February, 1948

POPULAR GOVERNMENT

The Morehead Building — The South's First Planetarium

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

GOVERNMENTAL LABORATORY BUILDING
INSTITUTE OF GOVERNMENT

INSTITUTE OF GOVERNMENT SERVICES

		TO CITY, COUNTY AND STATE OFFICIALS	TO CITIZENS	TO SCHOOLS
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		Summary of New Public Laws	Summary of New Public Laws	Summary of New Public Laws
		Summaries of New Local Laws affecting each County and City	Summaries of New Trends in Local Legislation	Summaries of New Trends in Local Legislation
		State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws
CLEARING HOUSE OF INFORMATION between city halls, county court houses and state and national capitols to keep officials, citizens and schools informed of new developments in government	THROUGH	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.
		Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws, Programs and Rulings
		Monthly Magazine and Special Studies	Monthly Magazine and Special Studies	Monthly Magazine and Special Studies
		Federal and State Services to Local Units	Federal and State Services to Local Units	Federal and State Services to Local Units
		General Informational and Consulting Service	General Inform ational Service	General Informational Service

The Law Enforcement Officers' Benefit and Retirement Fund

By HENRY L. BRIDGES
State Auditor
of
North Carolina

The Law Enforcement Officers' Benefit and Retirement Fund of N. C. was established by Chap. 349 of the Public Laws of 1937 (now Sec. 143-166 of the General Statutes of N. C.) to provide benefits to law enforcement officers upon disability, retirement or accidental death in the performance of duty. The Fund is supported by the contribution of law enforcement officers who wish to receive disability or retirement benefits; and certain income set aside from court cost assessed in the criminal courts of the state.

The law governing the operation of the fund provides that the Board of Commissioners of the Fund shall determine the recipients of benefits, the amount to be disbursed as benefits, and shall make such rules and regulations as may be "Essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits." More specifically, the law states that the board shall adopt rules governing the payment of the benefits on account of officers who may be killed or may become seriously incapacitated while in the performance of their duty, and rules governing the amounts to be paid as retirement benefits, with the limitation that such retirement benefits are to be paid only to officers who have contributed to the Fund at the rates set by the Board and who have had at least 20 years of continuous service as law enforcement officers. Such Rules and Regulations have been prepared and adopted.

SUMMARY OF BENEFIT AND CONTRIBUTION PROVISIONS

A summary of the main benefit provisions of the Fund and the sources of revenue from which benefits are paid is presented in the following digest:

I. Coverage

Accidental death benefits cover all law enforcement officers, regardless of whether or not they contribute to the Fund. All other benefits cover only officers who contribute to the Fund. Contributing officers are referred to as members.

II. Benefits

Service Retirement Allowance—Any member who attains age 50 and has credit for not less than 20 years service, including at least 5 years of membership service, may retire on a service retirement allowance. The service retirement allowance consists of: (a) the annuity provided by the member's contributions accumulated with interest compounded at 4% per annum to the date of retirement; (b) a pension equal to a percentage of the annuity which would have been provided at age 65, or upon his retirement, if prior to age 65, such percentage (referred to as pension rate) to be set aside by the board from time to time on the basis of the annual actuarial valuation of the Fund; and (c) a pension on the creditable prior service which shall be equal to the pension rate applied to twice the hypothetical contributions accumulated at 4% interest that he would have made during his creditable service prior to July 1, 1940. The hypothetical contribution is based on the member's rate or contribution on July 1, 1947 as applied to his actual compensation for the period of his prior service. However, in determining the actual compensation received by the member during the period of his prior service, the Board shall use the compensation rates which, if they had progressed in accordance with the rates of salary increase adopted by the Board, would have resulted in the compensation actually received by the member in the year of service immediately preceding July 1, 1942.

If a member at the time of retirement is age 55 or over and if the monthly service retirement allowance as computed above is less than $30.00 for members contributing at 3%, or less than $40.00 for those contributing at 4%, or less than $50.00 for members contributing at 5%, then

COVER PICTURE

When the imposing building in the architect's drawing on the cover is completed late this year, it will house the sixth planetarium in the world, the first in the South, and the only one owned by a college or university.

It is being given to the University of North Carolina by a distinguished alumnus, John Motley Morehead, now of Rye, New York.

