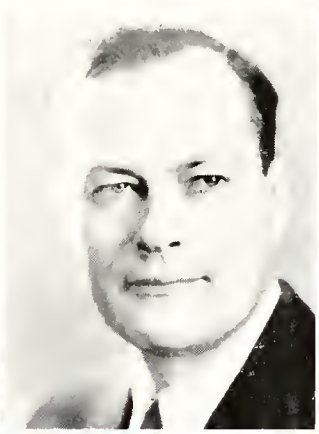
December, 1948

POPULAR GOVERNMENT

Above: Members of the Committee on Post Legal Education, right to left: Charles H. Livengood, Jr., Robert V. Brawley, Beverly C. Moore, Sam B. Underwood, Jr., Edward L. Cannon, L. B. Hollowell, Robert N. Sims, Jr., George S. Green, Albert Coates, chairman. Below, left to right: Richard E. Thigpen, President, North Carolina State Bar Association; Robert H. Wettach, Dean, U. N. C. Law School; Harold Shepard, Dean, Duke University Law School; Robert E. Lee, Dean, Wake Forest Law School.



See Page 1

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
Chapel Hill

Bar Committee Plans Legal Institutes

The Post Legal Education Committee of 1948-49, appointed by President Richard E. Thigpen of the North Carolina Bar Association, met at the Institute of Government building in Chapel Hill on October 23, 1948, and approved a program of state-wide Institutes to be held quarterly at Chapel Hill, Durham and Wake Forest, as Carolina, Duke and Wake Forest Law School facilities permit. The cost of all four Institutes to individual lawyers will be $25, including mimeographed and printed materials. The cost of individual Institutes to lawyers attending fewer than all sessions will be $10 for each separate Institute.

It further approved a program of Institutes in local bar associations throughout the state, following the several state-wide Institutes and covering similar subject matter. To illustrate: many lawyers without law school courses in taxation feel the need of elementary courses in this field. They cannot take off the time to go to law schools for these courses. Weekend refresher courses cannot satisfy this need because they presuppose a basic subject matter training which many do not have. Weekend Institutes cannot satisfy this need because they, too, presuppose a basic knowledge of the subject matter if it is to be covered from a variety of angles, or as a fairly detailed study of one or more particular topics. The Committee on Post Legal Education feels that this acutely felt need of lawyers may be met by a combination of home study and local Institutes organized by interested lawyers within local bar associations, and it is accordingly launching this experiment in connection with the Institute scheduled for January 21-22. In addition to the instruction in "Legal Problems in the Income Tax Return," a course of home study for local Institutes covering ten to twelve weekly sessions of two or three hours each will be outlined and teaching and study methods and materials will be discussed by Henry Brandis, Charles Lowndes and Albert Menard of the Carolina, Duke and Wake Forest Law School faculties. Lawyers in local bar associations trained in systematic law school courses in taxation or with a basic knowledge of taxation gained by private study and experience and willing to participate in conducting these local courses are invited to attend, in addition to lawyers interested in attending these local courses or in private study by themselves. The Committee hopes to perfect this procedure and apply it to all of the state-wide Institutes to be held in 1949 in the effort to develop a program of continuing legal education within reach of all members of the bar.

The committee outlined the following state and local Legal Institutes for the year 1949:

January 21-22, in Chapel Hill: Legal Problems in the Income Tax Return. Lectures and discussion led by John E. Mulder, Director of the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association, assisted by experienced Income Tax attorneys of the American Bar. *Elementary courses in Taxation for Legal Institutes in Local Bar Associations.* Lectures and discussions led by Henry Brandis, Charles Lowndes, and Albert Menard of the Carolina, Duke and Wake Forest Law School faculties. *Recommendations* of the *Committee on Judicial Reform for the 1949 General Assembly—Constitutional and Statutory Problems Involved.* Lectures and discussions led by the Chairman of the Commission, Justice Samuel J. Ervin of the North Carolina Supreme Court, Francis J. Paschal, Secretary of the Commission, and other Commission members.

This state-wide Institute may be followed by local Institutes bringing the subject matter covered in the state-wide Institute within reach of all members of local bar associations interested enough to organize and sustain local study courses.

March 25-26, in Chapel Hill: Civil Procedure in North Carolina Courts, including the following topics: 1. Jurisdiction of Superior Court Judges; 2. Jurisdiction of Clerk of Superior Court and of Judge on Appeal from Clerk; 3. Discovery, Depositions and Adverse Party Examinations; 4. Hearings Before the Judge; 5. References; 6. Basic Considerations in Drafting Pleadings in North Carolina; 7. Fair and Unfair Comment in Arguments to the Jury; 8. The Motion to Strike; 9. Either Attachments and Garnishments or Supplemental Proceedings; 10. Motions at Trial, Before and After Judgments; 11. Motions to make More Definite and Certain and For Bill of Particulars; 12. Appeals; 13. Some Contrasts Between State and Federal Procedure. This Institute will be organized by Henry Brandis, University of North Carolina Law School faculty. Instructors to be announced.

This state-wide Institute may be followed by local Institutes, bringing the subject matter covered in the state-wide Institute within reach of all members of local bar associations interested enough to organize and sustain local study courses.

June 9-10 in Asheville: As part of the program of the North Carolina Bar Association meeting. Changes in the Law by the 1949 General Assembly. Topics and instructors to be announced.

This state-wide Institute may be followed by local Institutes, bringing the subject matter covered in the state-wide Institute within reach of all members of local bar associations interested enough to organize and sustain local study courses.

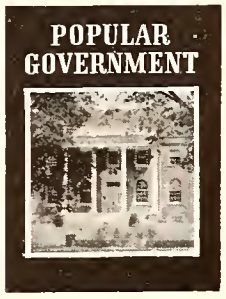
September 7-10, in Wake Forest: Problems in Taxation. This Institute will be organized and conducted by the Committee on Taxation under the chairmanship of Albert W. Kennon, Jr. of the Durham bar. Topics and instructors to be announced.

This state-wide Institute may be followed by local Institutes, bringing the subject matter covered in the state-wide Institute within reach of all members of local bar associations interested enough to organize and sustain local study courses.

Labor Law Institute at date to be announced. Program to be organized by Charles H. Livengood, Jr. of the Duke University Law School Faculty. Instructors to be announced.

Background of 1949 Legal Institute Program

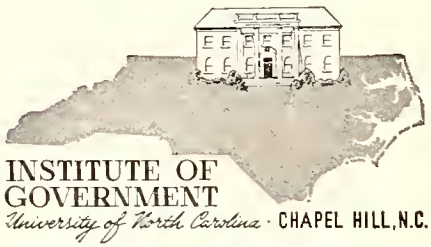
The first step. In 1940 Fred S. Hutchins, of the Winston-Salem bar, President of the North Carolina State Bar, requested and received the approval of the State Bar Council for a program of Legal Institutes. Pursuant to this approval, George C. Green, succeeding President of the North Carolina State Bar, appointed a Legal Institutes Committee, consisting of Louis J. Poisson, Chairman, Albert Coates, Fred S. Hutchins, Malcolm



December, 1948 Vol. 14, No. 12

CONTENTS

POPULAR GOVERNMENT is published monthly by the Institute of Government, the University of North Carolina, Chapel Hill. Editor: Albert Coates; Associate Editors: W. M. Cochrane, George Esser, Donald B. Hayman, Henry W. Lewis, J. A. McMahon, Donald W. McCoy, David G. Monroe, Clifford Pace, J. D. Phillips, Jr. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: Per year, $2.00; single copy, 25 cents. Advertising rates furnished on request. Entered as second class matter at the Post Office in Chapel Hill, N. C.



McDermott and Dale F. Stansbury. During the following summer the chairman called a committee meeting, attended by members Poisson, Coates and Stansbury, to outline Institute programs. Thereafter Henry Bane of the Durham bar initiated, organized and carried through on April 25, 1941 the first Legal Institute under this program at the Institute of Government building in Chapel Hill. Sixty five members of the bar attending the afternoon session, presided over by Mr. Bane, heard H. G. Hedrick of the Durham bar, Fred S. Hutchins of the Winston-Salem bar, and J. Dolph Long of the Burlington and Graham bars discuss the "Practical Aspects of the Trial of Automobile Negligence Cases." Judge Leo Carr presided over the evening session, in which addresses were delivered by A. L. Brooks of the Greensboro bar on "The Life of Chief Justice Clark" and Victor S. Bryant of the Durham bar on "Some Views in the Legislature Concerning the Legal Profession."

The Second step. This program, interrupted by the impact of World War II, was renewed in 1944 and 1945 in state-wide Legal Institutes held in Raleigh, organized and conducted by Edward L. Cannon, Secretary of the North Carolina State Bar and of the North Carolina Bar Association. These Institutes dealt with Taxation and Labor Law and attracted lawyers from all sections of the state.

The third step in the development of Legal Institutes in North Carolina came with Mr. Cannon's foresight into the necessity of refresher courses for lawyer-veterans returning from the armed services. Conferences between officials of the North Carolina State Bar and the North Carolina Bar Association allocated the responsibility for refresher courses and Legal Institutes to the North Carolina Bar Association and Louis J. Poisson of the Wilmington bar, President of this Association, appointed a committee to inaugurate these refresher courses. The committee consisted of Charles R. Jonas, Chairman, Luther Hartsell, Charles W. Tillett, Alan Marshall, Albert Coates, Isaac T. Avery, Jr., with L. J. Poisson and E. L. Cannon, ex-officio. This committee requested the Deans of Carolina, Duke and Wake Forest Law Schools to organize and conduct this refresher program. These law school representatives pointed out the fact that with post-war faculties of pre-war size and with post-war student bodies double or treble their pre-war size law schools, super-adding to their program of legal education a further program of post-legal education would be spreading thin and short-changing one set of veterans for another. They pledged the support of their individual faculties to any organizing and administrative agency designated by the Bar to carry out this refresher program. Thereupon the Committee on Refresher Courses, with the united backing of officials of the North Carolina Bar Association and the North Carolina State Bar requested the Institute of Government to organize and conduct the refresher program with the assistance of the three law school faculties and other members of the bar.

