conferred upon a public officer involve the exercise of judgment and discretion he is not liable to a private person for neglect to exercise such powers or for the consequences of the lawful exercise of them if he acts within the scope of his authority and without malice or corruption. (Citing cases.) If, however, his act is corrupt and malicious he may be liable in his personal capacity for the injury inflicted by him."

It is, therefore, difficult for me to conceive of any situation in which the board of directors of your insti-

tution would be personally liable for the death of a patient as the result of an accident by fire in the institution, unless it could be shown that the directors had knowingly employed some person who had caused the injury or death who was known to be grossly incompetent.

S. What Constitutes Necessary Expense

To D. B. Teague.

Inquiry: (1) Is a building for a county health department a necessary expense such as would authorize the issuance of bonds of the county for its construction, or if it is not a necessary expense, is it such a purpose as is authorized by special act for a special purpose, and do the commissioners have the authority to call an election to vote on the question of issuing bonds?

(A.G.) I find no decision passing upon the question of whether a building constructed for housing a county health department would be a necessary expense. In addition, the County Finance Act does not provide any authority for the issuance of bonds for such purpose. I note that the commissioners desire to erect such a building on the courthouse square, and it could be designated and called a courthouse annex or extension and be treated as such. In many of the courthouses in the state it is the practice to include space for the offices for county activities, including county boards of health. If the building is erected on the courthouse site and a resolution calling for its construction term it as a part of the courthouse, the authority for the issuance of bonds would be provided by G.S. 153-77 and other sections of the County Finance Act. Cases hold that the erection and repair of a courthouse is a necessary expense. *Burgin v. Smith*, 151 N.C. 561.

U. Purposes for Which Appropriations May Be Made

To D. B. Teague.

Inquiry: Do the county commissioners have the authority to use the surplus from the 1946-47 budget in the construction of a building as quarters for the health department?

(A.G.) The County Fiscal Control law requires that any surplus revenues be accounted for in the tax levies and appropriations made for the next succeeding year. See G.S. 153-122, 153-123, 153-124. Under this law the surplus in any fund could not be diverted and used for some purpose for which no appropriation has been made. If the county should determine to erect such a building as a part of the courthouse, any available funds could be appropriated for this

purpose and taxes levied to defray the cost of this construction. In this way the surplus funds could be made available in the construction of the building, which might be used to house the health department but which would be, in fact, a part of the courthouse.

To Larry I. Moore, Jr.

Inquiry: May a county appropriate county revenue to the American Legion for the purpose of purchasing and erecting a home for the American Legion Post?

(A.G.) In order for such appropriation to be made there would first have to be some statutory authority; and, after the enactment of such statutory authority, the question would have to be submitted to a vote of the people of the county; and this not being a necessary expense, it would have to be approved by a majority of the qualified voters of the county before such appropriation could be made.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

B. Matters Affecting Municipal Utilities

20. Franchise and other taxes

To Edwin Gill.

Inquiry: Should a city bus system company pay both state and city a 6% gross receipts tax?

(A.G.) By Section 203, of the Revenue Act, a franchise tax is levied on street bus transportation systems. This tax is a tax of 6% of the total gross receipts derived from such business after the deductions allowed by the franchise tax article. It appears, thus, that the company should pay the 6% gross receipts tax to the state. Subsection (6), of Section 203 of the Revenue Act, provides that "no city or town shall impose a greater privilege or license tax upon such companies than the aggregate privilege or license tax which is now imposed by any such city or town." This provision first appeared in the Revenue Act of 1933, which was ratified on May 13, 1933, c. 445, s. 203. It appears, thus, that municipal corporations are authorized to levy a privilege tax on street bus transportation systems in an amount not in excess of that levied in 1933.

F. Contractual Powers

15. Requirement for competitive bids

To John D. Shaw.

Inquiry: City called for bids on relining water mains; on finding the lowest bid in excess of funds available may the city enter into private negotiations with the low bidder to reduce his bid price if all of the work remains the same as called for in the advertised specifications?

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(A.G.) Yes, if the agreement entered into with such low bidder was based on performing substantially the same service and type of work contained in the advertisement for bids.

To Fred Folger.

Inquiry: Is a municipality included in the statutory provision that if the "government agencies or subdivisions of the State" perform their own work, the cost of which is not in excess of \$5,000, no bids need be let?

(A.G.) G.S. 143-135 applies to municipalities so that a municipality performing by or through its duly elected officers or agents work for such municipality up to and including an amount not to exceed \$5,000 would not be embraced within the requirements of G.S. 143-29. A municipality in doing its own work as specified in this statute, the cost of which did not exceed \$5,000.00, would not have to let it to bids, according to this view.

N. Police Power

21. Sale of wine and beer

To J. D. White.