In addition to the planetarium, the building will also contain the Morehead Art Gallery, including the art collection of Mr. Morehead's wife, the late Genevieve M. Morehead. (Drawing by Eggers and Higgins, Architects).

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February, 1948 Vol. 14, No. 2

POPULAR GOVERNMENT is published monthly by the Institute of Government, The University of North Carolina, Chapel Hill. Editor: Albert Coates; Managing Editor: W. M. Cochrane; Business Manager: L. W. Allen; Associate Editors: Henry W. Lewis, David G. Monroe, Clifford Pace, Terry Sanford. 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.

an additional pension is allowed in an amount sufficient to bring the total monthly allowance up to these respective amounts.

III. Disability Retirement Allowance

Any member who becomes totally and permanently disabled and who has credit for at least 10 years service, including at least 5 years of membership service, but who has not fulfilled the conditions for service retirement, may be retired by the Board on an ordinary disability retirement allowance.

The ordinary disability retirement consists of: (a) the annuity provided by the member's contributions accumulated with interest compounded at 4% per annum to the date of retirement; and (b) a pension equal to 9/10 of the pension which would have been provided at the age when the member would have been first eligible for service retirement had he continued in service and had his compensation continued at the amount last paid prior to retirement.

IV. Accidental Disability Benefit

Any member not eligible for service retirement allowance or ordinary disability retirement allowance who has contributed to the Fund for 5 or more years and who is totally and permanently disabled as result of an accident in the performance of duty, may be granted an accidental disability benefit. (If the member has fulfilled the condition for an ordinary disability retirement allowance, the assumption is made that the ordinary disability retirement allowance will be payable in lieu of the accidental disability benefit.)

The accidental disability benefit is a lump sum consisting of: (a) the amount of his contribution to the Fund accumulated with interest compounded at 4% per annum; and (b) a payment of $500.00.

V. Accidental Death Benefit

Accidental death benefits are payable to any law enforcement officer in the event of death arising out of and in the course of actual performance of his official duty.

The accidental death benefit consists of a lump sum payment equal to his contributions, if any, and, in addition, the following benefits which in the aggregate are not to exceed $1,500: (a) a funeral benefit of $200.00; (b) a benefit of $100.00 to each dependent child under age 18 and to each dependent incapacitated child over age 18; (c) a benefit of

HENRY L. BRIDGES

State Auditor Bridges is also chairman ex officio of the Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund. Mr. Bridges has served as auditor since February, 1947, when he was appointed by Governor Cherry on the death of Mr. George Ross Pou. When appointed he had been practicing law in Greensboro, after four and a half years' service in the coast artillery, including duty at Trinidad and Dutch Harbor. Prior to the war he spent ten years serving in the office of the Clerk of Court of Guilford County.

$500.00 to the widow, or if there is no widow, such sum divided in the discretion of the Board, among the eligible children or dependent parents or dependent brothers and sisters.

VI. Return of Contributions upon Separation from Service

If a member withdraws from service or from the Fund or dies before retirement, an amount equal to his contributions to the Fund without interest is returnable to him, or to his beneficiary or estate in the case of death.

If a retired member dies before he has received in retirement allowance payments an amount equal to the sum of his contributions to the Fund at the time of his retirement, the excess of the sum of his contributions without interest over the retirement allowance payments received by him is paid to a designated person or to the retired member's estate.

VII. Contributions

There are three classes of members, those who contribute at three percent of compensation, those who contribute at 4% of compensation, and those who contribute at 5% of compensation. No new member is allowed to join the Fund except on the basis of 5%.

The maximum compensation on which members may contribute is $5,000, per annum. No contributions are required of the member who elects not to contribute if he has attained age 60 and has at least 20 years of creditable service including at least 5 years of membership service.

VIII. Court Costs

The following is quoted from Section 143-166 of the General Statutes of N. C.: "In every criminal case finally disposed of in the criminal courts of this state, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case might be two dollars ($2.00) additional costs to be collected and paid over to the treasurer of N. C. and held in a special fund for the purpose of this article."

The income from the court costs is the main source of revenue for the Fund. The court costs fund enables the Fund to match the contributions of the individual members and maintains and stabilizes the earnings of the Fund on individual contributions at 4% compounded annually.