Institute of Government participation in Legal Institutes began in 1940 when Fred Hutchins invited Albert Coates, Director of the Institute of Government, to bring Institute of Government experience with institutes for city and county attorneys and judges and solicitors of Recorders' Courts before the Bar Council in support of his efforts for legal institutes for the bar as a whole. This participation continued with the Institute Director's appearance, at the request of Mr. Cannon, before the State Bar Association during the war years to discuss the possibility of refresher courses for returning lawyer-veterans. It went further in organizing and conducting the refresher courses given in the winter and spring of 1946 and the summer of 1947.

These courses included topics in the following fields of law: Federal and State Income Taxation, Ad Valorem Taxation, Forms of Business Organization, Title Examination, Casualty Insurance, Conflict of Laws, Bills and Notes, Collective Bargaining, National Labor Relations Act, Evidence, Trial and Appellate Procedure, Administrative Law and Procedure, Preparation of Briefs and Records on Appeal, and Legislative Changes in the Law by the 1947 General Assembly. Attendance at these Institutes ranged from eighty-five to one hundred and fifty lawyers. In organizing and conducting these Institutes for the North Carolina Bar Association, the Institute of Government received unstinted cooperation from members of the Carolina, Duke and Wake Forest Law School Faculties and from members of the Bar. In 1948 the Committee on Taxation under the leadership of Albert W. Kennon, Jr., of the Durham bar, organized and conducted at the Duke University Law School an Institute built around the topic "Tax Planning for Estates" attended by nearly one hundred lawyers. This Committee continuing under the Chairmanship of Mr. Kennon has been requested to organize and conduct a tax institute as an integral part of the legal institute program for 1949 planned and directed by the Committee on Post Legal Education of the North Carolina Bar Association.

The North Carolina Bar

Local Bar Activities

Richard E. Thigpen, President

Edward L. Cannon, Secretary

Some cities and counties have no bar associations. Local bar associations, where they exist, have varying degrees of activity: setting the court calendar, annual social meetings—sometimes with a visiting speaker, periodic meetings as particular problems arise, regular meetings with systematic programs of study and discussion of current legal problems. POPULAR GOVERNMENT invites local bar officials to send in detailed reports of their activities for a clearinghouse of information among local bar officials.

At a recent meeting of the New Hanover County Bar Association, Association President Addison Hewlitt, Jr., appointed a committee of members to study current problems pertaining to the practice at the local bar, particularly with respect to the unlawful practice of law, the need for expediting the trial of cases, and the status of present fees in relation to cost of living. The committee, consisting of Thomas W. Davis, Chairman, William B. Campbell, Wallace C. Murchison, James B. Swails and Cicero P. Yow, made the following preliminary report to the Association. POPULAR GOVERNMENT publishes it for the benefit which we feel its concreteness and thoroughness offer to other bar groups in the State and to the public.

I. Fees

Your committee has included that the fees charged by the members of the New Hanover County Bar are entirely too low in the light of living conditions existing today. Fees of examination of title, especially building and loan titles, have not been changed in fifty years. We therefore recommend revisions of fees which will more nearly reflect current conditions.

II. Unauthorized Practice of Law

No violations of the statute against unauthorized practice of law are more flagrant than those arising from the preparation of conveyances of real estate by laymen, and legal advice given and charged for by Certified Public Accountants. While a wide variety of individuals are guilty of this infraction of the law, dealers in real estate are without a doubt the prime offenders. Over half of the deeds, mortgages and leases filed in New Hanover County are prepared by laymen, and an inspection of the instruments filed for registration in New Hanover County on any given day will reveal that at least 2/3 to 3/4 of these instruments are prepared on printed forms, most of them by laymen.

The New York Supreme Court, Appellate Division, First Department, on April 12, 1948, handed down a decision "In The Matter of The Application of New York County Lawyers' Association, to Punish for Contempt and to Enjoin the Unlawful Practice of the Law by Bernard Bercu," 78 N. Y. Supp. (2d) 209, holding that a certified public accountant, who was called in by a taxpayer to advise on the question whether the taxpayer could pay past due sales taxes for prior years in one year when it had a large income and then deduct them in its federal income tax return for that year, was engaged in the unlawful "practice of law," where the accountant was doing no accounting work for the taxpayer in the ordinary acceptation of accountant's work, he had nothing to do with

Members of the New Hanover County Bar Association appointed by Addison Hewlett, Jr., President of the Association, meet in committee to study current problems pertaining to practice at the local bar. Left to right: James B. Swails, Secretary-Treasurer of the New Hanover County Bar Association; Cicero P. Yow; Thomas Davis, chairman of the committee; William B. Campbell; Wallace C. Murchison, Vice-President of the New Hanover County Bar Association, and Addison Hewlitt, Jr.

the taxpayer's books or its tax return, the facts were all fixed, and the only question was what view the tax authorities and ultimately the courts would take on the question involved.

Your Committee recommends, therefore, that a committee be appointed by the President of the New Hanover County Bar Association to meet with proper representatives of the Wilmington Board of Realtors and Certified Public Accountants and discuss these features with them to the end that such practices cease and desist, and if no agreement can be reached, that the matter be presented to the Grievance Committee of the North Carolina State Bar, Inc.

III. Professional Bondsmen

The nature of the business of standing bonds of persons charged with criminal offenses for monetary compensation permits practices which are detrimental to justice. The North Carolina Legislature of 1945 passed an act to tax and regulate professional bondsmen and others in New Hanover County. Among other things, this act makes it unlawful for any professional bondsman to solicit business by or through any attorney at law, court official, or law enforcement officer, or to pay to, give, or lend to any said person or persons money or other things of value as pay or gratuity for such service. It makes it unlawful for professional bondsmen to solicit business, directly or through another, in any jail, court house, court room, or other municipal or governmental building, or to recommend to any person incarcerated or bailed any particular attorney at law, or firm practicing law, or to advise such person with respect to the law or court procedure, and prohibits sheriffs, deputy sheriffs, police officers, constables, jailers or assistant jailers from recommending any particular bondsmen or attorneys, and fixes the fees of professional bondsmen. It gives to the Governing Board of the City of Wilmington or the Board of County Commissioners of New Hanover County power to inquire into the violation of any of the provisions of the Act and to revoke the license of any professional bondsman upon satisfactory proof of such violation.

Your Committee's investigation of this matter reveals complaints from attorneys practicing criminal law in the Superior Court and Recorder's Court, and also by the public at large, in such instances as follows:

(a) That bondsmen have on occasion attempted to give legal advice to persons charged with offenses in the state criminal courts and have on certain occasions been guilty of prompting them as to what to testify to in a given case.

(b) That certain bondsmen have advised defendants as to what attorney to employ, and in effect, have solicited business for certain attorneys.

(c) That bondsmen have loitered on public property for the purpose of soliciting business.

(d) That bondsmen have on occasion advised the use of the ten-day stay of execution which is permitted under the practice in Recorder's Court, in order that they could obtain the fee for standing an additional bond.

(e) That bondsmen have on occasion surrendered the person for whom bond was made prior to the date set for the person's appearance, and that upon the surrender of the person in such an instance a return of half the bond fee was not made, as is specifically required by the law.

(f) That bondsmen have in the past frequented and made use of the Bar in the Recorder's Court in the same manner as regularly licensed attorneys; however, this practice has now been forbidden by the present Recorder.

Your Committee recommends that the law regulating bondsmen in this County be rigidly enforced, and that the attention of the City Council of the City of Wilmington, the Board of County Commissioners of New Hanover County, the Sheriff of New Hanover County and the Chief of Police of the City of Wilmington be called to this act regulating bondsmen, and to the facts, and request be made upon these City and County officials to make an investigation and if the facts are as found by the Committee, to cancel the license of the bondsmen.

Your Committee further recommends that the practice of requiring a stay bond for a ten-day stay of execution pending defendant's decision as to whether or not he will appeal to the Superior Court be abolished, as it is the opinion of this Committee that an appearance bond once executed for any particular court remains in full force and effect until the judgment of that court is complied with or an appeal is made to a higher court.

IV. Setting and Trial of Cases in the Superior Court

In response to request of local attorneys at the Bar, your Committee undertook an investigation of the civil business of the Superior Court of New Hanover County for a one-year period, September 1947 to September 1948. During this period six civil terms of court were held—October and December 1947, and February, April, May and August 1948—a total of ten weeks of court. The minutes of the Superior Court revealed the following business transacted during this one-year period:

Motions and orders	48
Divorces and annulments	135
Judgments by consent	19
Judgments before Judge	6
Judgments after jury trial	19
Mistrials	4
Voluntary nonsuits	2
	233

This table shows that only 25 contested cases went to judgment before the court, with and without a jury, during the year. A large number of uncontested divorce suits were tried but these divorces seldom occupied more than one day's time during each term. Motions, orders and consent judgments were often handled during breaks in the trial of cases, and only a few motions required extended argument before the Judge.

The number of cases, other than divorce suits, disposed of by the Superior Court during this one year period totaled 46. This includes 25 contested cases, 19 consent judgments and 2 voluntary nonsuits. This may be compared with the number of cases placed on the trial calendar during the year September 1947 to September 1948. There were 211 such cases, an average of 35 each term. However, a large number of these were repeaters, so that the number of different cases on the year's trial calendar was 128.

