

January, 1948

POPULAR GOVERNMENT



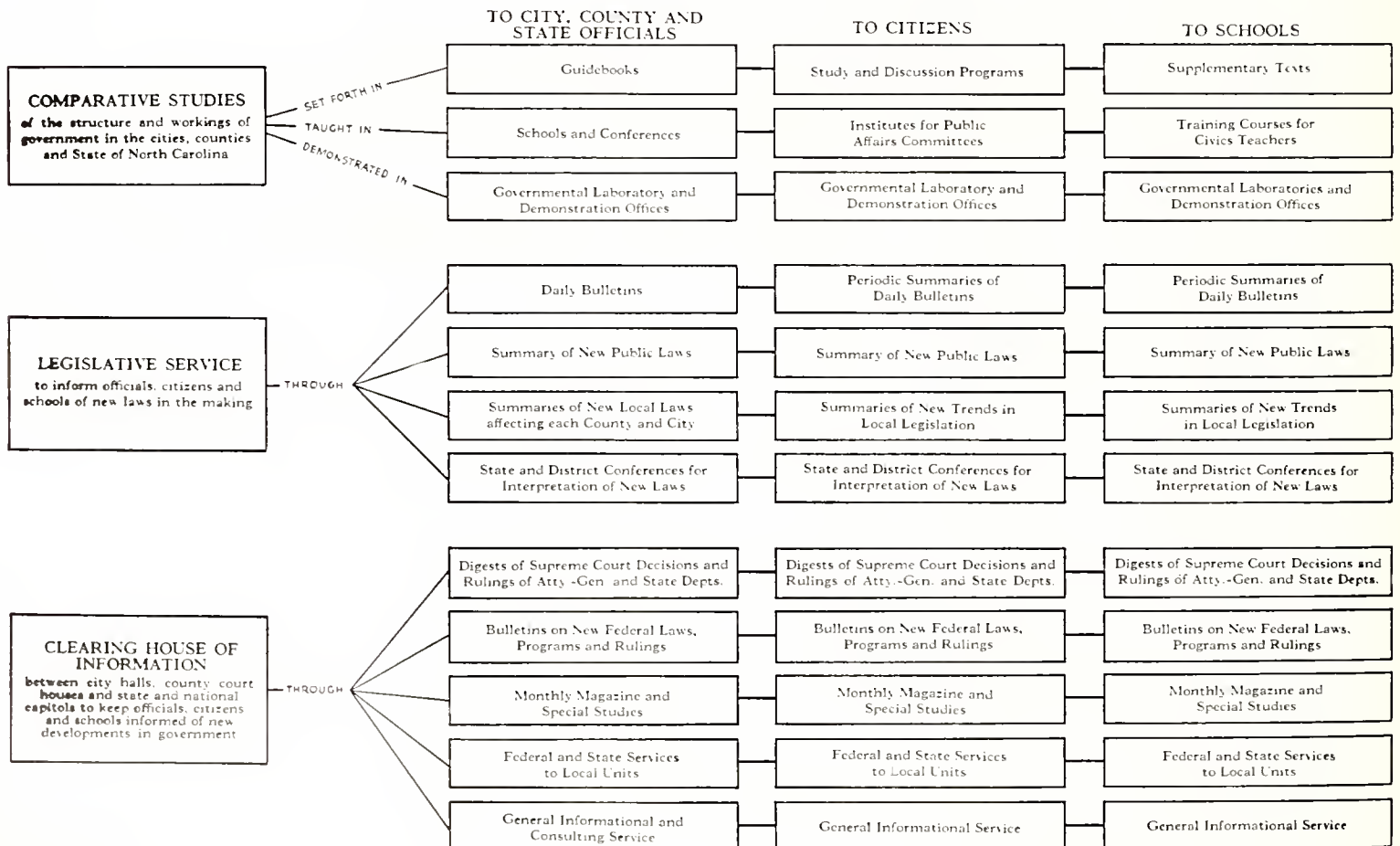
1948: North Carolina's Vehicle Inspection Year (See Page 5)

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GOVERNMENTAL LABORATORY BUILDING INSTITUTE OF GOVERNMENT



INSTITUTE OF GOVERNMENT SERVICES



Listing Property for Taxation

Some Thoughts and Advice for Taxpayers and Tax Listers to Consider Before Meeting for Their Annual Conversations This January

The citizen and his government meet formally on two occasions. At elections this meeting chiefly emphasizes the exercise of a privilege and secondarily the performance of a duty. At tax listing time the major emphasis is on duty and the secondary emphasis on privilege. To put it another way, the citizen contracts for the services he wants in November and gets an accounting of the costs in January. This is artless reasoning, and takes little account of economic and political variations on the democratic theme, but on analysis it contains a vein of truth.

When man and his government meet to make the contract (if the figure can be carried further), the concept of the willing buyer and the willing seller should materialize. The election casts the die, for after that the government in theory, at least, is what the citizens bargained for. What it does, what it fails to do, and how it does or fails to do those things the citizens wanted in November, flow straight from the bargain struck on election day. When the bill is presented, figured in the way the citizen has instructed his government to figure it, his complaints carry little weight. In honesty, his responsibility is clear: pay the bill with good grace, and, if he thinks he has been cheated, fight mightily to strike a better bargain next November.

But the responsibility lies on two sides. A citizen's government must keep in constant focus the simple truth that the contract it has made lies not with groups of citizens, favored sets of friendly men and corporations, but with each citizen, and all of them. (And here the figure, stretched out beyond its useful resilience, snaps back and stings us. How can there be a contract without bilateral participation? Some citizens failed to vote.) This contract's obligation has been codified:

"All property, real and personal, shall as far as practicable, be valued at *its true value in money*, and taxes levied by all counties,

By HENRY W. LEWIS

Assistant Director

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COVER PICTURE

The men in the picture on the cover are practicing for their part in North Carolina's motor vehicle inspection program, scheduled to begin on January 1, 1948. They were students at the Mechanical Inspection School conducted by the Institute of Government in December for the Division of Mechanical Inspection, Department of Motor Vehicles, and they are inspecting an automobile in the Safety Inspection Lane set up at the school as part of their course.

This picture shows what happens at the second station in the safety lane process (see pages 4 and 5 for pictures and explanation of the entire lane). At this station the inspectors check the general soundness of the vehicle—testing steering wheel play, handbrake, rear view mirror, tires, condition of windshield, and window glass, whether lights work, etc.

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municipalities and other local taxing authorities shall be levied uniformly on valuations so determined." (Section 500 of the Machinery Act, G.S. 105-294. Both these and later italics have been freely supplied.)

These are the standards set for the accounting under a government financed from *ad valorem* tax receipts. The citizen must pay according to the things he possesses that make him a man of property, great or small. The more valuable his possessions (and consequently the wider his enjoyment of their use), the more he is obligated to contribute to the general agency of government. Yet no citizen can be singled out to carry a greater or lesser burden than the true money value of his possessions will warrant, for the further mandate is uniformity. The rate applied must work with constant regularity and equality.

Entangled with the government's obligation is a need for men to administer its services and compute the charges. County commissioners select for their county a tax supervisor charged with running the machinery, and, in turn, the supervisor appoints the men and women charged with listing the property of citizens in their townships so that property may be inventoried, examined, and evaluated with an eye to determining what portion of the burden it should bear. (Nor is the list taker himself immune from the tax burden.) The list takers' instructions and authority are clear:

The instructions: "Under the supervision of the supervisor [they] shall *secure lists* of all real and personal property and polls subject to taxation in their townships, and shall *assess* all such property. . . . To this end they shall secure from each taxpayer" a list specifying the property required by law.

The authority: To get the list they may visit the taxpayer and his property, investigate its value, and examine the taxpayer

about his property under oath. In addition they may issue subpoenas for any persons for examination under oath when they have reason to believe those persons have knowledge pertinent to the discovery or valuation of property subject to taxation in the township, or knowledge necessary in obtaining a complete listing. (Section 407 (2) of the Machinery Act, G.S. 105-290 (3).)

The authority hints at a record of the accounting. That record is the tax abstract, a form patterned to fit legislative instructions and itemized

to remind both tax lister and taxpayer of those items of property most likely to be found on the land and in the houses of that county. (It is wise to notice that these printed lists are reminders, and that omission from the printed list is no defense when charged with keeping something back.)

Government invites the citizen to meet his list taker between January 1 and January 31, and adds an urgent request that he come early. If the work proves too much for 30 days, thirty more may be added to the period, but when the citizen refuses the

invitation, he is forced to meet the government under less sociable circumstances.

"The penalty for failure to list property or a poll before the close of the regular listing period shall be ten per cent (10%) of the tax levied for the current year on such property or poll." (Section 1109 (3) of the Machinery Act, G.S. 105-331 (3).)