RECENT CHANGES IN THE RULES AND REGULATIONS

The Board of Commissioners has made a few changes in the rules in the sessions held recently. There has been no major change in the rules except for the change to 5% which will be discussed in detail a little later.

The Board has adopted an amendment to the rule whereby if a member withdraws his contribution while he is still in law enforcement work and later desires to come back into the Fund, he cannot do so. It seems that there have been some individuals who wanted to use our fund as a means to an end, and the purpose of this amendment is to eliminate that sort of thing. One case in particular was that of a member, whose contribution was paid for by a city, who would periodically request the withdrawal of his contributions. Immediately thereafter he would file a new application for membership. This was done several times, which entailed a

great deal of administrative work. Not only that but he was using this means to gain an increase in salary which he was not justly entitled to by reason of fact that a city was paying his contribution for him. In my opinion this city was not aware of his shenanigans.

The members who are in law enforcement work and receive their compensation on a fee basis have heretofore paid their contributions on a basis of a hundred dollars ($100) per month. The Board felt that this was extremely low and that most officers, although on a fee basis, have an income of much more than $100 per month. The Board raised this amount to a maximum of $250 per month on which a member could make his contribution when he is on a strictly fee basis. Each year the Board will require the person to submit an affidavit to establish the amount of his actual compensation during the past year. The Board will make adjustments as to the amount of his contributions based on his actual salary and that which he estimated his income would be.

There are times when a member for some reason, whether political or personal, leaves law enforcement work and then later on re-enters law enforcement work. In the past, the rules have been such that a person could not have more than one year absence from law enforcement work and still maintain his membership in the Fund. The Board realized that this worked an undue hardship on some and consequently increased that maximum break from one year to five years. Under the present rules a person may be out of law enforcement work not to exceed five years and still maintain his current standing in the Fund. This does not mean that he can make contributions to the Fund during the period that he is not in law enforcement work, but it only means that when he leaves law enforcement work and does not withdraw his contribution from the Fund, then when he re-enters law enforcement work, he can pick up right where he left off with full credit for all prior service.

A new provision was added to the rules whereby a person who has had 20 years service, but who has not reached the age of 50, who ceases to be in law enforcement work, can leave his contribution in the Fund. When he reaches age 50 he can apply for and receive retirement benefits. The rule does not require such a person to have the status of a law enforcement officer at the time of application for retirement. Actually what it does, if a person who has 20 years service and has not yet attained age 50, leaves law enforcement work, his account is held intact as it is at the date he left law enforcement and then upon reaching age 50, or within 12 months thereafter, he can apply for retirement. This will prevent those who have had a long period of service and have not quite reached the age of retirement from losing out on all of their accumulated benefits when something happens to cause them to leave law enforcement work before reaching age of retirement.

The most far reaching change in the rules and regulations was adopted December 15th when the Board amended their rules so as to permit a person to contribute 5% of his salary if he so desires. The increase from 3% or 4% to 5% is still on an optional basis for those who became members prior to January 1, 1948. However, all new members after January 1, 1948 must contribute at 5 per cent.

Contribution at either 3, 4 or 5 per cent of salary may be made. The minimum monthly benefits established are $30.00 for those contributing at 3 per cent, $40.00 for those contributing at 4 per cent and $50.00 for those contributing at 5 per cent. This minimum benefit is effective upon retirement at age 55 or over with 20 years creditable service. These minimum benefits will apply to those who are on retirement at the present time. If anyone is on retirement who has had 20 years or more service and is 55 years of age or over before retirement, then his retirement allowance will be adjusted so as to reach the minimum monthly benefits specified above. A member may still retire at age 50 years, without the benefit of the above minimums.

The contribution account of each individual member will be credited with an amount sufficient to bring his contribution account up to 5 per per cent for the period of July 1, 1940 to December 31, 1947; provided that each member signifies in writing to the Board and elects to contribute at 5 per cent of his compensation in the future. This will involve an allocation of funds from the "Court-Cost Fund" to build each member's contribution account to the 5 per cent basis. In such allocation, however, no funds will actually be transferred to the contribution account until disability or service retirement becomes effective. Should a member later desire to withdraw his contributions he would not, therefore, receive any benefit from this allocation. For example, if a member has had an average salary of $200.00 per month since July 1, 1940 then his account will be credited upon retirement with $204.00, which would make up the difference in 4 and 5 per cent contributions from July 1, 1940 to December 31, 1947. Of course, this will be added to his annuity reserve and will help his retirement benefits a great deal.