What was the average length of time in bringing these cases to judgment?

The Committee investigated both the 25 contested cases and the 19 consent judgments. Time was figured, not from the commencement of the suit, but from the joining of issues, i. e., the date final pleading, either reply or answer, was filed. The average time from that date to date of judgment was 18 1/3 months for the 25 contested cases and 10 1/3 months for the consent judgments. This, of course, covers only the business of the Superior Court during term time and does not include consent or default judgments before the clerk or compromise of cases with voluntary nonsuit outside of term.

What is the present state of the civil issue docket in New Hanover County?

As of September 15, 1948, there were 1506 cases open on the docket. This, of course, does not include tax foreclosure suits. 203 of those cases were more than 10 years old, some originating back in 1921. 710 cases, or almost half, were more than 5 years old. The summons docket showed a total of 516 cases commenced in the one year period from September 15, 1947, to September 15, 1948, and 450 cases during the previous 12 months. A good idea of how fast these cases are being disposed of may be obtained from the fact that from January 1, 1948, when the present civil issue docket was transcribed, to September 1, 1948, 244 cases were removed from the docket by trial, settlement or otherwise. On this basis, a year's total of 366 cases would be disposed of, as compared with 516 cases started.

Investigating further the handling of civil cases, the Committee made a thorough check of the August 1948 civil term of Superior Court. This term lasted only one week, but in other respects could be considered typical. The Calendar Committee, composed of members of the local Bar, received letters requesting the setting of 60 cases, other than motions and uncontested divorces. A tentative calendar of 33 cases was arranged and the calendar as finally set contained 28 cases, excluding motions and uncontested divorces.

Going into the history of these 28 cases, the Committee found that 11 cases, or 39%, were appearing for the first time on the trial calendar; 7 cases, or 25%, were appearing for the second time, or third time, and 9 cases, or 32%, were appearing for the fourth to the eighth time on the trial calendar. With reference to the lapse of time since each case was first calendared for trial, it was discovered that 11 cases, or 39%, had made their first appearance on the trial calendar from 1 to 3 years prior to August 1948. One case first appeared on the calendar in February 1945.

Upon the calling of the calendar in court, a number of cases were continued by consent and a number of others were left "open." During the one week term a judgment of dismissal was granted in one case, and two cases were tried before a jury and verdicts rendered. The other 25 cases were continued and went over for the term.

Summing up the results of its study of the civil business of the New Hanover County Superior Court during the past year, the Committee arrived at the following conclusions:

1. Only a relatively small number—25—contested cases were brought to judgment.

2. The average time for trial of contested litigation was 18 months from the joining of issues.

3. There are at present a great many old and probably dead cases on the civil issue docket.

4. The disposition of cases is not keeping pace with the commencement of new actions.

5. A large number of cases requested by attorneys for trial each term do not appear on the final trial calendar.

6. The great majority of calendar cases are continued and go over to a later term.

The record is not one of accomplishment. Unfortunately the present system operates to encourage delay and retards rather than expedites the trial of civil cases in the Superior Court. The Committee feels that the present system is not only undermining every attorney's ability to make a living but it is also creating in the mind of the public generally a very unfavorable attitude toward courts, judges and lawyers. Unless civil litigation can be disposed of efficiently and contested issues decided without burdensome delay, the questions which should be tried in the Superior Court will be tried before some board or other administrative agency, by arbitration, or by forced and unsatisfactory compromises.

Although recognizing that many of the problems faced by the Bar of New Hanover County are statewide in nature, the Committee makes the following recommendations to improve the local situation:

First, the Committee strongly urges that all members of the New Hanover County Bar Association refrain from requesting the setting of cases which they have no real intention of trying. At each term of court when the calendar is called a large number of cases are continued by consent or without legal cause, in violation of the rules of the Calendar Committee. This not only causes the civil calendar to collapse each term but also prevents cases actually ready for trial from getting a place on the calendar.

Second, the Committee recommends that the Calendar Committee enforce the following Rules of Practice in the Superior Court of North Carolina—Rule 18: "All civil actions that have been at issue for two years, and that may be continued by consent at any term, will be placed at the end of the docket for the next term in their relative order upon the docket." Rule 20: "When a calendar of civil actions shall be made under the supervision of the court, or by a committee of attorneys under the order of the court or by consent of court, unless cause be shown to the contrary, all actions continued by consent, and numbered on the docket between the first and last numbers placed upon the calendar, will be placed at the end of the docket for the next term, as if continued by consent, if such actions have been at issue for two years." The Calendar Committee should also make an attempt each term to have the Superior Court Judge enforce the rule of that Committee against continuance except for legal cause arising after the setting of the final calendar. In addition, this Committee also recommends that the Calendar Committee keep a permanent record of cases which attorneys request placed on the trial calendar, and refuse to give cases which have been continued without legal cause priority at the setting of calendars.

Your Committee is making a study of the method of setting the calendar, and the improvement in the trial of cases in various other places, and has not reached a conclusion and is not ready to suggest any changes in the present rules of the New Hanover County Bar, but this Committee expects to conclude this investigation and make a report to the next meeting of the Bar Association of suggested changes in the rules now in force so as to provide for the acceleration of the trial of cases and disposal of the calendar.

In this connection, your Committee calls the attention of the Bar to the fact that lawyers are extremely dilatory, they continue their cases on the slightest pretext, they fail to answer correspondence promptly, and thus they are severely and justly criticized for not disposing quickly of suits which they bring into court for their clients.

The lawyer's destiny is completely dependent upon the people of his community. If the people are suspicious and distrustful of lawyers they will employ them only when compelled to do so, and Bar sponsorship of legislation or proposals or ideas of any kind will only arouse their antagonism; but if the Bar has won their confidence and respect, they will be glad to avail themselves of its services, and they will be influenced by the opinion of lawyers on questions of public interest. Therefore, it behooves the Bar to establish good relations with the public. It behooves

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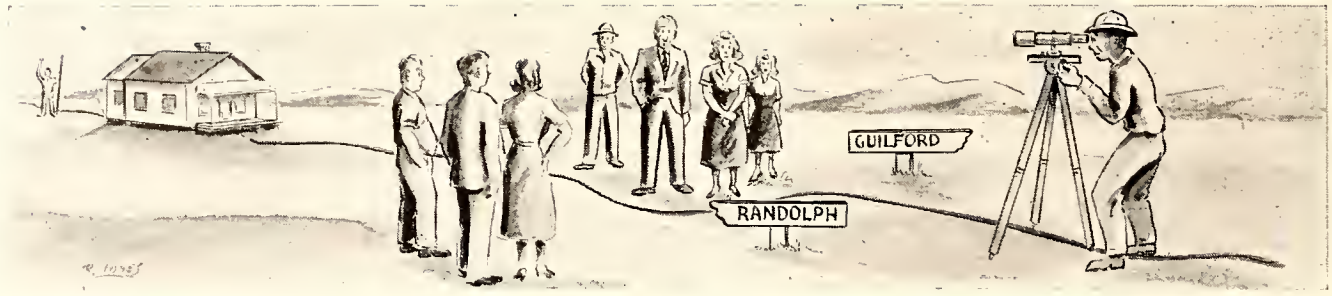

Two Counties In Search Of A Boundary

By
JACK ABERNATHY
Greensboro Daily News

This summer the commissioners of Guilford and Randolph counties waded into a swampland of confusion over the exact location of their 28-mile-long common boundary line. This month they plodded back out and gave some wary directions to a four-man arbitration board to "go in thar and git 'im!"

The "'im" referred to is a precise, staked-out, clearly marked line on the ground which it is hoped will be the future boundary line for generations to come. To reach that goal the arbitration board will have to arrive at a line agreeable to both groups of county commissioners, as well as one that will not unsettle boundary dwellers too much.

When the arbitration board, made up of two men from each county, reaches a decision, it will be submitted to the two sets of commissioners for ratification. When ratified it will be the boundary. No one concerned with the problem has yet ventured a flat statement that such a happy solution will be reached. On the other hand, all concerned, including residents of the boundary area, are anxious for a definite boundary line.

It may well be true that this "swampland of confusion" reaches out over the whole state where county boundaries are concerned. Probably a high proportion of counties do not know with any degree of exactitude where the starting and ending points for boundaries are, nor even the course of the lines, as determined by modern surveying methods.

Many counties may be doing just what Guilford and Randolph did before the question of a "shifty boundary line" arose—and that is taking tax listings as they come into the office, or on the basis of "what people in the neighborhood think", or possibly from real estate listed in the wrong county.

The center of the Guilford-Randolph tangle lies in the matter of taxable property and its location. Tied in with that, though, are such questions as voting, police protection, schools, in fact the whole gamut of governmental functions. Yet it was the activity of the tax office in both counties which started the move to fix the line. Randolph's new tax structure went into effect this Spring, and the zig-zagging boundary line was one of the early discoveries of the methodical system installed. Guilford knew about it five years ago, but was unable then to get action on the matter.

Following the discovery by its new tax commission of the wavering line, the Randolph commissioners asked the Guilford board to go into the project on a 50-50 basis. Guilford agreed, and the Southern Mapping and Engineering Company of Greensboro was engaged, at a fee of $3,800, to survey and mark an "exploratory line." Since that time, mutual agreement and cooperation have marked the attitudes of the two governing bodies.

Despite the co-operative attitude of the boards and the "exploratory line" completed by Engineer Ralph Stout several months ago, the new arbitration board was found necessary. The reason is that evidence supporting the exploratory line was not conclusive enough to satisfy both sets of county commissioners. They consulted statute books and found one covering county and state boundary disputes. Then the two boards agreed to name the present four-man arbitrating group.