While the responsibility is bilateral, this is no ground on which to fight a tug of war. Since Stamp Act days when the cry against taxation

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Board of Directors of County Commissioners' Association Holds First Meeting

When the county commissioners of the state gathered in Asheville last August for the annual convention of their Association, they voted to replace their organization's old executive committee with a board of directors. Under the new plan, which was proposed by retiring president John Swain of Wake, the board of directors is composed of the president and vice-president of the Association, together with one director from each of the state's ten highway districts.

The first meeting of the new board was held November 7 at Raleigh. A summary of the record of that meeting follows:

Next Annual meeting of the Association: A committee was appointed (R. L. Brame of Durham; Addison Hewlett, Sr., of New Hanover; Dan Taylor of Beaufort; and Secretary-Treasurer John Skinner of Warren) to meet in June and pick the time and place for the Association's 1948 convention. The committee was directed to give first choice consideration to Morehead City, second choice consideration to Wrightsville Beach.

Change in the Association's constitution: A committee was appointed to draft proposed changes in the constitution made necessary by the change from the executive committee to the board of directors. This committee, which will report its work to the next board meeting in April, is composed of Henry Vaughan of Nash, chairman; Knox Watson of Hoke; and Mr. Skinner.

Counties not members: The directors within whose districts the following non-member counties lie were asked to make every personal effort to bring them into the Association: Alleghany, Avery, Catawba, Chatham, Clay, Graham, Franklin, Jackson, Macon, Mitchell, Pamlico, and Surry.

District meetings: Each director agreed to have a district meeting between January 15 and April 1 and to try to have every commissioner in the district present, along with county accountants, tax supervisors, and clerks to the boards of commissioners. The board of directors expressed its feeling that in addition to the opportunity these meetings would offer for the commissioners of different counties to get to know one another, the program at each meeting should include: Discussion of needed changes in the state laws, with the district director to bring the district's recommendations to the next board meeting; an invitation to the state highway commissioner for the district to attend and tell the counties what the plans of road construction are and what each county may expect during the coming year; a discussion led by a county accountant, followed by an open discussion, in order that all may have the benefit of suggestions for improved methods of operating; a discussion of the work of the tax supervisors, with attention to revaluations, collections, tax rates, etc.; and a recommendation from the district to the next annual meeting's nominating

committee as to the district's choice for district director (the present directors were appointed by the president for one year terms; thereafter each district will elect its own director for a two year term).

Legislative program: Mark Goforth of Caldwell was appointed chairman of the Association's legislative committee, to serve until the next annual meeting with Clarence P. Parks of Rutherford, D. G. Wilkie of Henderson, and Arnie D. Cashion of Mecklenburg. This committee will take the recommendations coming from the district meetings, and formulate a legislative program to be presented at the annual meeting.

Present at the meeting and assisting in working out the program for the coming district meetings was Albert Coates, Director of the Institute of Government, who pledged the continued cooperation of the Institute with the Association.

Members of the board of directors are: First district, Meade H. Mitchell of Halifax; second, Dan Taylor of Beaufort; third, Addison Hewlett of New Hanover; fourth, R. P. Holding of Johnston (Vice-President), John P. Swain of Wake, (past President), and J. Henry Vaughan of Nash; fifth, R. L. Brame of Durham; sixth, F. Knox Watson of Hoke; seventh, Arnie D. Cashion and J. Caldwell McDonald (President), both of Mecklenburg; eighth, Mark Goforth of Caldwell; ninth, Clarence P. Parks of Rutherford; and tenth, D. G. Wilkie of Henderson.

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

Taxicab Regulation

Lexington—Permission was granted by the board to the taxicab companies of the city to increase the standard cab fare from \$0.35 to \$0.45.

Winston-Salem—The board adopted an ordinance providing that no female passenger over six years of age shall ride unaccompanied by another passenger on the front seat of a cab when the back seat thereof is unoccupied, and that when such a female is the sole passenger in a cab, she shall ride on the back seat.

Snake-Handling

Durham—“The physical contact by human beings with venomous reptiles by such human beings knowingly and intentionally handling reptiles of a poisonous species or variety, whose venom has not been removed, by picking them up with bare hands, holding them against exposed parts of the human body, . . . or inviting, suggesting, exhorting, challenging or otherwise suffering or permitting or aiding others to do so, is dangerous and is inimical to public health, safety and welfare, and is hereby declared to be a public nuisance. . . .” These are the opening provisions of a detailed ordinance aimed at public snake-handling by religious groups, adopted by the city council in October.

City Planning

Albemarle—Acting under the authority of Part 4, Article 2, G.S.Ch.160, the board adopted a resolution establishing a five-member city planning board, with one member of the board of commissioners to be a member of the planning board. The function of the new board will be to “make such investigations, compile and present such reports as to its investigations or findings or recommendations, and to adopt such recommendations as it may believe to be for the welfare of the people of the City of Albemarle. . . .”

Agenda for Council Meetings

Durham—Deeming it “desirable that the individual members of the city council know in advance of regular meetings the matters which will be presented for action. . . .” the coun-

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Institute of Government

cil added a section to the city code requiring the city manager to prepare a docket pertaining to the agenda of business to be transacted at regular council meetings. The docket is to contain all matters filed with the city manager prior to 1 p.m. on Thursdays preceding regular meetings on Mondays.

Circus Advertisements

Greensboro—Before license to operate in Greensboro is issued to circuses, carnivals and similar amusements, they are now required to post \$250 bond conditioned upon their removing all their advertising signs within ten days after the date advertised for performance.

Christmas Bonus

Louisburg—A Christmas bonus in the amount of 10% of each town employee's monthly salary (not to exceed \$10) was voted by the board early in December.

Municipal Utilities

Albemarle—The charge for water and sewer connections was raised from \$15 each to \$30 each, effective upon publication in December.

New Bern—The board called a special election for January 13, on the question of issuing \$279,000 in bonds for the reconstruction, enlargement and extension of the city's electric system.

New Bern—The board adopted the following schedule of fees for tapping the city's water lines:

	Water	Tap Fees
<i>Inside City</i>		
¾" service		\$30
1" service		\$40
<i>Outside City</i>		
¾" service		\$40
1" service		\$50

The new schedule provides that all connections above 1" shall be at cost of labor and materials plus 10%, plus

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Counties

Hospital Plans

Warren—After a public hearing at which no citizen or taxpayer appeared to enter a protest, the board passed on second and third readings a bond order authorizing \$110,000 of county hospital bonds.

Beaufort—The board directed the county attorney to obtain the necessary forms by which the county may apply to the State Medical Care Commission to declare the hospital beds in the county inadequate and unacceptable, and to seek approval from the Commission for construction of a medical clinic at Belhaven and at Aurora, and a hospital at Washington.

Bertie—The board voted to apply to the State Medical Care Commission for construction of a 50-bed county hospital, and created a board of managers for the project.

Court Reporter

Mecklenburg—The commissioners voted to increase the salary of the court reporter to \$400 per month, out of which he is to pay an assistant court reporter which he is to employ. And the county will also pay \$50 monthly to the assistant for handling the resident Superior Court judge's work when he visits the county.