The effective date of the 5 per cent contribution is January 1, 1948 and each member is allowed until April 1, 1948 in which to elect to contribute at 5 per cent of his salary. The first payment at the 5% rate will be on the January salary. After April 1, 1948 no charge in contribution will be allowed whereby a member can contribute at 5 per cent.

A man at 25 years of age enters law enforcement with an average salary of $200.00 per month. He contributes 5% of his salary or $120.00 per year until he retires. After 20 years his contributions will amount to $2,400.00, and the compound interest will amount to $1,173.36. Contributions plus interest will amount to $3,573.36. After 19 years the yearly interest will amount to more than the annual contributions. If he continues his contribution for 33 years, his contribution will total $3960.00 and the interest will total $3985.14 or a little more than equal his contributions; and his total credit will be $7945.14. This member, if he retires at age 50 years with 25 years service, will receive approximately $62.00 monthly retirement benefits. If he retires at age 55 years with 30 years service, he will receive approximately $94.00 monthly retirement benefits. If he retires at age 60 years with 35 years service, he will receive approximately $143.00 monthly retirement benefits. Any member whose salary varies up or down from the salary of $200.00 per month will receive benefits accordingly.

Our fund is on a very sound financial basis. It is the policy of the Board to keep all the funds not immediately needed for the payment of benefits and other expenses invested in bonds.

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North Carolina's Motor Vehicle Inspection Act

By DAVID G. MONROE
Assistant Director
Institute of Government

Thousands of preventable traffic accidents have occurred in North Carolina because of motor vehicle defects. Such defects cause accidents because they interfere with one or another of three safe driving "Essentials": *seeing*, *steering*, and *stopping*. Clear vision to a safe distance, instant control over vehicle direction, and quick stopping are all vital to safe driving. When a driver's vision is impaired, when steering apparatus is faulty, when brakes refuse to hold, a vehicle becomes a hazard on the roadway.

I. SEEING

Today's high speeds, congested traffic, two-way traffic flow, together with the erratic driving of many motorists, all place a premium on clear vision. The driver must see *at once* any hazard in his way. The reason is clear when we observe the relation between speed and stopping distance:

Suppose the "average" driver (proceeding at the relatively safe speed of 45 miles an hour) sees a traffic hazard ahead. How far will his vehicle travel before he can bring it to a stop? Three separate "time elements" are involved: (1) perception time (the time it takes the driver to get his foot on the brake after seeing the hazard); (2) brake reaction time (the time it takes the brakes to take hold after his foot is on the pedal); and (3) stopping distance time (the time it takes to bring the car to a stop after the brakes have taken hold).

On the average, under normal conditions, at 45 miles an hour, the car will travel *351 feet* before it reaches a dead stop—having traveled 132 feet during perception time, 66 feet during brake reaction time, and 153 feet during stopping distance time.

Naturally, the greater the speed, the greater the distance the car will travel before stopping. At 60 miles per hour, for example, the average car will travel about 537 feet, almost a tenth of a mile. It is thus easy to see that a split-second delay in observing a hazard can spell the difference between safety and death. That is why any vehicle defect which impairs clear vision *must be removed*.

Basic Vision Requirements

What are the basic requirements for clear vision from the driver's seat? Some of them are: (1) a clean windshield, side and rear glass; (2) properly functioning windshield wipers; (3) a rear view mirror capable of providing a rear view for at least 200 feet; (4) windshields and windows free of stickers and posters; (5) headlights with the required candle power, and with beams properly aimed for the greatest roadway illumination without blinding others; and (6) such other adverse (auxiliary) lights as are necessary for safe driving—fog lights, spot light, etc.

Lighting Problems and Needs

In assuring himself proper roadway illumination for his own clear vision, the driver is under obligation not to destroy the vision of other drivers. Many a motorist has been temporarily blinded by the criminal glare of out-of-focus lights. The "one-eyed monster" is also a commonplace hazard, for it is sometimes difficult to decide which side of the road a car is on, when it has only one headlight burning. Faulty tail lights are dangerous. Lack of clearance lamps (on larger vehicles) constitutes another of the numerous "lack-of-perception" dangers that lead to accidents.