Good clue to the importance of the boundary negotiations and the attitude of the county commissioners is that both chose their two members of the arbitration group from the highest level of their citizenry. From Randolph there are H. M. Robins, Asheboro's city attorney, and W. L. Ward, member of Asheboro's city council. Guilford members are Charles Phillips of Woman's College, and P. M. Davis, leading farmer of the High Point area.

A stenographic report of what was said at a meeting in Asheboro October 11 when the two sets of county commissioners gave instructions to the new arbitration board would be the best way to cover the major facts in the boundary issue. None was taken, however, so the remainder of this article is taken from a reporter's notes.

Chairman G. Russell Hodgin of Randolph commissioners began the meeting by saying, "Both counties agree what is now in use is not the true line, and we don't even assume so. This thing has accumulated on us, and we think it is time we did something about it. Both groups of county commissioners are highly desirous that whatever we do be satisfactory to both. We don't want to do anything that will excite the citizenry of either county into feeling against the other county."

Chairman J. A. Doggett of the Guilford commissioners said, "Four or five years ago Guilford County thought it would be a good idea to establish accurate township lines and survey school districts. We hoped that eventually all surveying in Guilford County would be tied into those boundary markers. We contacted the five counties on our borders, but none

(Continued on page 8)

THE CLEARINGHOUSE

Recent Developments of Interest to Counties, Cities and Towns of North Carolina

Cities and Towns

Municipal Revenue

With the first session of the 1949 General Assembly imminent, North Carolina cities jointly and singly took inventory during the past month and girded to do battle in Raleigh for measures that would bring relief to strained municipal pocketbooks. Hard-pressed to finance the services they are already providing, and at the same time realizing that more and better services for citizens are still needed, several cities are considering new sources of revenue. In *Greensboro*, a recent resolution of the city council provided for the appointment of a 25-man committee which will study and recommend legislation to the General Assembly to benefit revenue-depleted municipalities. Included in the resolution were the recommendations that the committee request the state to refund to the cities a percentage of the gasoline tax, and ask for state maintentance of all highways within the city limits.

City officials in both Greensboro and *Winston-Salem* have discussed before their respective governing boards a suggestion that a municipal income tax be adopted, realizing that authorization by the state legislature or possibly a constitutional amendment would be necessary before such a move would be possible. They pointed to the trend toward broadening the taxing powers of local governments through Home Rule amendments in other parts of the nation. A extreme example of the latter is the recent legislation in Pennsylvania permitting local governments to tax anything not already taxed by the state, and to use the revenue entirely as they see fit.

Annexation

The nation-wide trend toward municipal expansion, which gained momentum last year when 298 cities extended their borders, is being followed on a growing scale in North Carolina, where cities are taking advantage of the 1947 act of the legislature providing for annexation of territory. After a special meeting at which no objections were offered, the *Waynesville* board of aldermen passed an ordinance extending the town limits eastward to include what is now known as East

Waynesville. As called for by the 1947 act, the board had given four weeks' notice that objections to the ordinance would be heard at the meeting. Annexation of the new area will take place at once, its residents to get immediate benefit of the cheaper light and water rates in Waynesville as well as garbage disposal services. *Mount Airy* city commissioners are also reported to be considering a resolution to extend the city limits. The proposal has met with some opposition in the past but has never reached a vote. Under the terms of the 1947 act, the commissioners will hold a hearing on the question, and if fewer that 15% of the residents to be affected by annexation protest, extension of the town's limits will take place immediately. Another attempt to join the City of *Greensboro* is being made in the suburban towns of *Hamilton Lakes* and *Starmount Forest*. Here the procedure for annexation is governed by a special act of the 1945 legislature which provides that the towns may call a special election on the question after presenting to the Greensboro city council a petition for such a move signed by at least 30% of their qualified voters. An attempt to get signatures for such a petition failed two years ago. Greensboro now supplies water, sewer maintenance and fire protection at 50% higher rates to the suburban areas. If annexed, the towns would receive the additional services of police protection and health and recreation facilities, and at rates presently being paid by city residents. The move would mean an increase in Greensboro's population by about 700 persons.

Hitch-hikers

The suggestive gesture of the raised thumb, long familiar as the hitch-

(Continued on page 8)

Counties

Fire Protection

When six homes burned to the ground within shouting distance of the city limits in Winston-Salem while an ordinance-bound fire department stood by unable to go to the scene, and when a forest fire near Chapel Hill was prevented from reaching disastrous proportions only by the prompt action of local boy scouts, public indignation was aroused in these communities. But the problem of providing fire protection to areas beyond city limits has long faced local governing officials and worried homeowners in cities and counties all over the state. This month the county of *Stanly* and the City of Albemarle hit upon a workable solution that seems satisfactory to both. The county has ordered a new fire truck to be placed in the Albemarle fire station and manned by the city's firemen. When the truck arrives, two full-time firefighters will be added to the Albemarle fire department, their salaries to be paid by the county. The city and county will share the repair bills for the truck, and in addition the county will pay $25 a month to the city for gasoline, oil and operating expenses. The truck will be used to answer calls in both the county and the city. Last spring High Point attempted a partial solution to the problem by adopting an amendment to an existing ordinance to permit the use of city fire fighting equipment at schools, churches, hospitals and state and federal properties beyond the city limits in *Guilford* county. At present, in cooperation with property owners in the suburban area, the city is working on a plan to provide outside protection by laying a new water line in the nearby area, to be paid for by the property owners who enter into contract with the city.

Air Service

The *Lenoir* board of commissioners has approved an application to the Civil Aeronautics Board requesting a certificate of necessity from the CAB stating that the area needs air service. The application will shortly be submitted to the Kinston city council for approval. The city and county

(Continued on page 8)

Counties

(Continued from page 7)

must have such a certificate before any air line will agree to include Kinston on its route, a representative of the Kinston-Lenoir County Airport Authority told the board. The Airport Authority eventually hopes to secure both east-west and north-south air service through the county after the CAB certificate is obtained.

Consolidated Health Department

A consolidated health department for *Guilford* County and the cities of Greensboro and High Point has been planned by governing officials of the three units. Attorneys are currently working on the draft of a proposed bill authorizing consolidation to be presented to the next General Assembly. The bill will first be subject to the approval of the county's dental and medical associations and other interested citizens, as well as a special committee, representing the county and the two cities, which has been authorized to take action toward the merger. The consolidated department would be run by a seven-member board consisting of the chairman of the county commissioners, two members recommended by each of the cities, and two recommended by the county commissioners. Plans also call for the county to assume complete financial control of the department by the fiscal year 1953-54.

Boundary

(Continued from page 6)

were interested, and so the move failed then."

Quite a few minutes were taken up discussing whether the "new line" should be straight, as is the "exploratory line" marked by Engineer Stout. Randolph Chairman Hodgin said, "Looks to me as if when the counties were formed it was done on a basis of straight lines. That is what we would like—a straight line. Not that we wouldn't ratify another type of boundary if decided by the arbitration group." Guilford commissioners said in general they thought a straight line would be desirable. But they pointed to possibility of an ancient survey with inaccurate instruments which might have warped the line. They also pointed out that there might be a lot of difficulty through disturbing the place of residence of a lot of citizens. At another point it was brought out that there are about 150 families in the border area.

Phraseology from the original legislative act was quoted—"Beginning at a point in the Anson line at the southeast corner of Rowan County, running north 28 miles, then east to the Orange County line." Arbitrator Robins asked why the 28 miles of the western Randolph border could not be measured off to get a starting point in the Davidson line from which to run east along the border between Guilford and Randolph. Randolph Chairman Hodgin answered jocularly that that method had been considered, but they feared it would put High Point in Randolph County, and Randolph didn't want it. The reason that method could not be used is of course the same difficulty—no one knows what survey methods were used in 1779, nor even whether actual surveys were made when Randolph County was split off from Guilford.

Randolph Chairman Hodgin noted some of the problems connected with locating the line, "It seems that at one time a man's land holdings were given in for taxes to the county where he voted. Now, if he sold some of the property for subdivisions, it often happened that property would be shifted from one county to another. Deeds for some of that property will be very much in doubt after we get a new line. However, costs of rewriting instruments will be carried by the county in which the land falls."

Both sets of county commissioners told the arbitration board not to be concerned over tax problems. After the line is settled, the two tax departments will work out equitable tax listings. As an example they cited the case that would occur if the line should split a house—the house would be listed in one county or the other. Swapping of small areas will have to be done, it was agreed.

At the close of the meeting, Tax Supervisor Bill Hester of Guilford unrolled, a section at a time, the 30-foot map showing the "exploratory line." Engineer Stout had drawn the acreage, ownership, and location of all land touching the line. Beneath Stout's arrow-straight line Guilford tax men had penciled a red line showing their tax listings. Majority of this line was south on the Randolph side of the "exploratory line" by from 200 to 600 feet, although in several areas it zig-zagged back over beyond the Guilford side.

Then the county commissioners tossed the ball to the arbitration board, and asked them to run with it. The payoff touchdown is slated to be made this month, since the majority of Randolph commissioners leave their posts in December.

Cities and Towns

(Continued from page 7)

hiker's sustitute for travel fare, is now illegal in *Roanoke Rapids*. An ordinance passed this month at the request of Police Chief T. J. Davis prohibits travelers leaving the city from thumbing rides from passing motorists within the city limits.

City Code

The *Hickory* city council has approved a contract with a commercial publishing firm which provides for the preparation of a city code. The company will perform a considerable number of services in addition to printing the city's ordinances, having agreed to edit the ordinances where they see fit; submit to the city attorney recommendations to alter or repeal ordinances which have become obsolete; classify the ordinances according to subject matter; check the ordinances against state laws to insure validity and constitutionality; prepare a frontal analysis of each chapter of the code and a complete and comprehensive index to all ordinances includes in the code. The company will also aid the town officials in the preparation of a new charter, to be submitted at the 1949 session of the legislature, by making recommendations to the charter committee in the light of their work on the ordinances themselves.