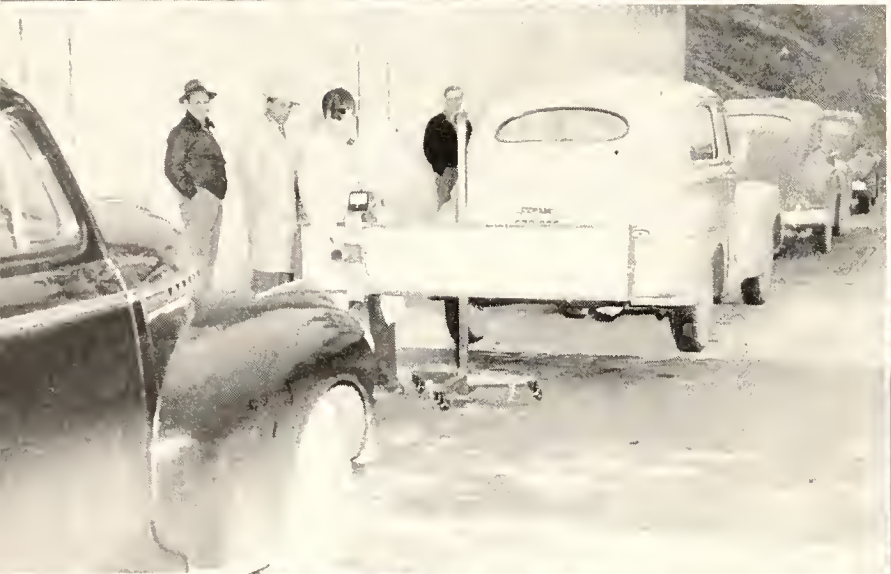
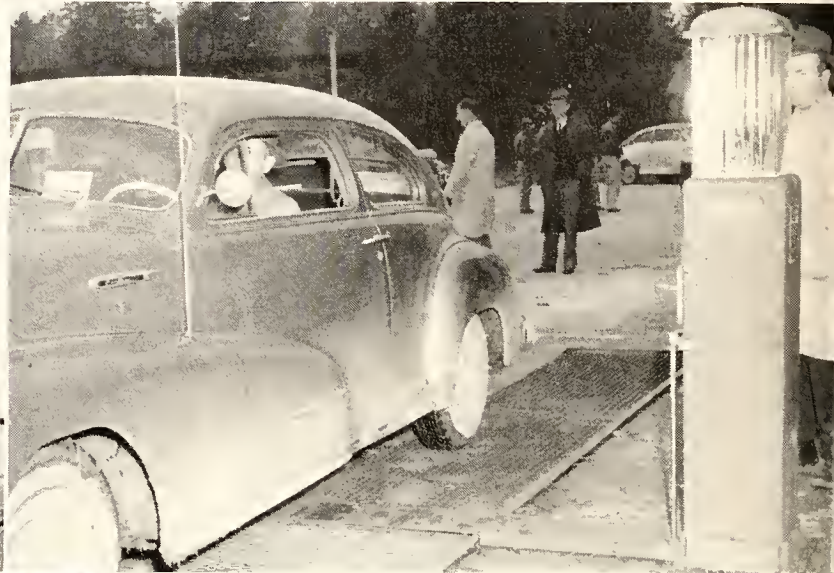
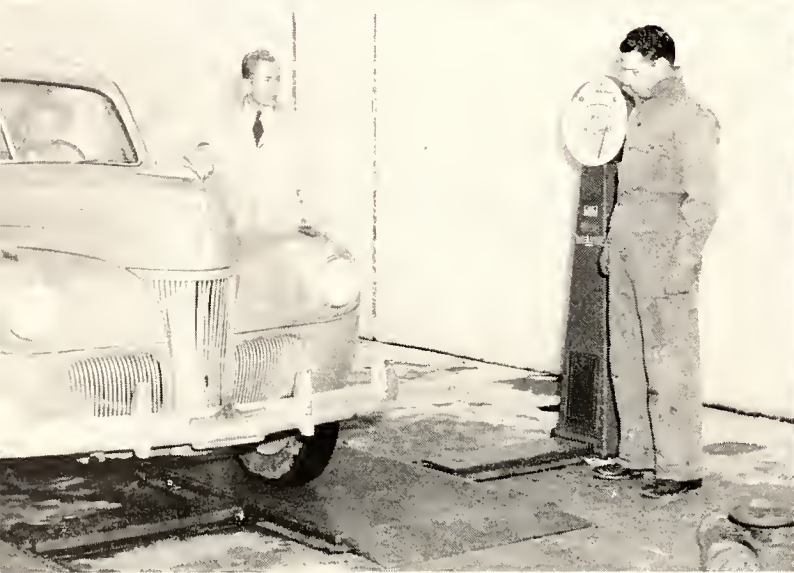
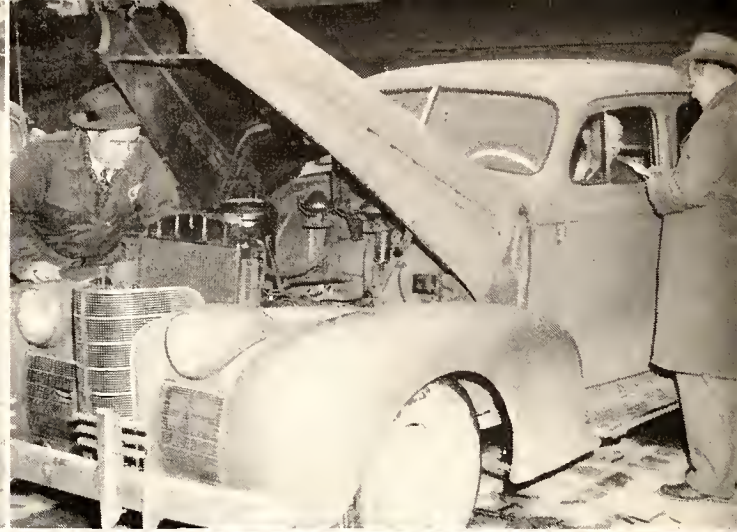
County-City Cooperation

Mecklenburg—Effective January 1, the county will join with the City of Charlotte in taking care of emergency, police and accident cases at the Good Samaritan Hospital, under the same arrangement already in force with regard to city and county hospitalization cases.

Tax Penalties

Camden—The commissioners rescinded a motion made in their February, 1947 meeting, under which a penalty of 10 per cent minimum or \$1, whichever was larger, would be added to the tax of persons who did not list their 1947 taxes. They then adopted a motion to impose a flat penalty of \$1 on all persons who failed to list their 1947 taxes.

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The Vehicle Inspection Program

The pictures on the adjoining page are scenes which will be duplicated throughout North Carolina during 1948. They were made at the Mechanical Inspection School conducted in December by the Institute of Government for the Mechanical Inspection Division of the Department of Motor Vehicles. These pictures show the process through which every vehicle in use in North Carolina must go at least once during 1948, under the inspection law enacted by the 1947 General Assembly.

The students at the Inspection School did much of their learning by working on an actual "Safety Inspection Lane" set up in Chapel Hill. The picture at top, left, shows the whole lane in operation with cars entering at the left side and progressing through all the stages of inspection to final approval at the right. The next one (top, right) shows the first step in the lane—where the inspectors test for ownership and the right to drive, by checking motor registration numbers and driver's license.

The second step in the process is shown in the picture on the cover, being an over-all check of the general condition of the car (see COVER PICTURE note on page 1). At the third station (second row, left), wheel alignment is tested with the aid of the equipment shown at right. The fourth station (second row, right) is where the brakes on each of the four wheels are tested. The fifth station (third row, left) tests the car's lights for beam intensity, light direction, and focus. The final step is taken at station six (third row, right), where the vehicle is graded, and where, if it has passed inspection, an official approval sticker is placed on the lower left side of the windshield. (For a full description of the inspection program, see "Can Your Car Pass the Test?", in the November, 1947, issue of POPULAR GOVERNMENT.)

The picture at the bottom of the page shows the men who have already started their preparations for carrying out the inspection program. They are members of the class at the first inspection school, the primary purpose of which was to train Safety Lane supervisors. The second school, which will begin at the Institute of Government on January 5, and the third school, which will begin late in January, will bring the total of lane supervisors and inspectors to 200. Working under Arthur T. Moore, Director of the Mechanical Inspection Division of the Department of Motor Vehicles, these men will apply the techniques and skills learned at the inspection schools to every motor vehicle in North Carolina during 1948.

In charge of the December school was David G. Monroe, Assistant Director of the Institute of Government. Working with him were William L. Bishop, L. V. Blalock and George Dale, of the Mechanical Inspection Division, each of whom will be a Zone Supervisor in one of the three zones into which the state will be divided for this work. Other instructors during the course of the school were Walter Anderson, Director of the State Bureau of Investigation; W. E. Koonce, Director of the State's Auto Theft Bureau; Mrs. Cora Rice, Director of Public Relations, Department of Motor Vehicles; and A. R. Squyer, chief engineer for the Weaver Manufacturing Company, manufacturers of the inspection equipment.

(All photographs by Communication Center, University of North Carolina)

Tax Listing

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carried moral conviction, some citizens, misunderstanding sound tradition, or fearing they might bear more burden than was justly theirs, or fighting taxes just to keep in trim, accept the invitation as a challenge, girt in all the armor of offended privacy, open argument, and sometimes craftily devised deceit. While this is wrong, the battle spirit is not always confined to the taxpayer. The list taker cannot always divest himself of human likes, foibles, and the feeling of having all the "common sense." In fact, this very common sense has ruined more tax assessments than all the economic failings of the system.

To the taxpayer then, the list taker would like to say: "Think hard before you come to my table. Take inventory, not just of what you listed with me last year, but inventory of all you own, land, houses, cars, merchandise, livestock, machinery,

furniture, jewelry, fur coats, and dogs—all of it. In candor ask yourself 'its true value in money' and, if it will help you to be honest, write it all down and bring your list to me. That will speed the job, and improve the accuracy of both of us."

To the list taker, and ultimately to his supervisor and commissioners, to all those charged with setting his tax bill, the taxpayer then would say: "Study hard before you come to the table. Study the instructions the people have set as your standard. Learn how to question taxpayers so that all of us will meet you on an equal footing. Use those yardsticks provided for you in measuring value. Rely on standard measures that will guarantee a uniform job, and rely on what you call your "common sense" only when there is no clear standard set. Learn impartiality, courtesy and tact, and never forget that you assess not for yourself but for us all."