Headlight Power

The average candle power of headlights in use today is about 12,000 foot candles. This is just about enough light to disclose a dark object (say a dark-clothed pedestrian) at approximately 227 feet. Yet, as we have seen, if the average driver were traveling at 45 miles an hour, he could not possibly stop in time to avoid hitting that object. North Carolina law requires that headlamps shall be so constructed, arranged, and maintained that under normal atmospheric conditions and on a level road they will produce a driving light strong enough to render clearly discernible a person 200 feet ahead.

Headlight Glare

Nothing so contributes to impaired vision as headlight glare. This is not caused by the *amount* of candle power, as is often thought. In fact modern sealed beam headlights with 50,000 candle power can be used with safety. Most glare today is caused by the *improper adjustment of beams*. The old single beam headlamps still cause trouble when out of focus. The modern assymetric lamp which permits aiming one beam in an off-parallel direction can be a major source of glare. The dual beam lamp, which permits a high beam for usual travel and a depressed beam for passing, can likewise blind approaching motorists when improperly focused.

Headlight Adjustment

Proper adjustment of headlights is obviously a scientific undertaking. The light beam must be neither too high nor too low. The ideally focused beam is one which has a drop in the beam of three inches for every 25 feet of beam length. North Carolina law (G.S. 20-131) requires that none of the main bright portion of the beam should rise above a horizontal plane passing through the lamp centers parallel to the road level upon which the loaded vehicle stands, and in no case higher than 42 inches, 75 feet ahead of the vehicle. Moreover, the main bright portions of the beam cannot be focused too far to the left or right of center. If focused too far to the left, the beam would shine directly into the eyes of approaching motorists. Lights become unsafe when their main beam angles to either side more than seven inches every 25 feet.

One can understand, therefore, why headlamp focus must be accurately gauged. The Mechanical Inspection Division of North Carolina's Motor Vehicle Department uses the Weaver Light Tester for this purpose.

Other Lights

Other factors which affect the driver's perception involve failures of

other required lights. The tail light (two are preferable) should be clearly visible for at least 500 feet. Trucks, buses, and other vehicles of unusual size or load should have clearance lamps to warn of their large size. Fitfully blinking, dimly seen, or burnt-out tail or clearance lights are high-scoring causes of accidents. The unlawful use of auxiliary lights—particularly spot lights—is also a threat to clear vision.

II. STEERING

Constant and instant control over vehicle direction is the second "must" in the attainment of driving safety. The steering apparatus required to pilot modern high powered vehicles is complex, the result of years of engineering effort to overcome steering deficiencies causing excessive tire wear, road-shock, wind-wandering, and other factors contributing to unstable directional control.

A precise balancing of wheel movement and vehicle motion is a fundamental necessity for safe driving. The wheels must have the right amount of "camber" (the "lean" of the wheels from vertical). The steering gear must provide the proper amount of "caster" (the slant of the king-pin toward the rear of the car). The wheels must "toe-in" or "toe-out" the required amount. The steering column must not have excessive play.

Steering Defects

The vehicle becomes unsafe when these parts get out of adjustment. Too much camber causes abnormal tire wear. Worn tires cause skidding and are always potentially dangerous because of blowouts. Improperly adjusted tie-rods can cause the vehicle to weave from side to side, thus leading to serious side-scuffing of the tires. When the king-pin slant is too much off-side, road shock to the car is accentuated, there is greater strain on the steering knuckle bearings, and the driver has greater difficulty in preventing the car from pulling to one side. If there is too much caster, the driver will find it more difficult to turn, the vehicle will straighten out violently after a turn, and low speed shimmy will develop. If there is too little caster, the driver must grip the wheel in order to fight the vehicle's erratic motion. And where the caster in one king-pin is unequal to that in the other, the car will tend to pull to one side, with resulting excessive tire wear.

Thus, when the steering mechanism is out of adjustment, tire wear is accentuated; the whole car takes an additional "pounding" and therefore depreciates more rapidly; and it is harder to steer, which means that the driver has less control over its direction. These are reasons why so much attention is given to the steering gear when a vehicle is being inspected. No car is deemed safe if defects in wheel alignment cause it to "slide slip" more than 30 feet for every mile of forward travel, nor if there is any pronounced looseness anywhere in the steering or directional controls.