Town Manager

The desire for "a more efficient and economical administration of the affairs of the town of *Dunn*" has prompted the town commissioners to adopt a resolution favoring the city manager form of government for Dunn. The proposal was made by Mayor Emmett C. Aldredge after considerable study of the manager plan. An act of the legislature will be required before the question can be put to a vote by the citizens.

"Non-Fix" Traffic Tickets

Chicago officials have launched an experiment designed to save time and paper work on traffic violation cases and to prevent unscrupulous citizens from having their traffic tickets "fixed" at the city hall. The new system, which is also being tried in several other large cities, is based on the use of a ticket termed by the Northwestern University Traffic Institute "the most modern ever designed for a municipal police department." Every ticket is numbered and made out in quadruplicate, one copy going directly to the court, the second going to the police department, the third retained

by the officer, and the fourth going to the unfortunate traffic violator. Chicago officers will regularly spend two days in court each month at which time all of their cases will be handled. Disposition of each case will be recorded on the copy of the ticket which was sent to the court.

Sunday Movies

Tabor City commissioners, by a vote of two to one, have legalized the showing of movies on Sunday, as long as the theatres are closed during church hours. A public hearing on the question in September displayed heated support on the part of citizens for both sides of the question, and the matter was held over until this month for cooler consideration by the commissioners. In *Asheboro*, where movie operators have petitioned the council for repeal of the ordinance prohibiting the Sunday showing of movies, the council has referred the question to the public. If a sufficient number of requests from citizens asking for repeal are received, the question will be reopened by the council for further action.

Retirement

A resolution establishing a policy governing the employment and retirement of city employees was passed by the *Raleigh* city council in conjunction with the passage of a resolution to enroll city personnel in the Local Government Employees' Retirement System. Under the new employment policy, minimum and maximum age limits of between 21 and 32 for the fire department, 21 and 38 for the police department, and 21 and 48 for all others, are set in the hiring of new personnel, with the exception of the fire and police chiefs. Retirement will be mandatory for firemen at 55, and at 60 for all other employees except administrative officials, who will be automatically retired at 65.

Sanitation

Following the recent action of other North Carolina cities, and in response to petitions from several hundred citizens, the *Lexington* city council passed an amendment to a city ordinance which virtually eliminates the maintenance of hog pens within the city. The original ordinance prohibited the maintenance of hog pens within 100 feet of residences; the amendment extends the prohibited area to 300 feet. The council is also considering employing a sanitarian within the city to help enforce existing sanitation laws.

Report From Washington

Electrification

With 68.4% of its farms electrified, North Carolina is leading the South and fast approaching the national average of 68.6%, according to the most recent report of the Rural Electrification Administration. The rate with which light is reaching into the state's rural areas has been accelerating since the program began in 1935, when only 3% of North Carolina's farms were wired, and nothing will slacken it this year. REA administrator Claude M. Wickard has allotted nearby ten million dollars, to be made available before June 30, 1949, to be loaned to electric power cooperatives, public utility districts, municipalities and private companies in North Carolina. In addition, the state is eligible to share in the two hundred million dollars of discretionary funds to be distributed by the REA this year.

Insurance Dividends for Veterans

North Carolina veterans of World War II who carried National Service Life Insurance may divide an unexpected jackpot amounting to $34,000,000 early next year when the Veterans Administration refunds as dividends to policy holders all profits collected on mutual insurance payments. The refund will be paid to each veteran on the basis of his individual insurance account record. The enormous task of computing the individual dividends is now being done by the 13 branch offices of the Veterans Administration. Unofficial estimates indicate that between 1½ and 2 billion dollars will be returned to the nation's veterans by the end of 1949.

Flood Control

Appropriations for two major flood control projects in North Carolina were requested by Army Engineers this month from the federal Budget bureau. The amounts granted will be withheld until the budget for the new fiscal year is presented to Congress by the President in January. The Engineers have asked for funds to finance construction of the Yadkin River basin flood control dam near Wilkesboro at an estimated cost of $7,194,000, and the Buggs Island control and power reservoir on the Roanoke river in North Carolina and Virginia at an estimated cost of $68,900,000. To date $17,900,000 has been appropriated for the Buggs Island project; only planning funds have been allocated for the Yadkin river dam.

Highway Mail Service

One of the first four highway mail routes in the nation to be authorized by the Post Office Department this month will speed delivery to all North Carolina post offices on U. S. 74 between Charlotte and Asheville. A large truck, complete with mail clerks and sorting facilities, will make one round trip daily between the two cities, returning to Charlotte every night. Thus same-day delivery is asssured for letters dispatched from and intended for post offices along the route. Highway mail truck service was also instituted this month between Baltimore and Washington, Asheville and Blue Ridge, Ga., and Indianapolis and Vincennes, Indiana.

Hospitals

The federal allocation of $3,429,016 going to North Carolina this year under the Hill-Burton Hospitals Construction Act has already been earmarked by the Medical Care Commission for various approved projects throughout the state. Of the total figure, $1,200,000 will be divided between state-owned mental and tuberculosis hospitals and a teaching hospital at the University of North Carolina. The remaining $2,229,000, matched by state and local funds, will help finance new local hospitals in the counties of Allegheny, Alexander, Swain, Washington, Johnston, Warren, Pitt, Wilkes, Alamance, and Guilford. Each hospital area provided at its own expense a site acceptable to the Medical Care Commission, the U. S. Public Health Service and the State Department of Health. The Hill-Burton Bill originally scheduled annual federal allocations to be made over a five-year period. $75,000,000 has already been appropriated by Congress for the states during the two years the bill has been in effect.

1948 Meeting Of Tax Supervisors And County Accountants

Retiring President M. L. Laughlin (center) poses with new officers, C. E. Gwin, President, and Miss Maida Jenkins, First Vice-President, elected at the 1948 meeting of the North Carolina Tax Supervisors' Association. Not pictured is J. C. Haynes, newly elected Second Vice-President of the Association.

On November 16, 17 and 18, the North Carolina Tax Supervisors' Association and County Accountants' Association met for their annual sessions in Chapel Hill. The two groups were among the first with which the Institute of Government began its work in the early 1930's.

Early in the meeting Henry W. Lewis, Assistant Director of the Institute of Government, presented a tentative system, devised by the Institute, capable of use in all North Carolina counties for the assessment of real property. This system is described in a manual now being prepared for distribution to interested counties by January 1. At a later point a number of tax supervisors participated in a panel discussion of current personal property listing and assessing problems. In its business session the Association adopted the resolutions set out below, and the new Association President, Mr. C. E. Gwin, appointed the following as a legislative committee to work toward carrying out the program outlined in the resolutions: J. Curtis Ellis, Nash County; W. F. Hester, Guilford County; Bryan Aycock, Wayne County; R. C. Gates, Lincoln County; and J. A. McGoogan, Hoke County.

1948 Resolutions of the North Carolina Tax Supervisors' Association

BE IT RESOLVED by the North Carolina Tax Supervisors' Association that we hereby express our ap-

Members of the North Carolina County Accountants' Association who attended the 1948 meeting in Chapel Hill on November 17 and 18.

preciation and thanks to Henry W. Lewis and the Institute of Government's staff for the outstanding work done on the preparation of a standard revaluation system for use in North Carolina counties; and we hereby recommend that it be published in the way that it can be made available to the counties at the earliest possible date. Be it further resolved:

1. That we commend the General Assembly for passing G.S. 105-302.1 providing that inventories and costs of merchandise be furnished the tax supervisors as of January 1st each year, and urge that this law be kept on the statute books.

2. That the North Carolina State Board of Assessment be empowered by the General Assembly to assess and certify valuations to the counties on air lines and bus companies operating instrastate.

3. That our officers work with the Secretary of the State Board of Assessment on a system for bringing about equalization of property values throughout the State.

4. That the Department of Motor Vehicles be requested to set up their files so that a list of the names and addresses of all motor vehicle owners may be filed by counties and made available to county tax supervisors upon request for same.

5. That the President of the Association appoint a committee to endeavor to enlarge our membership to include all tax supervisors in the State.

6. That our thanks and appreciation is hereby expressed to Mr. Albert Coates, Henry W. Lewis, and the entire staff of the Institute of Government for their splendid service and untiring efforts in improving local government in North Carolina.

Chatting together between sessions are the current officers of the North Carolina County Accountants' Association. Left to right: J. C. Haynes, member-at-large; Miss Lillian Ross, Secretary-Treasurer; F. W. McGowen, President, and J. Curtis Ellis, First Vice-President.

7. That our appreciation is hereby expressed to the Carolina Inn and the University of North Carolina for our splendid entertainment.

Adopted unanimously by Tax Supervisors' Association, November 17, 1948.

Officers of the Tax Supervisors' Association elected for the coming year were: C. E. Gwin of Catawba County, Chairman; Miss Maida Jenkins of Moore, first vice-president; and J. C. Haynes of Rowan County, second vice-president.

Following a banquet on Wednesday night, November 17, the county accountants, many of whom also work as tax supervisors, met with Donald McCoy, Assistant Director of the Institute of Government, to discuss the problems of county financial analysis and methods of presenting local government budgets to the public in understandable form.

On Thursday the group heard a discussion by W. E. Easterling, Secretary of the Local Government Commission, of the problems raised by the results of the vote on the three proposed constitutional amendments which related to local government finance. The closing period of the session featured a round-table discussion of the general problems involved in the work of county accountants, led by F. W. McGowen, President of the County Accountants' Association.