Impartial Advice to the List Taker

1. Explain to the taxpayer what your duty requires of you.

2. Take time with each taxpayer, ask him plenty of questions so that his listing will be full.
3. Write the information on the abstract in a legible manner.
4. Do not accept "lump" listings without first securing detailed information about the items included in the "lump." Require inventories if needed.
5. Before asking the taxpayer to set a value, require him to describe the item in detail.

Impartial Advice to the Taxpayer

1. List your property as soon as possible after January 1st.
2. Know your property, and have it all in mind when you come to list.
3. Answer the list taker's questions as accurately as possible.
4. Do not try to minimize either the amount or quality of your property.
5. If asked to furnish an inventory, comply with good grace and speed.

Local Wine and Beer Elections

Under Ch. 1084, Session Laws of 1947

On December 5th, the *News and Observer* reminded its readers that December 7th would be 160 days after July 1, an important date for people interested in the local beer and wine situation. On April 1st the General Assembly ratified House Bill No. 1051 (now Chapter 1084 of the Session Laws of 1947) which carried the title "An Act to Authorize the Holding of Elections in the Municipal Corporations and the Counties of the State to Determine Whether or Not Wine and/or Beer shall be Sold Therein." About midway in the text of the Act are these words: "No election shall be called pursuant to the provisions of this Act within one hundred and sixty (160) days after the effective date of this Act." The effective date was set at July 1, 1947. Thus it was simply a matter of arithmetic. Now that the waiting-period has elapsed it is a fair guess that a number of counties and municipalities will be wanting to get started toward holding wine and beer referenda. As a matter of fact, Robeson County has already begun to take steps, and the *News and Observer* says that the movement is under way in Pender County. It might be a good idea to look at this Act, and try to spell out just exactly what a city or a county has to do in order to hold such an election, and how the election, once called, must be conducted.

The Purpose of the Act

Chapter 1084 provides first for the holding of county-wide elections on the question of the sale of wine or beer or both. An affirmative majority of the votes actually cast is what it takes to carry the election. If the majority favors sale of beer, then the county commissioners and the governing body of each municipality in the county must issue licenses to sell beer of $\frac{1}{2}$ of 1% of alcohol by volume but not more than 5% of alcohol by weight (as defined in G. S. 18-64), notwithstanding any public, special, private, or local law to the contrary. If the majority favors sale of wine, then the county commissioners and the governing body of each municipality in the county must issue licenses to sell "unfortified" wine of not less than 5% nor more than 14% absolute alcohol by volume (as defined

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in G. S. 18-64) and "sweet" wine of not less than 14% nor more than 20% of absolute alcohol by volume (as defined in G. S. 18-99), notwithstanding any public, special, private or local law to the contrary. In both cases, licenses must be issued under the provisions of G. S. Ch. 18. (For a comment on some possible difficulties with regard to "sweet" wine, see page 61 of the Institute of Government's 1947 *Legislative Summary*.)

If a majority opposes the sale of beer and/or wine, then 60 days after the election the sale or possession for purposes of sale of beer (if beer is opposed) of more than $\frac{1}{2}$ of 1% of alcohol by volume and/or wine (if wine is opposed) of more than 3% of alcohol by volume is made a misdemeanor, punishable in the discretion of the court.

Holding a County-wide Referendum

Initial Action: 15% of the registered voters of the county who voted for governor in the last election must sign a petition addressed to the county board of elections requesting: (1) that the question of the sale of wine, or (2) the question of the sale of beer, or (3) the question of the sale of both wine and beer be submitted to the voters, and (4) stating that the signers of the petition are registered voters of the county. These statements must appear on the face of the petition before it can be considered by the county board of elections.

Action by the County Board of Elections: When a valid petition incorporating the necessary elements set out above is presented to a county board of elections, it has no discretion. Within 30 days after receipt of the petition it must call the type of election requested. Thus should the board receive a valid petition on January 3, it must issue the call for the election before February 4th.

Selecting a Date for the Election: Several important things must be taken into consideration in setting the date for the election. It cannot be

held "within 60 days of the holding of any general election, special election, or primary election" in the county or in any municipality in that county. "Within 60 days" should probably be interpreted to mean either 60 days before or 60 days after any other election. The second point to be remembered in setting the date for the election is that the Act requires that notice of the election be given 30 days prior to the date on which the registration books are opened for the election. Since the registration books must be opened on the fourth Saturday before the date of the election (G. S. 163-31), it is apparent that the date for the election will have to be at least 53 days from the date the board is able to give the first notice.

Notice of the Election: As has already been pointed out the board of elections must give notice of the election at least 30 days before the books are opened for registration. Having recorded its determination to call the election, the board is faced with deciding what information the public notice of the election should contain. Chapter 1048 does not specify the requirements of the notice, but in the light of the general law and the usual requirements for such notices, it seems advisable that the notice carry at least the following recitals:

- (1) The date of the election.
- (2) A statement of the complete purpose of the election.
- (3) The board's authority for calling the election, i.e., a reference to the enabling act and a recital of the receipt of a proper petition.
- (4) The fact that no new registration will be held, or that a new one will be held, whichever is the case.
- (5) If no new registration is to be held, the fact that registration for persons not already on the books will begin on a certain date (the fourth Saturday before the election) and continue through a certain date (the second Saturday before the election).
- (6) The location of the polling places, or a statement that they will be the same as those used at the last election.
- (7) The names and addresses of the registrars.
- (8) The fact that the registrars

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First Police Procedure School

Concluded at the Institute of Government

County commissioners and city councilmen from all parts of North Carolina were represented by their law enforcement officers in the first one-month Police Procedure School conducted at the Institute of Government. Officers attending covered the subjects of criminal law, court procedure, police administration, criminal investigation, fingerprinting, patrol techniques, traffic control, accident investigation, and narcotics control; qualified on the Practical Pistol Course; and studied such allied subjects as first aid, photography, public relations, and taxicab control.

At the final banquet and awarding of certificates held at the Carolina Inn, Walter Anderson, S.B.I. Director, invited by the officers to be guest speaker, talked of the value of police training and said "the significant thing about this school is that it is the first time that we have conducted a police school for this duration—one month; thus allowing the subjects of general police procedure to be covered with far greater thoroughness than ever before. The important thing about this school is that it is only the beginning, with frequent one-month schools to follow; thus making it possible for every law enforcement officer in North Carolina to attend. We are proud of the Institute of Government's progress in extending its training schools to one month; and we look forward to the time when it will be possible for every police officer, sheriff, and sheriff's deputy to have available a training course at the University of North Carolina."

Terry Sanford, Assistant Director of the Institute of Government, in awarding the certificates to officers who successfully completed their course, pointed out that "this school is the result of the efforts of many police officers, and the credit for its success goes to every officer who helped plan the program and conduct the instruction. As you recall, the Police Executives' Association went on record last August in complete support of a training school to be conducted for one month and to cover the general topics of police science. Special credit is due the Federal Bureau of Investigation, which in cooperation with the Insti-

tute of Government from the very beginning of its training programs, has helped set the stage for these longer and more complete schools; and in planning and supplying topnotch instructors for this school has assured its success. I am sorry that Special Agent Jim Waller, of the F.B.I., who had a large part in the formation of the program and the teaching of the school, is unable to be here tonight because of urgent official business. The officers of North Carolina owe a great debt of gratitude to Mr. Hoover and the F.B.I. for making excellent police training available to all police agencies. In addition to the Federal Bureau of Investigation, countless North Carolina officers have had a hand in making suggestions as to how the school should be conducted and in teaching at the school, and their assistance counted greatly in the preparation of a valuable course of instruction."

Instructors at the school were: Corporal John Laws, State Highway Patrol; Chief Stanhope Lineberry, Mecklenburg County Police; James W. Powell, S.B.I.; Lewis E. Williams, S.B.I.; Patrolman Guy Langston, State Highway Patrol; W. E. Koonce, Director, State Auto Theft Bureau; Joseph F. Gillette, National Board of Underwriters; Walter Anderson, Director, S.B.I.; Benjamin T. Julian, F.B.I.; David O. Allen, F.B.I.; Edwin R. Groves, F.B.I.; Captain Lloyd W. Henkel, Charlotte Police Department; William H. Gibson, F.B.I.; Chief L. L. Jarvis, Greensboro Police Department; James I. Waller, F.B.I.; Robert A. Allen, S.B.I.; Chief John Gold, Winston-Salem Police Department; Captain D. T. Lambert, State Highway Patrol; B. M. Martin, District Supervisor, U. S. Bureau of Narcotics; Lieutenant W. A. McCall, Charlotte Police Department; Sergeant Frank Shields, High Point Police Department; W. T. Atkinson, Bureau of Narcotics, Greensboro; Sergeant H. M. Evans, Greensboro Police Department; J. E. Thornton, Special Agent in Charge, F.B.I.; Albert Coates, Director, Institute of Government; David G. Monroe, Assistant Director, Institute of Government; Terry Sanford, Assistant Director, Institute of Government.