Arthur Moore, Director of the Mechanical Inspection Division, Department of Motor Vehicles.

Steering Adjustment

How can the steering condition of the vehicle be measured accurately? Not by old-time rule-of-thumb methods for they are incapable of providing the necessary accuracy that is nowadays required. In North Carolina's inspection program the Weaver Wheel Alignment machine is used to determine the amount of side slip in wheel alignment. This device accurately determines how many feet the wheels slip for each mile of forward travel. But neither it, nor any other instruments can tell you exactly what is wrong, for side slip can result from many defects: Camber, caster, toe-in, and so on. The wheel alignment indicator is like a physician's thermometer. It tells the patient's temperature only, and then the physician determines what is wrong by medical examination. So, also, when a vehicle has too much slide slip, as shown by the wheel alignment equipment, the expert mechanic must check for the causes of trouble.

III. STOPPING

The third of the fundamental necessities for safe driving is the ability to stop within a safe distance. One of the universal laws of motion is that if you double your speed, it takes you *four* times as far to stop; if you triple your speed, it takes you *nine* times as far to stop, and so on. For

(Continued on Page 9)

At the conclusion of the first Inspection School, certificates of completion were presented the successful students by David G. Monroe and Albert Coates of the Institute of Government. Left to right: Mr. Monroe, Mr. Coates, and John A. Simpson, receiving his certificate.

THE CLEARINGHOUSE

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

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

Counties

Tax Listing—Automobiles

Edgecombe—In view of the fact that the 1947 issue of the "Red Book" followed by automobile dealers in connection with used car values lists values at approximately 25% higher than the valuation on the same cars in its issue of the previous year, so that a taxpayer's automobile is thus valued at more this year than it was last year, even though it is a year older, the county commissioners voted to direct the tax supervisor and list takers to allow a discount of 20% off the Red Book's cash price in listing automobiles for 1948 taxes.

Washington—The board of commissioners took the same step with respect to Red Book listings as was taken in Edgecombe, above.

Insurance on County Property

Edgecombe—Taking a step in keeping with a general trend brought about by the high cost of replacing property lost by fire today, the commissioners voted to revise upward the amounts of insurance in force on county buildings and fixtures. They decided to increase insurance on the courthouse from $60,000 to $100,000; on courthouse fixtures, from $12,500 to $20,000; on fixtures in the courthouse annex, from $3,000 to $15,000; on county home building, from $40,000 to $75,000; on the tuberculosis hospital, from $17,000 to $30,000; on hospital fixtures, from $3,000 to $6,000.

Rural Police

Mecklenburg—The board approved action of the county civil service board, which had adopted a recommendation of county police chief Stanhope Lineberry that the force be granted one additional day off per month. Under the new arrangement, the men on the force will be off duty one day out of six instead of one day out of seven.

Meals for Prisoners

Washington—The allowance to the sheriff for meals served to prisoners in the county jail was raised from $1.25 to $1.75 per day.

Jurors' Pay

Mecklenburg—Beginning with January 1, grand jurors and regular jurors in the Superior Court will be paid a per diem of $5 per day, and tales jurors in the Superior Court will receive $4 per day, plus, in each case, the travel allowance provided by law.

Armory Repairs

Pitt—The county agreed to assume one half the cost of making repairs to the local armory, total cost for which was $396.

Salary Increases

Pitt—The salary of the Register of Deeds was increased from $3600 to $4200 annually.

New Construction

Warren—A low bid of $58,740 for additions to the county courthouse and jail, made by V. P. Loftis of Charlotte, was accepted by the commissioners.

Veterans

Mecklenburg—An appropriation of $3,000 to the Veterans' Information Center was granted by the board, to be used at a rate not in excess of $500 per month between January 1 and June 30, 1948.

Bond Issues

Alamance—The board voted to call a $2,900,000 school bond election, and directed the county attorney to have the necessary resolutions and other papers prepared looking toward the calling of the election, which had been requested by the county board of education and the trustees of the Burlington administrative unit.

Davidson—The board voted unanimously not to order an election on the issuance of six million dollars worth of bonds for repair and construction of school buildings, as requested by the boards of education of Lexington, Thomasville and Davidson County.