(A.G.) While the governing body of a municipality may not refuse to grant a beer license to a person solely because he operates a pool room, it can in effect deny the same by refusing to grant a permit to operate a pool room in which beer or wine is sold. This authority is granted by G.S. 160-200(33) which provides that a municipality may license,

prohibit and regulate pool and billiard rooms, and provides for the revocation of licenses. It therefore appears that the governing board may revoke the license of a pool room if it sells beer in violation of an ordinance of the city prohibiting the same.

X. Ordinances

I. Validity of ordinances

To J. H. Stockton

Inquiry: May a town governing board enact an ordinance declaring the operation of a sawmill or planing mill within the corporate limits to be a nuisance in fact and in law, and an ordinance abating or preventing such nuisance?

(A.G.) I have been unable to find any case in North Carolina which holds that a sawmill or planing mill is a nuisance *per se*, or is a nuisance in fact and in law. In the case of *Turner v. New Bern*, 187 N.C. 541, it was held that an ordinance adopted by the city forbidding the erection of lumber yards within a long established exclusively residential portion of the city would be sustained as not being an abuse of the authority granted by G.S. 160-200. I am inclined to the opinion that a sawmill or planing mill would not be held by the courts to be a nuisance *per se*, when established and operated within the boundaries of a municipal corporation. There are many such mills now in active operation in cities and

towns of North Carolina, and I have never heard of their operation being challenged on the ground of being a nuisance. This does not mean, however, that upon proper showing as to the particular operation of a sawmill or planing mill, its operation would not amount to a nuisance. The cases, however, hold that the prohibiting of a sawmill or planing mill from operation could not be done on purely esthetic grounds.

Article 4 of Ch. 160 of the General Statutes gives ample provisions for zoning.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

V. Clerks of the Superior Court

42. Exemption from jury duty

To Paul A. Coffey.

Inquiry: Is it practical for magistrates to serve on the jury?

(A.G.) It probably is not practical for magistrates to serve on the jury, since it is my experience that most lawyers do not care to have magistrates serve on a trial jury, and in most cases will excuse them. I do not find, however, where magistrates are exempt from jury duty under our statute, which is Section 9-191. Under the law their names will have to be put in the box the same as any other citizen's if they meet the necessary qualifications for jurors.

One Minute Quiz---

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2. What three governmental levels are served by POPULAR GOVERNMENT?
3. What other groups are served by POPULAR GOVERNMENT?

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Answers---

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2. Town-city; county; state
3. Schools, lawyers, civic leaders and organizations

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104. Permit for deadly weapon
To Wyatt J. Porter.

(A.G.) It is unlawful in this state for any person, firm or corporation to sell, give away, dispose of, purchase or receive any pistol, pump-gun,

bowie knife, dirk, dagger or metallic knucks without first securing a permit therefor from the clerk of the Superior Court in the county in which such purchase, sale or transfer is intended to be made.

Books Received

Smoke Control and Air Pollution

CITY SMOKE CONTROL AND AIR POLLUTION PROGRAMS—MODEL ORDINANCE ANNOTATED. By Charles S. Rhyne and William G. Van Meter, Washington: National Institute of Municipal Law Officers, 730 Jackson Place, N.W. 1947. \$2.00. 23 pages.

This is report No. 120 of the NIMLO series, containing an introduction to the smoke control problem by Mr. Rhyne, a discussion of court decisions upholding and invalidating smoke control measures, a model ordinance and annotations to each section of the ordinance. "Devices now exist for the complete combustion of matter which heretofore was cast out upon the city, and which laid a complete blanket of grime and filth upon the city," says Mr. Rhyne. The booklet recognizes that differing problems existing in different localities require different solutions, and takes account of the charter, statutory and constitutional limitations of which cities

must be aware with regard to the control of smoke.

Municipal Regulation of Peddlers

MUNICIPAL REGULATION OF PEDDLERS, SOLICITORS, & ITINERANT MERCHANTS. By Charles S. Rhyne, Charles H. Burton and Charlie O. Murphy. Washington: National Institute of Municipal Law Officers, 730 Jackson Place, N. W. 1947. \$5.00. 165 pages.

Three model ordinances are contained in this book: One for peddlers, one for canvassers and solicitors, and one for itinerant merchants and itinerant vendors. Definitions are particularly important in this field of municipal regulation, and careful classification is essential in framing an ordinance which will fully cover the various kinds of wandering salesmen described by the title. A full list of subjects dealt with is too long for inclusion here. However, in addition to the model ordinances mentioned, ordinances of several representative cities are set out in full, together with annotations to the model ordinances and a review of court decisions.