It has been announced that the next

Police Procedure School will be held in the spring.

Cities and Towns

(Continued from Page 3)

minimum charge of \$25 for connection on paved streets or cost of actual repairs if cost exceeds \$25.

The sewer tap fee will be \$50, plus \$25 minimum for opening pavement. In addition, if the city constructs a service line from the main to the property line (back of sidewalk), an additional minimum fee of \$25 will be charged, or cost of labor and materials plus 10% if in excess of \$25.

Public Health

Hickory—Passed on its first reading early in December was an ordinance declaring the keeping of hogs, pigs or swine within the city limits to be a nuisance, and prohibiting the keeping of them, effective on April 1, 1948. The ordinance would also make it unlawful to maintain a stable for horses, mules, cows or goats, unless such stable is kept clean, with the requirement that each stable have a water-tight, fly-proof bin for keeping manure, which must be emptied every five days during spring and summer, and every seven days during fall and winter. Poultry keepers would be likewise affected by a similar provision in the ordinance, with the additional requirement that effective fly-control methods must be employed in the coops between April 15 and November 1 each year.

Building Code Changes

Greensboro—The council amended the building code so as to permit use of insulated metal flue assemblies in one-story prefabricated houses, provided such flues have been tested and approved by the Underwriters' Laboratories, Inc., provided the flue assembly is one which has been furnished by the prefabricator as an integral part of the prefabricated structure, and provided its use is limited to gas or oil burning furnaces.

Electric Wiring

Lexington—All new or additional wires in buildings within the city's

fire limits must now be installed in approved steel or iron rigid conduits, except that flexible conduits, not exceeding 18 inches in length, may be used where adjustable motors or other movable electrical equipment is used.

Sunday Sale of Beer and Wine

Hickory—The council adopted an ordinance forbidding sale of beer or wine between the hours of 11:30 p.m. on Saturdays and 7 a.m. on Mondays.

Counties

(Continued from Page 3)

1947 Tax Collections

Scotland—The report of the tax collector and auditor on December 1 showed that all but \$75,823.29 out of the total 1947 tax levy of \$218,148.21, including poll and personal property taxes, had been collected.

Caldwell—The monthly report of the tax collector showed that as of November 1, \$185,774.30 had been collected out of the total 1947 levy of \$351,776.29.

Farm Census

Warren—Tax listers for 1948 will be paid 10 cents per farm for taking the farm census required by G.S. 106-25. (The 1947 legislature changed the law in connection with the farm census reports, so that instead of being taken annually as heretofore, starting with 1948 they are to be taken quinquennially.)

Public Libraries

Caldwell—The commissioners authorized purchase by the county library of a new bookmobile, to cost \$1085.

Fire Insurance

Scotland—At the request of local insurance agents, the commissioners ordered that the county's fire insurance business be divided among the agents so that they might each share in the county's insurance business, with division to be made as existing policies expire.

Assistance for the Blind

Scotland—The commissioners granted the request of the superintendent of public welfare that the appropriation for the blind be increased by 10 per cent.

Tuberculosis Cases

Rowan—The welfare department was authorized to investigate tuber-

culosis cases before bringing them to the county commissioners or the health department for action.

Veterans

Mecklenburg—The large display boards which have stood on the courthouse lawn, on which the names of Mecklenburg veterans of World War II have been enrolled, will be taken down after the boards have been photographed so that the names can be put into a permanent record in the office of the register of deeds.

Changes in Offices

Currituck—Mrs. Edna L. Blossom was appointed to fill the unexpired term of W. S. Gregory, resigned as register of deeds. Mrs. Blossom also took office as tax supervisor.

Currituck—Mrs. Margaret S. Raper was appointed county court reporter.

Juvenile Delinquency

A series of 18 reports in booklet form outlining the program of action recommended by the National Conference on Prevention and Control of Juvenile Delinquency is now available to interested agencies and the general public. These reports cover the entire field of juvenile delinquency, and may be obtained from the Superintendent of Documents, Government Printing Office, Washington 25, D.C., at prices per booklet ranging from 10 to 25 cents.

Also available is a handbook outlining the step-by-step procedures to be employed in communities for holding state and community conferences on juvenile delinquency, which are the primary recommendation of the National Conference. The handbook may be obtained from the headquarters of the National Conference, temporarily in the Department of Justice Building, Washington.

Wine and Beer Elections

(Continued from Page 6)

will attend the polling places from 9 A.M. until sunset on each Saturday during the registration period for the purpose of registering persons not heretofore registered, and that at

other times during the registration period, the registrars will be available during the same hours at their homes or places of business.

(9) The fact that challenges will be received at the polling places on a certain date (the last Saturday before the election), from 9 A.M. to 3 P.M.

(10) A statement as to what the vote will determine, setting out what majority is required to carry the election as well as a statement of what will happen if the election is not carried.

Publication of the Notice: While neither the 1947 Act nor any provisions of G. S. Ch. 163 states how the notice of the election should be published, it is recommended that the board of elections take a leaf from the ABC election law (G. S. 18-16, coupled with G. S. 163-23 and G. S. 163-22) and publish the notice "in some public journal or, in lieu thereof, in three public places in such County and at the courthouse door." The newspaper publications should appear at least once a week for four weeks preceding the beginning of registration and might well be continued during the registration period as a matter of caution.

General Instructions for the Conduct of the Election: Following the usual custom in drafting the legislation for such elections, the 1947 Act incorporates the provisions of Chapter 163 of the General Statutes for purposes of the details of holding such an election, in so far as those provisions do not conflict with specific instructions in the Act. Thus the Australian Ballot Law and the other sections of Ch. 163 must be followed wherever possible. There are two points, however, on which that Chapter must not be followed. First, there is to be no voting by absentee ballot in wine and beer referenda. Second, the form in which the propositions are to be submitted on the ballot is prescribed by the 1947 Act. This can be determined by examining Section 2 of the Act.

Registration: Calling a new registration is left to the discretion of the county board of elections. Registration is conducted by the registrars at the polling places on the fourth, third and second Saturdays before the election from 9 A.M. until sunset. On oth-

(Continued on Page 10)

IN MEMORIAM

The opening paragraph of a story carried in the *Rocky Mount Telegram*, November 17, told the news that "J. R. Thomas, Rocky Mount's police chief since 1938, met his death this afternoon in a police car which was wrecked against a stone wall just outside the city limits. The popular police officer died in a hospital here shortly after he had been brought from the scene of the wreck and attending physicians said that he had suffered grave internal and head injuries." This unexpected news brought surprise, shock, grief with a cutting edge, and the empty feeling of personal loss to friends who knew and loved him.

He was born in Tarboro on October 17, 1903; christened "John Robert Thomas;" schooled in Tarboro and Rocky Mount—where he moved in 1913 when he was ten years old; apprenticed in the Rocky Mount Fire Department which he joined in 1923 when he was twenty years old and trained in the fire college conducted by the State Fire Marshal; matured in the Rocky Mount Police Department which he joined as chief in 1938 when he was thirty-five years old—after three months schooling in the FBI National Police Academy supplemented through the years by periodic instruction in statewide, district and local training schools conducted by the Institute of Government. He was in the prime of his life and at the height of his powers when he died in 1947 at the age of 44.

The cold facts of his record represent him as a moving spirit in every activity associating him with other men: He rose through the ranks in the fire department to the position of assistant chief and instructor in the fire college—training firemen and fire chiefs throughout the state. His record as fire-fighter, assistant fire chief and fire college instructor lifted him to the headship of the police department where he gave new meaning to the title—Chief of Police, and lifted his organization to the highest level of effectiveness and dignity it had known in all its history. His record as chief of police uncrossed the fingers of law enforcing officers who had looked with doubting eyes on a fireman catapulted to their ranks, and lifted him to the executive committee, the vice-presidency and the presidency of the North Carolina Police

By ALBERT COATES

Director

Institute of Government

Executives' Association. His native ability, penetrating insight into law enforcing problems, and capacity for imparting his knowledge, experience and enthusiasm to other men won him a place as instructor on the staff



CHIEF J. R. THOMAS

of the Institute of Government and membership on the committee of law enforcing officers guiding the Institute in its program of instruction for city, county, state and federal law enforcing officers working within the territorial limits of North Carolina. His habit of leadership followed him as a citizen into the activities of his community where he rose through the ranks of church members to the place of Deacon and Chairman of the Board of Deacons, through the ranks of Rotary Club members to the presidency of the Rocky Mount Rotary Club, through the ranks of citizens to that high place in the minds and hearts of his fellows reserved for men who make the wheels of the city go round and leave a vacant place against the civic sky when they are gone.