Leading a discussion of personal property listing and assessment, the panel includes, left to right, J. C. Haynes, Rupert Crowell, Milton Williams, Henry W. Lewis, J. E. Emerson, Jr., R. E. Gates, William F. Hester, Miss Inez Naylor, J. Pate Fulk, M. L. Peel, J. D. Joyner.

The Jailers Go To School

On the morning of October 27th, twenty-five county and city jailers met at Chapel Hill to register for a course of training new to North Carolina—a course in Jail Management.

Three days later they were awarded certificates for satisfactorily completing the course, thus becoming the first jailers to join the other groups of city, county, and state officials who have been attending training schools at the Institute of Government since 1932—a growing roster of thousands of alumni of what has become a great university of public officials.

The need for such training was first recognized at meetings of a committee created pursuant to Chapter 915 of the Session Laws of 1947: "*The State Board of Public Welfare is hereby authorized and directed to consult regularly with an advisory committee of sheriffs and police officers regarding the personal safety, welfare, and care of inmates incarcerated in county and municipal jails and city lock-ups . . . .*"

Pursuant to this mandate, members of the State Board of Public Welfare met twice during 1948 with representatives of the Police Executives' Association, Sheriffs' Association, State Bureau of Investigation, State Board of Health, State Insurance Department, and Institute of Government, to discuss conditions existing in the jails of North Carolina. This committee studied, approved, and recommended to the jailers of North Carolina a model set of desirable jail standards and regulations—and these recommendations served as the basis for much of the classroom study and discussion at the Jail Management school.

Other topics for discussion and study during the course included: The jail and its relation to welfare problems; jail sanitation problems; physical examination and medical treatment of prisoners; jail management; jail inspection; community responsibility for jails; jail officers' responsibility to the public; fire prevention and control; opportunities for cooperation between law enforcement, judicial, and welfare officers; salaries versus fees; and legal rights of prisoners.

The course was organized and conducted by the Institute of Government and the State Board of Public Welfare, and the instruction staff of the school included the following: Albert Coates, Director of the Institute of Government; Dr. Ellen Winston, Commissioner of Public Welfare; R. L. Caviness, Sanitary Engineer, State Board of Health; Dr. W. G. Cheves, State Prison Medical Officer; Miss Nina Kinsella, Executive Assistant to the Director of Federal Prisons; Fred Wilkinson, Federal Bureau of Prisons; Jailer Norman Butler, Cumberland County; J. B. Moore, Inspector of Institutions, State Board of Public Welfare; Walter Anderson, Director, State Bureau of Investigation; Captain J. M. Tucker, Winston-Salem police department; Eric Hall, Chief of Asheville police; Mark Boone, Engineer, State Insurance Department; Tom Grier, Field Representative, State Board of Public Welfare; W. M. Cochrane, Assistant Director, Institute of Government; John Morris, Secretary, North Carolina Sheriffs' Association; Hoyle Efird, First vice-president, North Carolina Sheriffs' Association and Clifton Beckwith of the office of the Attorney General.

Against a background of posters illustrating rules for good jail management (provided for the school by the Federal Bureau of Prisons), Director Walter Anderson of the State Bureau of Investigation speaks to the class on "Community Responsibility for Jails." At the table beside him are (left to right): J. B. Moore, Inspector of Institutions, State Board of Public Welfare; Chief Eric Hall of Asheville; Jailer Norman Butler of Cumberland; Fred Wilkinson, Federal Bureau of Prisons; and Captain J. M. Tucker, Winston-Salem police department.

Claims Against The State In North Carolina

By Daniel K. Edwards
Durham Attorney
Member of House of Representatives

As a result of the efforts of Mr. Edwards and his associates in the 1947 General Assembly, the method of handling claims against the State became one of the subjects which the Commission on the Administration of Justice, created by the 1947 Legislature, was directed to study. The Commission had the benefit of Mr. Edwards' research in its work on this phase of its study.

I

THE PROBLEM

It is not likely that the problem raised by the claims of individuals against the State of North Carolina will ever become a political issue with appeal to any large number of voters. It directly affects the pocketbooks and self-interest of only that small group who are the claimants. It is not a matter that immediately affects the progress of business, industry, or agriculture. It is, in fact, a matter of concern only to those who interest themselves in the almost imperceptible accretion that is the progress of the administration of justice in North Carolina.

The problem, in spite of the fact that it is somewhat technical and obscure from the point of view of the general public, has been recently receiving considerable atention. The October 1947 issue of *State Government*, a magazine published by the council of state governments, is devoted to the developments in state legal accountability, containing discussions of the Illinois, Michigan and New York Courts of Claims. During the 1947 session of the North Carolina General Assembly a bill was introduced providing for a Court of Claims in this state, but was not pressed through to enactment. A substitute bill was enacted requiring the Commission set up to investigate the judical processes in this state to make a study of the Court of Claims problem.

During the same session of the North Carolina legislature, at the first meeting of the House Rules Committee, it was suggested that all claims against the state be consolidated, in the interest of saving time, paper and space on the House calendar, and presented as an omnibus bill for enactment toward the end of the session. This was brought to the attention of the Chairman of the Appropriations Committee and a subcommittee was appointed to collect all such bills introduced and to prepare an omnibus bill incorporating the salient facts of each claim. As a result House Bill 1039 (1947 Session Laws of North Carolina, Page 1640), embodying over a hundred claims ranging in amount from $7.50 to $9,000.00 was passed during the closing days. There is no reason to suppose that 1947 was an unusual year as to the number of claims presented.

Suppose John Doe, the well known litigant, was knocked down and seriously injured in his native North Carolina on his way to the Court House by a truck maintained and operated by the servants, agents, and officers of the State of North Carolina in connection with the repair of the State's highway. Upon his release from the hospital, John Doe limps to the office of his energetic attorney, Coke Blackstone. Blackstone, without hesitation advises him that it is apparent that he was injured as a result of the negligence of the truck driver who was seemingly acting at the time within the scope of his employment. Doe has a cause of action against the truck driver, who turns out to be a twenty-year-old honor grade prisoner without a dime in the world and some five years of a sentence yet to serve. No. John Doe cannot sue the State of North Carolina; under the common law, the sovereign cannot be sued without its consent.

It is quite true that the North Carolina constitution, Article I, Section 35 states: "All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law . . . . ." And Article IV, Section 9, of the same document states: "The Supreme Court shall have original jurisdiction to hear claims against the State, that its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action."

This, at first glance, would seem to provide a tribunal accessible to our claimant. The Supreme Court, however, has decided that "claims" it was given jurisdiction to hear were limited to claims involving only questions of law; if there is a question of fact to be considered, the claim will not be heard. (McIntosh, *N. C. Practice and Procedure*, page 15 and cases there cited; also *Blatzer et al vs. State*, 104 N. C. 265, 10 S. E. 153, *Calkins Dredging Company vs. State et al*, 191 N. C. 243, 131 S. E. 665, *Lacy vs. State*, 195 N. C. 284, 141 S. E. 886.)

As early as 1886, the General Assembly attempted to find a remedy for the self-imposed limitation of jurisdiction adopted by the Supreme Court. A statute was enacted which provided in part that "if an issue of fact shall be joined on the pleadings, the Court shall transfer it to the Superior Court of some convenient county for trial by a jury. . . (General Statutes Section 7-10). The Supreme Court has declined to be bound by the provision of this statute on the grounds that the constitution provides that the Court shall make its own rules and that therefore the General Assembly has no power to direct the Court to take the action outlined in the statute. (*Lacy vs. State*, 195 N. C. 284, 141 S. E. 886).

An examination of the law, as stated in the decisions in this State, would not lead our claimant to entertain much hope of relief in the Superior Court. Article I, Section 35 of the State Constitution has never been construed as a consent on the part of the State to suit by an individual. It has been uniformly held in this jurisdiction that State agencies created by statute are also immune from suit, partaking of the immunity of their sovereign creator, unless that immunity is removed by statute. (*Carpenter vs. Atlanta Railway Company et al*, 184 N. C. 400, 114 S. E. 693, *Scales vs. City of Winston-Salem*, 189 N. C. 469, 127 S. E. 543, *O'Neal vs. Wake County et al*, 196 N. C. 184, 145 S. E. 28, *Lord and Folk Chemical Company vs. State Board of Agriculture*, 111 N. C. 135, 15 S. E. 1032, *Moody vs. State Prison*, 128 N. C. 12, 38 S. E. 131, *Prudential Insurance Co. of America vs. Powell et al*, 217 N. C. 495, 8 S. E. 2d 619, *Dalton vs. State Highway and Public Works Commission*, 223 N. C. 406, 27

S. E. 2d 1). It appears that our claimant could bring an action founded in tort against the negligent employee of the State Highway and Public Works Commission (*Miller vs. Jones et al*, 224 N. C. 783, 32 S. E. 594) but since that employee seems to be quite insolvent, this is not a very practical remedy. (The distinction between *Miller vs. Jones et al* (Supra) and *Wilkins et al vs. Burton*, 220 N. C. 13, 16 S. E. 2d 4066, which held a governmental officer not liable unless his act "is corrupt or malicious," does not concern us here since it has nothing to do with the immunity of sovereignty).

The Federal Courts offer no relief. The United States Constitution nowhere explicitly announces that a member state may not be made a party defendant in a law suit instituted by one of its own citizens and the early case of *Chisholm vs. Georgia* (2 Dall. 419) indicated that the United States Supreme Court might allow that right. But the law of that case was reversed by the eleventh amendment, and *Hans vs. Louisiana* (134 U. S. 1) decided that the Federal Court would not entertain an action by a citizen against his state.