Parking Meters

PARKING METERS—LEGALITY—MODEL ORDINANCE ANNOTATED. By Charles S. Rhyne and Charlie O. Murphy. Washington: National Institute of Municipal Law Officers, 730 Jackson Place, N.W. 1947. \$2.00. 29 pages.

This is a survey of the legal problems raised by the adoption of parking meters since their invention in 1935, containing a review of selected court decisions, a model ordinance and annotations thereto.

Sewerage Service Charges

SEWERAGE SERVICE CHARGES. By Samuel Robert Wright. College Station, Texas: Bulletin No. 98, School of Engineering, Texas Engineering Experiment Station. 1947. 74 pages.

This is a study of the nature of sewerage service charges as they

have developed in Texas, with discussion of such charges in relation to municipal finance in general and arguments for and against their adoption, together with information on Texas rate structures, billing practices and collection and legal problems. The pamphlet contains a selected bibliography of books, pamphlets, bulletins, articles and court decisions on the subject.

Municipal Utilities

FINANCIAL ADMINISTRATION OF MUNICIPAL UTILITIES. By Irving Tenner. Chicago: Public Administration Service, 1313 East 60th Street. 1947. \$3.75. Pp.xi, 152.

The author defines a municipal utility as "any enterprise operated by a governmental unit, which renders services to the public for compensation. . ." including in the definition every commonly recognized municipal utility from airports to waterworks. However, he confines himself to the financial problems of only electric and water plants, and deals with financial organization and policies, rate structures, budgeting, debt administration, customer accounts, custody and control of cash, purchasing and storage of materials, salary and wage accounting, management of fixed assets, general and cost accounting principles and procedures, and financial reporting. The text is supported and illustrated with numerous sample forms and charts.

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CALENDAR OF DUTIES

FOR CITY AND COUNTY OFFICIALS

Prepared by the Staff of the

INSTITUTE OF GOVERNMENT

This Calendar outlines the principal duties required by statute to be performed on definite dates; it does not include certain duties where the exact time for performance is not specified by statute.

NOVEMBER, 1947

DAY	OFFICIAL	DUTY	Reference to Law. (To General Statutes unless otherwise indicated)
Each regular meeting of Governing Body	Sheriff or Tax Collector	Report to Governing Body concerning taxes collected.	105-375
1	Sheriff or Tax Collector	½% discount period for 1947 taxes ends today.	105-345(1)
On or before 1st	Register of Deeds	Transmit, to State Board of Assessment, duplicate list of tax exempt property.	105-312
On or before 1st	County Board of Education, Board of Trustees	File with Controller of State Board of Education certified statement of expenditures, salaries, and other obligations due and payable during the month.	115-367
2*	Sheriff or Tax Collector	Period for paying taxes at par begins today.	105-345(2)
5	Police Department	Forward to Department of Motor Vehicles all reports (on approved form) received during preceding calendar month of accidents involving property damage of \$25 or more or resulting in injuries or death to any person.	20-166 d
5	Local Registrar of Vital Statistics	Transmit to State Registrar of Vital Statistics and County Register of Deeds, all birth and death certificates registered during October.	130-99
On or before 10th	Clerk of Superior Court	Make monthly inheritance tax report to Commissioner of Revenue.	105-22
10	Coroner	Report to Department of Motor Vehicles the death of any person during preceding calendar month as result of accident involving motor vehicle and circumstances of such accident.	20-166(g)
On or before 15th	County ABC Board	Report and pay State tax on wine and liquor sales for the month of October.	18-85; 105-170

Justice J. Wallace Winborne
 Supreme Court of North Carolina
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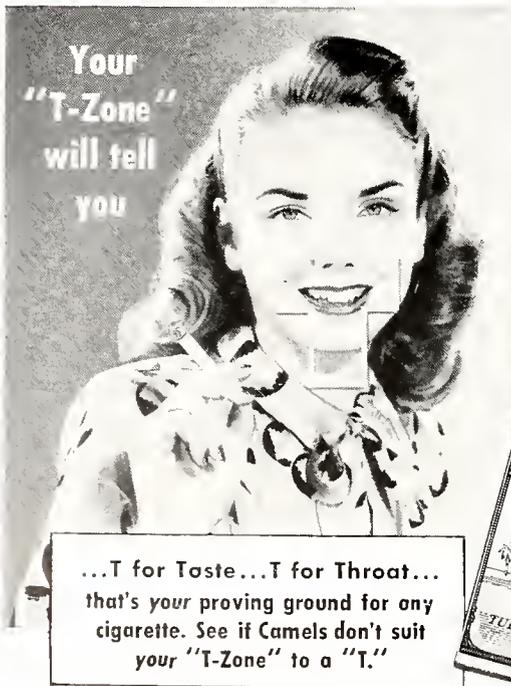
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