Men who knew and loved him called him "Red"—not "Thomas," nor

"Chief," but "Red"; and most of those he met fell within that grouping and felt in a moment that they had known and loved him all their lives. Perhaps this nickname started with the color of his hair; but certainly it did not stop there. It took on deeper meaning with his radiant and well-nigh unfailing smile, and with the light that kindled in his eyes as the smile was absorbed in the discussion of problems pressing for solution. It grew with the burning energy which kept him forever on his toes and won for him the vivid description of the *working* fireman, the *working* chief, the *working* citizen. And I think it took its special tinting from the restless spirit of the fireman who forever tried to outrun his fellows to a fire and to beat them to the place of danger when he got there; from the flaming spirit of the man who started as police chief without ever having been policeman and won appraisals such as those relayed to me the other day, fresh from the lips of the men he worked with: "He pitched right in the day he came on the force and never let up"; "he did every sort of thing that came to hand—maybe to show us that if he didn't learn policing the hard way by coming up from the bottom, he was willing to learn it the harder way by going from the top to the bottom and holding his own with any of us in anything that had to be done"; "he was forever saying 'step on it, step on it, step on it' when we were in a chase"; "he was the only man who ever got in front of me when we were going into a house on a raid"; "he was riding on the back seat of a coach while we were chasing a bootlegger who had threatened to wreck the next police car that got after him and to break the neck of the first officer who tried to arrest him, and when we caught up with him and forced his car into the ditch, Red crawled over the backs of the men on the front seat, got out of the car first and grabbed the bootlegger before he had a chance to fight or run"; "that little red-headed son of a gun acted like he was seven feet high and weighed three hundred pounds when he was moving out in front on a tight spot after a dangerous criminal."

We cannot pluck the heart out of the mystery that made him what he was and hold it up for public view;

but incidents such as these that men have witnessed at close range—the impact of his driving force upon the hard realities of life around him, like the impact of flint on steel, strike off sparks which light up for a few enduring seconds the inner core of a

man who started with the family name of "Thomas," was given the surname of "Robert," won the title of "Chief," outran them all, and left to those he left behind him the priceless legacy of the enduring personality known and loved as *Red*.

Chief J. R. Thomas

No single event in Rocky Mount which has occurred in a long, long time served to shock this entire community as profoundly as the untimely death of Police Chief J. R. Thomas. Men and women of all races and creeds and representing all walks of life, had come to look upon the chief as a friend as well as a stern defender of the law. Their tributes are from the heart. They loved and respected "Red" Thomas as few men have been loved and respected in the history of Rocky Mount. He had a knack of enforcing the law and making people like it.

Aside from the personal angle, Chief Thomas will be remembered here for his efforts in building in Rocky Mount a police department worthy of any city of similar size in the country. First, he tackled his manpower and wielded his men into an efficient, loyal force. Then, he tackled the physical equipment and saw the establishment here of many features boasted by the most up-to-date police departments in the country. After that, he challenged the citizenry to lend a hand and was met with generous response.

It's not often that you find a man schooled in the determined methods of law enforcement, who can stand up before a civic club and tell its members how to be better citizens. But Chief Thomas could do it and did—not only here but in many other localities, for his services and presence were much in demand.

Also, Chief Thomas never told his men to do something which he wouldn't do himself. He was a leader and not a boss. His men loved and respected him because they knew they would get a fair deal and the same held for the public in general. A policeman can become one of the most unpopular individuals in a community, because his job is one which can easily make him so, unless he has the ability to make it otherwise. This ability Chief Thomas possessed and he passed it on to other members of his department.

That Chief Thomas will be hard to replace goes without saying. As a matter of fact, he cannot be replaced and it should be the community's fondest hope, that his successor will be a capable substitute. — Rocky Mount Telegram.

Wine and Beer Elections

(Continued from Page 8)

er days during this period they must be available for registration at their homes or places of business during the same hours. After sunset on the second Saturday before the election each registrar must certify to the chairman of the county board of elections the total number of electors registered in his precinct (G.S. 163-21). From 9 A.M. to 3 P.M. on the Sat-

urday before the election the registrars must remain at the polling places to receive challenges and appoint a time for hearing them before the election (G.S. 163-78). The election itself must be held in exactly the same way any general election is held. The precinct and county canvasses must also be conducted under general election procedure.

Holding a Municipal Referendum

Only after a county has voted *against* wine or beer or both, may a municipality in the county consider holding an election of its own, and

even then the town must have at least 1000 people credited to it by the last Federal census before it can hold a referendum. If the town does have a population of 1000 or more and if the county has voted *against* wine or beer or both, the town is permitted to hold a referendum in the same way the county held its referendum. In this case, however, the petition must be addressed to the governing body of the town and not to the county board of elections. If more people voted in the last town primary, then the petition must be signed by 15% of that number; if more voted in the last town general election, then 15% of that number. The petition must recite the kind of election desired and the fact that the signers are registered voters of the municipality. It then becomes the duty of the governing body of the town to call the election and conduct it. While the municipal governing body is substituted for the county board of elections for purposes of calling and conducting the election, it must follow the provisions of the Act and the General Elections law (G.S.Ch. 163), not the Municipal Elections law (G.S. 160-29 *et seq.*). Municipal governing bodies in carrying out the provisions of G.S. Ch. 163 would merely read "municipal governing body" for "county board of elections" wherever those words appear.

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Books Received

Surveys

AMERICA'S NEEDS & RESOURCES. *By J. Frederic Dewhurst and Associates. New York: The Twentieth Century Fund, 330 West 42d Street. 1947. \$5.00. Pages xiv, 812.*

The publishers call this volume "A fact-book of the American economic system," and indeed it is a comprehensive survey of the nation's human and industrial capacity and resources, balanced against estimates throughout of the probable needs and demands for 1950 and 1960.

Those parts of the survey which deal with costs of government at different levels, population trends, housing, medical care, recreation, to mention only a few topics, make the survey an indispensable part of the ref-

erence library of those interested in intelligent municipal planning. The volume contains much statistical data in these and other fields of interest to local government.

NEGRO YEAR BOOK—1947. *A Review of Events Affecting Negro Life—1941-1946. Edited by Jessie Parkhurst Guzman. Tuskegee Institute, Alabama: The Department of Records and Research. 1947. \$4.50. Pages xv, 708.*

This is the tenth edition of the Year Book series begun by the Tuskegee Institute in 1912, and contains data, statistical and otherwise, on the Negro with respect to population, achievements, the sciences, education, agriculture, business, race relations, politics, lynching, health, housing, and civil rights, to enumerate only a few of the main divisions.

Philosophy of Government

THE WEB OF GOVERNMENT. *By Robert M. MacIver. New York: The Macmillan Company. 1947. \$4.50. Pages ix, 498.*

This is an analysis of the bases of authority, the nature, the evolution and the functions of government, from its beginnings around the family group to its conflicting forms today.

State and Local Government

ORGANIZATION AND FUNCTION OF STATE AND LOCAL GOVERNMENT IN ARKANSAS. *By Henry M. Alexander, Fayetteville, Arkansas: The University of Arkansas Bureau of Research. (University of Arkansas Bulletin, Vol. 40, No. 17, October 15, 1946). 201 pages.*

Federal Government

THE PRESIDENT AND HIS STAFF SERVICES. *By Fritz Morstein Marx. Chicago: Public Administration Service, 1313 East 60th Street. 1947. \$1.00. Pages vi, 26.*

This is a study of the executive
(Continued on Page 13)

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Recent Supreme Court Decisions

Of Interest to City, County and State Officials

The Supreme Court of North Carolina has recently:

Decided that a municipality may not be held liable upon the theory of respondeat superior for gross neglect or culpable negligence of its officers in the discharge of their governmental duties.

In *Gentry v. Hot Springs*, 227 N.C. 665 (opinion filed 24 September 1947) plaintiff alleged that his intestate, a fifteen year old boy, was wrongfully incarcerated in the town jail during the early morning hours by the chief of police and jailer; that the boy was "brutally and inhumanly treated" by this officer; that the officer's "vicious and criminal propensities and general unfitness," as well as the condition of the jail as a fire trap, were well known to the mayor and board of aldermen; that the boy's brother came to the jail and was himself "brutally assaulted" by the chief, and locked up; that the chief then left for home, taking along the only jail key, and that shortly thereafter, about 3:30 a.m., fire broke out among shavings and other inflammable materials in the workshop adjacent to the jail, which quickly spread to the jail and suffocated plaintiff's intestate and his brother.