Since the courts with the few exceptions noted above, will not heed the suits of claimants when the State or its agencies are involved as defendants, resort must be had to the General Assembly itself. This is why year after year the legislative hoppers have been jammed with bills attempting to provide relief for individuals who have been wrongfully injured in some way or another by state

The resort to the legislature in these matters has been unsatisfactory both in theory and in practice. The adjudication of a claim involving a finding of fact and an interpretation of law is not properly a legislative function, and for the legislature to attempt to thus assume the prerogatives of the judiciary would result agencies or employees.
both in hampering the normal legislative process and in a poor job of handling the claim. The legislature has therefore avoided becoming a court by in each case delegating that function to the state agency concerned. Thus if a man is injured by a school bus, the statute enacted for his relief will merely authorize the State Board of Education to investigate the facts and pay the claimant a specified amount if the Board finds his claim to be justified.

Under this arrangement the state agency, which is the defendant, becomes judge, jury, and appellate court. The fact that it must pay the award, if any, out of its bi-annual appropriation, an appropriation made only for operating expenses, would make the agency justifiably reluctant to jeopardize its mission of service to the people of the state by paying any considerable amount of these funds to individuals no matter what the dictates of justice.

II
OTHER STATES

North Carolina is not alone in facing this problem. In 1947 at this writer's request, the Institute of Government of the University of North Carolina made a survey of the procedures used by other states. The result was most instructive and rich in potential solutions for our own situation.

Eighteen other states handle claims in the same manner as does North Carolina. (Arizona, Colorado, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, North Dakota, Oregon, South Dakota, Vermont, Washington. No report from Oklahoma, Pennsylvania, Rhode Island, Utah, and Wyoming.) In three other states claims are handled by the legislature but by a somewhat different procedure. (Connecticut, Iowa, Kansas.) These differences of procedure seem to be designed to implement fact-finding by the legislature so that it can make final disposition of each case. This would offer no solution to North Carolina if the result desired is to avoid encumbering the legislature with a judicial role.

Some solutions suggested by procedures in other states:

A. Liability Insurance.

We have observed that an action founded in tort may be maintained against a state employee. (*Miller vs. Jones et al*, supra). This suggests the thought that the state could take care of tort claims by carrying liability insurance on all such employees. Indiana and Wisconsin have adopted this plan to some extent. (Indiana has a court of claims to hear contract matters.) In such tort cases the only practical reason for joining the state or a state ageny with the employee as a party defendant is the inability of such employee to pay a judgment if obtained. If nothing else is done it would seem that North Carolina should at least take this step.

B. Statutory consent to suit in regular courts.

In Texas the custom seems to be to obtain statutory consent to sue in the established courts in each individual case. In Missouri and South Carolina blanket statutory consent to sue certain departments has been granted. Massachusetts allows its Superior Courts to try all claims in law or equity against the state except torts; and California seems to have gone all out to permit all claims to be heard in its regular courts. Montana has required claimants to obtain judgment in the regular courts, then the judgment is reviewed by a Board of Examiners and finally passed on to the legislature.

C. Special Courts or Boards.

Some of the larger industrial and commercial states as well as some smaller states have in operation special courts established for the sole purpose of trying actions against the state. (New York, Illinois, Michigan, Louisiana, Nebraska, West Virginia.) Others have created special boards which seem in general to place the responsibility upon the executive branch of the state government. (Alabama, Arkansas, Idaho, Nevada, Ohio, Tennessee.) Others have designated certain established courts to act as courts of claims in addition to other duties. (Indiana.)

III
THE STATE CONSTITUTION

As the various alternatives are considered in an effort to devise the best procedure for handling claims against the state of North Carolina, it is inevitable that constitutional questions should arise. We have mentioned above Article IV, Section 9 of North Carolina Constitution which could easily be construed as vesting exclu-

sive original jurisdiction over claims against the state in the Supreme Court. If this were true, it would probably be necessary to submit a constitutional amendment to the people to permit a substantial reform of the present procedure.

In this connection there would seem to be a respectable logical basis for distinguishing between claims against state agencies and claims against the state itself. The legislature having created these agencies by statute, it would apparently follow that it could by statute expose them to suits by individuals. Also in the eyes of a political metaphysician they might not partake of the august sovereignty of "The State" which would in some measure be diminished by the State's participation in litigation as a party defendant.

Fortunately, however, the Supreme Court has apparently already supplied answers to all of these questions. It has on several occasions held that there is nothing in the State Constitution that prevents the legislature from conferring, by statute, original jurisdiction upon the Superior Courts to hear claims against state agencies. (*Ellis v. Institution*, 68 N. C. 423; *Bain v. State*, 86 N. C. 49; *Granville County Board of Education v. State Board of Education*, 106 N. C. 81, 10 S. E. 1002; *Yancy v. N. C. State Highway & Public Works Commission*, 222 N. C. 106, 22 S. E. 2d 256.) That conclusion also applies to suits against the state itself. (*Rotan et al v. State of North Carolina*, 195 N. C. 29, 141 S. E. 733.) Furthermore, if the legislature does prescribe a judicial method of asserting claims against state agencies, the individual claimant must follow the procedure thus established and may no longer resort to the constitutional original jurisdiction of the Supreme Court. (*Vinson v. O'Berry et al*, 209 N. C. 287, 183 S. E. 423; *Vinson v. O'Berry et al*, 209 N. C. 298, 183 S. E. 424; *Prudential Ins. Co. of America v. Powell et al*, 217 N. C. 495, 8 S. E. 2d 619; *Dalton v. State Highway & Public Works Commission*, 223 N. C. 406, 27 S. E. 2d 1.)

IV

THE COMMON LAW

Perhaps there is more involved in this matter than merely providing a forum for claimants against the state. We may be dealing with a question of "substantive" law rather than simply one of "procedure." The consequences of the ancient doctrine that "the King can do no wrong" may segregate the sovereign from the incidents of rules of law that would be applicable to others. When a court refuses to render judgment for a plaintiff because of the "sovereign immunity" of the defendant it is often difficult if not impossible to ascertain whether the court considers the matter demurrable for lack of jursidiction or for want of a cause of action—or both. The reports of the North Carolina decisions are inconclusive on the point.

The cases in which the Supreme Court has allowed judgments against state agencies because of statutes permitting those agencies to be sued indicates the question is purely jurisdictional. (See cases cited in note 18, supra.) It would, however, probably be possible to construe those statutes as not only conferring jurisdiction but also imposing liability if not expressly, at least by implication.

Moreover there is much language in the reports supporting the "substantive" theory. In the early case of *Clodfelter v. State* (86 N. C. 51), Smith, C. J. stated: "That the doctrine of respondent superior, applicable to the relations of principal and agent created between other persons, does not prevail against the sovereign in the necessary employment of public agents, is too well settled, upon authority and practice, to admit of controversy." And in a later case (*Moody v. State's Prison*, 128 N. C. 12, 38 S. E. 131), Clark, J. elucidated further by saying: "The reason given is that liability founded on the neglect or to torts of public officers engaged as servants in the performance of duties which the state, as a sovereign, has undertaken to perform, has always been denied, not on the narrow ground that such liability cannot be enforced, but on the larger ground that no liability arises therefrom."

Since the legislature can doubtless create both jurisdiction and liability by statute, the distinction drawn above may seem to have little significance except as a warning and a guide to the drafters of such statutes. Yet it does tend to clarify the issue in trying to rationalize the application of a dogma devised by and for absolute monarchs to one of the forty-eight political subdivisions of the United States in this the twentieth century. It means not that the sovereign can wrong a citizen and escape liability because it is above and beyond the reach of its own courts, but that there is no legally recognized wrong in what the sovereign does. It means that as the common law developed through the years molding and shaping the pattern of legal responsibility of one individual to another, it did not consider the sovereign state a part of that pattern.

It seems likely that this exemption of the sovereign was originally founded on the theoretical and practical difficulty of subjecting that sovereign to its own courts. There was a reluctance to mar the unbroken contours of a political theory by such an apparent anomaly. During the years this thought has become less and less applicable to the several states of the Union for the reason that their sovereignty has become less and less. As Charles A. Beard has said: "Though the original Constitution specified important powers which Congress could exercise the functions left to the states were so extensive and fundamental that men could, with a show of propriety, speak of the states as sovereign and the National Government as their agent in dealing with foreign countries. By a steady movement, however, the National Government has encroached upon the sphere ascribed to the states; under the Fourteenth Amendment it has secured a judicial control over all acts of state and local authorities touching the fundamental rights of person and property." (*Beard, American Government and Politics*, 5th ed., page 442.) And a state can be sued in the United States Supreme Court by another state (*South Dakota v. North Carolina*, 192 U. S. 286) or by the United States itself. (*United States v. North Carolina*, 136 U. S. 211.)

(Continued on Inside Back Cover)

The Attorney General Rules

Institute 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. Revaluation

To Paul A. Coffey.

Inquiry: Is it mandatory for a county to have a revaluation for tax purposes in 1949?

(A.G.) Under the present provisions of G.S. 105-278 it is mandatory that a revaluation be made in 1949. Such a revaluation may however be made by actual appraisal, by horizontal increase or reduction, or by a combination of both.

50. Listing and assessment of property

To Wilford L. Whitley, Jr.

Inquiry: Can county commissioners reduce the assessed tax valuation of property for the year 1948, when the property was destroyed by fire after listing, or must the adjustment be made by the commissioners upon a subsequent listing of the property?

(A.G.) The commissioners cannot now, at this time, adjust this valuation. G.S. 105-405 does not apply to destruction of property by fire. I am of the opinion that the case is covered by G.S. 105-279, subsection (3) (c), providing that where property has decreased in value to the extent of more than $100 by virtue of appurtenances damaged, destroyed, or removed since the last assessment, an adjustment can be made.