Plaintiff sought recovery from the municipality for the wrongful death of his intestate, and demurrer was interposed on the ground that the complaint failed to state facts sufficient to constitute a cause of action for wrongful death against the municipality. The court (Mr. Justice Seawell dissenting without opinion) affirmed the judgment of the lower court sustaining the demurrer on grounds of the governmental immunity of the municipality, saying:

"This doctrine which shields a municipality and its innocent taxpayers from liability for the negligent acts of its officers, done in the exercise of a purely governmental function, is recognized in all the decisions on the subject. . . . In the absence of statute, the doctrine of *respondeat superior* is not applicable to a State, or to its subdivisions when discharging a governmental duty. . . ." *Clodfelter v. State*, 86 N.C. 51, 41 Am.Rep.440; *Brown's Admr. v. Town of Guyan-*

By **W. M. COCHRANE**

Assistant Director

Institute of Government

dotte, 34 W. Va. 299, 12 S.E. 707; 41 Am. Jur. 896. See discussion in *Hunt v. High Point*, 226 N.C. 74, 36 S.E. (2d) 694.

The Court pointed out that here the chief of police and jailer, the mayor and the board of aldermen are charged with gross neglect and culpable negligence, but that the charges are leveled at them in their respective governmental capacities, and that unless and until the General Assembly shall declare otherwise, a municipality is not liable for the tortious acts of its officers committed in discharge of their governmental duties. The Court also said that G.S. 153-179, which provides standards of care for prisoners, is not applicable to the wrongful death allegations here made. *Moffitt v. Asheville*, 103 N.C. 237, 9 S.E. 695, Am.St.Rep. 810.

In conclusion the court observed that the question of whether Arnold Gentry (plaintiff's intestate) had a cause of action for personal injuries, which survived his death and became an asset of his estate, was not presented and was not decided.

Decided that where a tax collector is also county treasurer, a written demand for the return of taxes paid to him under protest addressed to him in his capacity as tax collector without the appellation "treasurer" is a reasonable compliance with G.S. 105-267, and will support an action for the recovery of taxes.

In *Southern Railway Company v. Polk County, et al*, 227 N.C. 697 (opinion filed 24 September 1947), plaintiff railroad had paid Max Feagan, tax collector and county treasurer, certain taxes under protest. The subsequently submitted written demand for their return to plaintiff was addressed to "Max H. Feagan, Tax Collector," without the appellation, "treasurer." The governing statute, G.S. 105-267, provides in such cases for written demand (within thirty

days after payment under protest) from, if a county tax, "the treasurer thereof." The tax here being clearly illegal, the Court said, the only question was whether the demand addressed as stated was a valid compliance with the statute.

"Looking at the reality of the situation," the Court was of the opinion that "the demand actually brought to the attention of Feagan as Treasurer the demand and the information required by the statute in reasonable compliance with its purpose; and that neither law nor equity is satisfied by withholding the funds."

Decided that the statutory procedure for abating a public nuisance (G.S. 19-2) is not appropriate against a municipal alcoholic control board set up under color of legislative authority, nor against the lessor of the building used for the purpose of operating a liquor control store.

Chapter 862, Session Laws of 1947, provided for an election in the Town of Louisburg on the question of authorizing a town liquor control store. The election was held and the store was subsequently established in a building owned by W. G. Lancaster and leased by him to the "Town of Louisburg Board of Alcoholic Control."

In *Amick v. Lancaster, et al*, 228 N. C. 157 (opinion filed 5 November 1947), a civil action was brought in the name of the State on relation of citizens of Franklin County to padlock the premises used for the liquor store, and to enjoin its maintenance as a nuisance.

Plaintiffs alleged that the Act under which defendants had established and were operating the liquor store is unconstitutional and that all proceedings thereunder are illegal and void. Therefore, plaintiffs sought to have the store declared "an offense against public morals, or a nuisance," and to have its operation as such abated under G.S. 19-1 and 10-2.

The court below dismissed the action, holding that plaintiffs were not entitled to the relief prayed for.

Mr. Chief Justice Stacy, speaking for the Supreme Court, said: "It

would be strange indeed, if the same government which authorizes the establishment of a 'liquor control store,' should also provide for its padlocking at the instance of a private citizen and thus render all who are connected with its maintenance 'guilty of a nuisance'. . . ." He considered the remedy selected as inappropriate, stating that it was never intended that the procedure under G.S. 19-2 for abating a nuisance should be applied against an alcoholic control board set up under color of law, or against one renting a building to the board for the purpose of operating a liquor store.

Having thus found the remedy inappropriate, and since the record did not show whether the action was dismissed in the court below on procedural or on constitutional grounds, the Court did not commit itself on the constitutional question raised by plaintiffs in connection with the Act of Assembly under which the store was established. "The courts will not determine a constitutional question, even when properly presented, if there be also present some other ground upon which the case may be made to

turn. State v. Lueders, 214 N.C. 588, 200 S.E. 22."

Books Received

(Continued from Page 11)

power of the President and its exercise. Although written originally for foreign readers, it should also help the American student in his search for a clearer understanding of the role of the chief executive in our government.

THE NEW TRADE-MARK MANUAL. By Daphne Robert. Washington: The Bureau of National Affairs, Inc. 1947. Pages *xxi*, 375.

The sub-title of this book sets forth that it is "A Handbook on Protection of Trade-Marks in Interstate Commerce," and, in particular, it is an analysis of the Lanham Trade-Mark

Act of 1946, with case citations and excerpts from the legislative history of the Act.

MUNICIPAL TAXICAB REGULATION

For distribution in connection with his lecture to officers attending the police procedure school recently conducted by the Institute of Government, Lieutenant W. A. McCall of the Charlotte Police Department prepared a copy of Charlotte's taxicab ordinance, and an outline of the procedure used by the department in carrying out the provisions of this ordinance.

Copies of the outline and ordinance may be obtained by any municipal official by writing the Institute of Government.

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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

25. Revaluations

To J. Roy Proctor.

(A.G.) G.S. 105-278 provides for the quadrennial reassessment of real estate for local taxation, and it set 1941 as the first quadrennial year. The next quadrennial year will be 1949, and it is my opinion that any county which desires to do so may have a complete revaluation to become effective with the tax listing period beginning January 1, 1949.

I am aware of the fact that the section cited has been amended from time to time to permit postponements of the 1941 and 1945 revaluations, so that some counties may have had revaluations since 1945. However, such reassessments, if made before 1949, would be merely in lieu of the 1945 reassessment, and the year 1949 would still be a regular quadrennial year.

30. Situs of personal property

To J. C. Ellis.

Inquiry: Where a salesman of a foreign corporation resides in this state and uses an automobile owned by the corporation in carrying on his business in this state, should the automobile be listed for taxation in the county wherein he resides?

(A.G.) The rule to be followed in the listing of personal property is primarily that it should be listed at the domicile of the owner unless the property itself has acquired a business situs other than the owner's domicile. In your case I think that you could require that the automobile be listed for taxation and if the taxpayer thinks that his property is not subject to taxation, he could pay the taxes under protest and sue for their recovery. (Cited: G.S. 105-302; *Southern Pacific Co. v. Kentucky*, 222 U. S. 63, 56 L. Ed. 96; and *Texas Company v. Elizabeth City*, 210 N. C. 454.)

B. Matters Affecting Tax Collection

75. Tax Liens

To W. R. Battley.

Inquiry: Where a person returns only personal property for taxes for the years 1943 and 1944, and in the year 1945 acquires and returns for taxation real property, does the personal property taxed for the years 1943 and 1944 attach to and become a lien against the real property acquired in 1945 and subsequent years?



HARRY
McMULLAN

Attorney
General
of
North
Carolina

(A.G.) Under G.S. 105-340, the personal property taxes for the years 1943-44 do not attach to and become a lien upon real property purchased in 1945. This section specifically provides that the lien on taxes levied on property shall attach to real estate as of the day of which property is listed, irrespective of the time of which liability for the tax arose. It also provides that the lien shall attach to all real property of the taxpayer in the taxing unit. This section seems to limit the lien for personal property taxes to real property owned by the taxpayer in the taxing unit on the date of the listing of the personal property.

II. POLL TAXES AND DOG TAXES

A. Levy

10. Power to levy

To Sam O. Worthington.

Inquiry: Is a municipality authorized to collect a dog tax under G.S. 67-5, *et seq.*?

(A.G.) Article 2 of Chapter 67, providing for the license tax on dogs, does not apply to municipalities. G.S. 160-56, however, does authorize municipalities to levy annually and cause to be collected for municipal purposes a tax "on all dogs, and on swine, horses, and cattle running at large within the town."

G.S. 160-58 provides that if any person residing in a town shall have therein a dog and shall not return it for taxation and shall fail to pay the tax according to law, the commissioners at their option may collect from the person so failing double tax or may treat such dog as a nuisance and order its destruction. This section is construed in *Mowery v. Salisbury*, 82 N. C. 175, in which it was held that although a dog was property, a dog tax is not directed on

the dog as property but upon the privilege of keeping a dog.

E. Uses

To R. F. Crouse.

Inquiry: G.S. 67-13 requires the county commissioners to pay, out of the collection of dog taxes, damages done by dogs to livestock in the county. Where the total dog tax collection for 1946 was insufficient to pay all claims in that year, are the commissioners required to pay the 1946 claims out of taxes collected in 1947? And since it appears that collections for 1947 will be insufficient to pay 1947 claims, are the commissioners required to give priority to the claims as of the date they were filed or would it be legal to prorate the fund and the payment of the claims?

(A.G.) The statute referred to says only that the commissioners shall order the payment of damages done by dogs "paid out of any monies arising from tax on dogs as provided for in this article."

There is nothing in the statute or in any case which I have been able to find which would determine the question. Any opinion I might give you would be only my estimate of what the Court might decide if the question were presented. It seems to be just one of those things for which the law has made no provision.

I would suggest, however, as a practical treatment of the problem that you get all of the claimants together and propose a pro rata settlement on the basis of funds available. If they agree, this, of course, would end the matter. But if they do not agree to accept it on that basis, I believe I would withhold the fund until, in some way, the question was judicially determined or some other legislation enacted which would be applicable.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

14. Privilege license—beer and wine

To J. T. Maddrey.

Inquiry: Does a town have authority to refuse to issue on-the-premises license for the sale of beer in pool rooms?

(A.G.) While the statute does not authorize refusal to issue such a license to a pool room, G.S. 160-200 (33) does authorize municipalities to

license, prohibit and regulate pool and billiard rooms . . . and in the interest of public morals provide for the revocation of such license. I think that under this authority you could refuse to license a pool room in which beer is sold. In other words, while you do not have authority to refuse to issue license to sell beer in the pool room, you may accomplish the desired result by refusing to license a pool room in which beer is sold.

40. Peddlers

To F. O. Carver.

(A.G.) It is the opinion of this office that a corporation which maintains a number of warehouses or distributing offices throughout the state for selling merchandise on the installment plan, sales being made only from samples, with articles sold being delivered from one of the warehouses, would not be subject to the peddler's license tax levied by Section 121 of the Revenue Act.

IV. PUBLIC SCHOOLS

G. Fines and Forfeitures Accruing to Schools

50. Objects for which such funds may be spent

To R. T. Lewis.

Inquiry: Does the county board of education have the right to use fines

and forfeitures funds in repairing school buildings when the county commissioners have failed to set up a sufficient amount for this purpose?

(A.G.) Fines and forfeitures can be used for maintenance of plant and fixed charges in accordance with the budget adopted and approved by the county commissioners and the State board of education, and not otherwise.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

F. Contractual Powers

15. Requirements for competitive bids

To Wade H. Lefler.

Inquiry: Where the town received sealed bids on water and sewer projects, and where the low bid contained an escalator clause whereby the bidder would be reimbursed for any increased cost of materials only, limited to a maximum increase of 10%, and where the contractor making this bid was the low bidder even including the additional possible 10% under the escalator clause, is it illegal for the town to accept this as the low bid?

(A.G.) It is my opinion that an escalator clause of this character would not be illegal as it has a limit beyond which it cannot go. I believe you

could legally accept this bid, and that no bidder whose bid was higher would have any cause for complaint. The next low bidder would be entitled to have his certified check returned only after the contract had been awarded and the contractor's bond had been given by the successful bidder.

Y. Streets and Sidewalks

1. Dedication and abandonment

To J. L. Hollifield.

(A.G.) Under the municipal law of the state, a town has authority to close any street in the town, G.S. 160-200 (11). In closing a street, however, the town might be liable to any abutting property owner who might be damaged by closing the right of ingress or egress to his property over the street. If the street is closed, however, it would not mean that the title to the land within the street would be acquired by the town, unless the town originally owned the land at the time the street was laid off. The town would have to acquire it by either purchase or condemnation.

Z. Workmen's Compensation and other Employees' Funds

16. Group insurance for employees

Inquiry: May a municipality pay from public funds the premium of

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group life insurance on lives of employees, the beneficiaries being persons other than the city?

(A.G.) Under G.S. 160-200(25) it seems to me that a municipality would have the right to pay the premiums on a group life insurance policy in an amount not to exceed \$2000, as the statute authorizes this to be done and I do not think it would be unconstitutional as a violation of Article I, Section 7, of the Constitution.

In *Bridges v. Charlotte*, 221 N. C. 472, the Court held that the payments made by the City of Charlotte into the retirement fund for its employees was not a gratuity and thus was not offensive to Article I, Section 7, of the Constitution, but was in the nature of increased salaries. (Section 7 of Article I reads as follows: "No man or set of men are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.—ED.)

VIII. MATTERS AFFECTING
CHIEFLY PARTICULAR
LOCAL OFFICIALS

B. Clerks of the Superior Court
68. Changing names

To George W. Fletcher.

Inquiry: Is the consent of both parents required for change of a child's name, where the mother has a child by her first husband, remarries, retains custody of the child and wishes to have its name conform to that of her second husband? The first husband and father refuses to express

himself on the subject of consent to change of name.

(A.G.) It seems to me that the proviso in Section 1, Ch. 115, S. L. 1947, expressly prohibits any change of a child's name unless both parents, if living, consent to the application.

D. Register of Deeds
14. Birth certificates

To Dr. C. P. Stevick.

Inquiry: Where a married couple have been divorced and within nine months after such divorce becomes final a child is born to the woman, is such child legitimate or illegitimate?

(A.G.) It is the opinion of this office that under G.S. 50-11 such a child is legitimate because, from the facts of the case as stated by you, this child, having been born within nine months of the divorce proceedings, would be presumed to be begotten during coverture.

L. Local Law Enforcement Officials
13. Prohibition law—illegal possession

To T. J. Davis.

Inquiry: Is it unlawful for a person to have in his possession off his own premises, a bottle of tax paid liquor with a broken seal?

(A.G.) Your county being under the A.B.C. law, I do not think such possession would be unlawful, provided the person possessed one gallon or less.

45. Passing school bus—speed laws

To Col. L. C. Rosser.

(A.G.) G.S. 20-17 requires motor vehicles to stop upon approaching a school or Sunday school bus while such bus is loading or unloading its passengers upon the highways or streets. I cannot find any provision exempting ambulances from the provisions of this section, and I therefore advise that ambulances are required to comply with it.

You also inquire whether ambulances are exempt from the speed laws as applied to public school zones. When traveling in emergencies, ambulances are exempt from the provisions of the speed laws, G.S. 20-145. Of course, such ambulances must not be operated recklessly.

72. Pyrotechnics

To D. J. Evans.

(A.G.) Cap pistols, including holster sets, may legally be sold in North Carolina; however, caps designed to be fired in such pistols may not be legally sold or possessed.

It is true that Section 146 of the Revenue Act was repealed by the 1947 General Assembly and the State may not now levy a tax on dealers in cap pistols. However, cities and

towns may, under their general power to levy a tax on trades and professions, levy such a tax.

IX. DOUBLE OFFICE HOLDING

6. Justice of the Peace

To B. F. McMillan.

(A.G.) A clerk of the Superior Court and a register of deeds may also serve as a justice of the peace and as a notary public. However, G.S. 51-1 prohibits a justice of the peace who holds the office of register of deeds, while holding such office, from performing any marriage ceremony.

XII. STATE TAXES

A. Levy of Such Tax

21. Privilege license taxes

To W. M. Hicks.

Inquiry: A veteran is building a home and believes he can, with assistance of a plumber's helper, install the plumbing system. The plumber's helper is not a licensed plumbing contractor but pays privilege tax to both the state and town. He furnishes no materials, is not contracting the job, but is hired by the day. Would either owner or helper be violating the plumbing laws?

(A.G.) It is not thought that under these facts either would be guilty of violating the Plumbing Act, Article 2 of G.S. Ch. 87. It appears that this is an almost identical factual situation with that in the case of *State v. Mitchell*, 217 N. C. 244, where the Court held that such a transaction is not violative of the Act.

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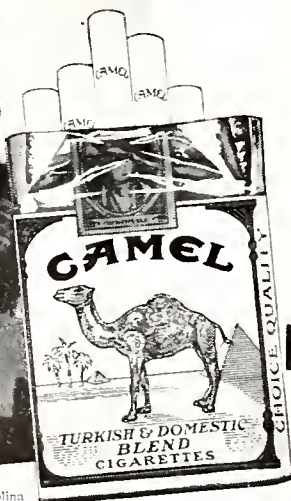
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