TAX LIEN ON REALTY

To C. S. Vinson.

Inquiry: Where a taxpayer bought certain land in February, 1944 and listed this particular land when he listed taxes for the year, does the county have a lien on that land for the taxpayer's personal property tax for 1944?

(A.G.) Since taxes are listed as of January 1st, and since the taxpayer did not own the real estate as of that date, I am of the opinion that taxes upon personal property listed by the taxpayer for that year did not become a lien upon the real estate acquired subsequent to Jan. 1st. Section 1401 of the Machinery Act.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

40. License tax on peddlers

To C. E. Garrett.

Inquiry: Are peddlers who sell partly at wholesale and partly at retail required to pay the peddlers' tax provided for by Section 121 of the Revenue Act, which exempts such

HARRY McMULLAN

Attorney General of North Carolina

"person, firm, or corporation who or which is a wholesale dealer, with an established warehouse in this State and selling only to merchants for resale?"

(A.G.) It would appear from the above that if the persons in question sell partly at wholesale and partly at retail they would be liable for the peddlers' license tax. If they sell entirely at wholesale but do not have an established warehouse in this State, or if their wholesale sales are not made exclusively to merchants for resale, they would be liable for a peddlers' license tax.

41. License Tax — merchandise sold from trucks

Inquiry: Are out-of-the-county salesmen who come into the county and peddle wares from trucks exempt from the peddlers' license tax?

(A.G.) Subsection (g) of Section 121 of the Revenue Act authorizes a county levy on peddlers of merchandise with vehicle propelled by motor, who are taxed by the State under subsection (a), a tax not exceeding $200 for each vehicle and this tax may be graduated on the basis of the size or weight of the vehicles, the average value of goods carried, and the types of products offered for sale. The taxing ordinance should provide for a graduated tax if such is desired.

IV. PUBLIC SCHOOLS

A. Mechanics of Handling School Funds

16. Letting contracts

To Messrs. Spence and Boyette.

Inquiry: Does the County Board of Education have authority to make repairs to school property in the County or construct school buildings in the County with a building crew employed for the service under a daily wage or must such work be accomplished by contract under the provisions of G.S. 143-129, and G.S. 143-131?

(A.G.) It seems to me that in cases in which the cost of the project does not exceed $5000 you could proceed in the manner specified in your inquiry, under the authority of G.S. 143-135.

To J. P. Bunn.

Inquiry: Can a County Board of Education build an addition to a school building exceeding $10,000 in cost with its own forces? If not, would the Board have the authority to go ahead with the erection with the use of its own forces, in case all bids are too high, after a letting has been properly advertised and held?

(A.G.) It is the opinion of this office that it will be necessary that a contract for this repair work be advertised in accordance with G.S. 143-129. If no satisfactory bids are received or all are in excess of the funds available for the purpose, it is the opinion of this office that the Board would not be required to readvertise for bids. There is no legal objection to letting the contract without readvertisement on a cost plus fixed fee basis, provided the cost does not exceed the availability of funds for the purpose. If let in this manner, the Board should require a guarantee from the contractor, supported by a proper bond, that the cost of the construction would not exceed the availability of funds. As an alternative, the Board could have its own forces do the work if all the bids are rejected. If the work is completed for less than the lowest bid received, no one could justly complain. However, if the total cost exceeds the lowest bid, or is in excess of funds available, the individual members of the Board might be personally liable for such sum in excess of the lowest bid or funds available.

B. Powers and Duties of Counties

25. Use of county funds

To N. F. Steppe.

Inquiry: Is it legal to use the public school fund to purchase membership in the rural electrical membership corporation, when such a purchase is a prerequisite to obtaining electrical service from that organization?

(A.G.) G.S. 117-16 provides that the membership corporations can render service only to its members, and therefore I believe that the County Board of Education would be justified in becoming a member by the purchase of stock or interest, when it is necessary to secure power and light from the organization.

F. School Officials

41. School attendance

To J. G. Boykin.

Inquiry: Are all farm children excused from the provisions of the school compulsory attendance law?

(A.G.) No. Only those children residing on farms who are fifteen years of age or older are exempted. The confusion arises from Chapter 826 of

the Session Laws of 1945. That act amended G.S. 115-302 to raise the maximum age for compulsory attendance from 14 to 15, but provided that the amending act should not apply to children on farms. This provision does not affect farm children 7-14, who are required to attend school by G.S. 115-302, and only exempts farm children 15 or older.

I. School Property

5. Property deed to school provisionally

To Hubert Eason.

Inquiry: Where school property has a reversionary clause by which the property reverted to the grantors when it was no longer used for school purposes, and it is no longer being used for teaching purposes, would use as an assembly point for students waiting for a school bus be a use for "school purposes" within the meaning of the reversionary clause?

(A.G.) I have been unable to find any Court decisions on this point but in my opinion it is very doubtful if such use could be construed as "school purposes."

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

I. Issue of Bonds

8½. Proceeds from bonds — more than sufficiency for purpose for which issued

To Algernon L. Butler.

Inquiry: May the unexpended proceeds of a bond issue authorized by a special election, be applied to the payment of principal and interest on such bonds, where the only provision in the act authorizing the election is that the provisions of the Local Government Act then in force shall be applicable to the bonds?

(A.G.) The unexpended part of the proceeds of bonds issued may be applied to the payment of the principal and interest. G.S. 153-107 (County Finance Act) requires that all such unexpended proceeds be applied to the payment of principal and interest, and section 10 of Chapter 382 of the Session Laws of 1947 does not repeal these provisions of the County Finance Act. Chapter 382 merely governs the procedure in collecting the proceeds from the sale of the bonds and their transmittal to the proper local official.

K. Unanticipated Revenue and Surplus

To Harry Woodson.

Inquiry: Can a city which has fixed its tax rate at the time provided by the statute (G.S. 153-124) later reduce the tax rate when proceeds from the sale of city property result in requiring less revenues from taxation? (After the tax rate was set the city received $83,000 from the sale of the City Airport.)

(A.G.) I am of the opinion that the city may reduce its tax rate under such circumstances. I am further of the opinion that if the city should decide to reduce the rate it should do so by adopting an amended resolution, and that a supplementary resolution should authorize the making of refunds to those taxpayers who have paid at the original rate.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

B. County Agencies

1. Power of agencies to sue and be sued

To Leon T. Vaughan.

Inquiry: Does a County ABC Board have authority to institute a suit for the recovery of damages to its truck because of the reckless driving of another party and who is the proper party plaintiff?

(A.G.) The statute does not give any county ABC Board the power to sue or be sued. I believe it could be done by making the County and the County ABC Board and its members in their official capacities, parties plaintiff. If either one of these are not necessary or proper parties, it would not be fatal to your suit, as the Court would merely order the elimination of the improper party.

New Hanover Bar

(Continued from page 5)

the Bar to enter into civic matters concerning the community in which they live. Any business enterprise which offers goods or services to the public must please the public or perish, and the Bar should create good will among the people of the community. The public cannot understand why, when a suit is brought by a lawyer, it will take 2 or 3 years to try it, nor does the public understand why a lawyer who takes a case for his client permits the case to be continued without a reasonable or plausible excuse.

Claims

(Continued from page 15)

V
CONCLUSION

The spectacle of hundreds of claims being presented session after session to the General Assembly of North Carolina, coupled with the makeshift method custom has devised for handling these claims, leads, it is submitted, almost irresistibly to the conclusion that some change should be inaugurated. The present system is both unjust to the claimant and burdensome upon the state. Appropriations intended by the legislature to provide funds for the effective operation of state agencies during the biennium should not be diverted by those agencies to the payment of claims against the state, but some special appropriation or other arrangement should be made to take care of such claims. That just claims against the state, whether founded in tort or in contract, should be paid is in accord with the prevalent sense of justice and sound public policy is evidenced by the fact that through the years our own legislature has enacted special laws to make such payments possible, and the fact that nearly every state in the Union has some method of giving such claims a hearing. (See also the Federal Tort Claims Act, 28 U. S. C. A. No. 931).

As we have seen, reform in North Carolina can be accomplished by legislation without a constitutional amendment. The solution adopted should be in conformity with the most economical procedure consistent with principals of good government.

The preceding analysis of the problem would seem to indicate that the proper solution would be to have such claims handled by an element of the judicial branch of the government rather than either the legislative or executive branch. This does not mean to say that it would be necessary or desirable to permit the courts to render judgments under which execution could be issued against state property, because it would be entirely feasible, and probably in accord with sound practice, to give judgments against the state the effect of judicial recommendations to the General Assembly, so that at each session special appropriations could be made to pay final judgments rendered during the preceding biennium. Nevertheless the marshalling and analysis of evidence and the application of the law to each particular situation should be in the hands of the judiciary.

Both economy and convenience to litigants would seem to be rather persuasive arguments against the establishment of any single court of claims to sit at the State Capitol or any other one place. Although the duty of representing the state in these matters would fall upon the Attorney General's Department, and for representatives of that department to travel about the state to attend various terms of court would create some additional expense, yet such a system would seem to be more economical than having all litigants and witnesses travel to Raleigh. The Superior Courts of the State as now constituted would seem to offer the most practical forum for such claims from the point of view of economy and convenience.

With regard to tort liability, the legislature should seriously consider whether North Carolina should be a self-insurer or whether it would be more economical for the state to carry liability insurance on all employees. Of course, one advantage of commercial liability insurance would be that under the present law claimants could obtain relief by bringing an action against the state employee involved and the expenses of litigating such matters for the defendant would be borne by the insurance companies.

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