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Cities and Towns

Electric Meters

Rocky Mount—The scarcity of meters for new electric current connections recently forced the board to establish flat rates for cases where meters cannot be supplied. The schedule of rates adopted in January for non-metered users is as follows: $10 per month for three-wire service to customers having electric ranges and water heaters; $7.50 for three-wire service to customers who do not have electric heaters; and $5 for two-wire service for new houses.

Unloading from Busses

Albemarle—An ordinance prohibiting the loading or unloading of passengers or baggage from inter-city busses on the streets of the city was enacted by the commissioners, effective August 1, 1948. The ordinance provides that it shall not apply to temporary stops made more than 500 yards from the bus station for a period of not over two minutes, for taking on and letting off passengers or baggage.

Unpaid Taxes

Lexington—City Manager French H. Smith was directed to make out a list of unpaid 1945 tax sale certificates and turn them over to the city attorney for immediate prosecution, with the city attorney to receive as additional compensation the interest, penalty and cost in each case, the city retaining the actual original amount of the tax on each certificate.

With respect to unpaid personal property taxes, the city manager was directed to prepare a list of all such taxes prior to and including 1946 taxes, to be turned over to the city attorney for prosecution on January 1, with the city attorney to receive as compensation 25% on all amounts thus collected.

Regulation of Trailer Camps

Winston-Salem—For the last several months the board of aldermen and interested citizens have been studying various proposals for regulation of trailer camps and automobile trailers parked in the city. In December the board adopted a

comprehensive ordinance covering the camps, which have become familiar almost everywhere during the past few years.

The ordinance (which is too long to set out here in detail) defines "trailers" so as to cover the various kinds used for sleeping or living quarters, defines a "trailer camp" to be the whole tract upon which one or more trailers are harbored, whether occupied or not, and defines "trailer lot" to be the portion of a camp allotted to one trailer. It makes it unlawful to operate a camp without a permit from the building inspector, and provides that a camp may be permitted in a business or industrial zone, but not in a residential zone unless authorized by the zoning board of adjustment. Approval of a camp by the inspector depends on whether it appears that it will not be a "source of danger to the health or safety of its occupants, or of others. . . ."

Camps opened hereafter must be approved in advance, and along with the application the operator must file a complete plan of the proposed camp. Other provisions set out location and space requirements for each trailer lot, and water supply, sanitation, garbage disposal, sewerage and lighting standards.

City Automobile Tags

Raleigh—The proper position for display of city license plates on automobiles was changed from front to rear by an ordinance amendment adopted by the council, which provides that "When two state license plates are issued, the city license plate shall be attached to the rear state license plate, if possible."

Sanford—An annual license tax of $1 per vehicle owned and operated in the town was levied by an ordinance adopted by the board of aldermen, with city license plates required to be displayed on either the front or rear of each vehicle.

Holidays

Raleigh—Regular holidays to be observed by city employees during the year were established as being New Year's Day, Easter Monday, July 4th, Thanksgiving and Christmas, with other generally observed holidays to be decided upon as they occur.

Insurance

Raleigh—The council adopted recommendations of the Finance Committee relative to insurance for the city, as follows: Fire protection and extended coverage insurance over all the city's property for a 3 year period, in a blanket policy with 90% coverage, at a cost of about $18,700—40% to be paid the first year, balance with 3% added premium on equal deferred payments for the two succeeding years; coverage on automobile policies to be increased to $25,000 and $50,000 for public liability and $5,000 for property damage, with the policy to cover also cars not owned by the city but operated by individuals for city business—cost of policy to be about $2,500 per year; and insurance covering boilers and all machinery to be $100,000 per accident—cost of policy to be about $3,700 for three years with 40% payment for one year.

Municipal Markets

Raleigh—Following a discussion of wholesale and retail market conditions arising out of a report made by council members Gattis and Fletcher on the inspection of the city market at Columbia, South Carolina, the council voted unanimously to request the state department of agriculture to join with the U. S. department of agriculture in a survey of the marketing situation in Wake and adjoining counties, in order that the council might have a clear picture of what would constitute adequate wholesale and retail marketing facilities in Raleigh.

Water and Sewer Connection Fees

Greensboro—Following a precedent already set in numerous other municipalities during the past year, the council revised upward the schedule of charges for water and sewer connections. A summary of the new fees is printed below, on the theory that they will be of interest to officials in other places facing the same problem: (a) where laterals have been laid to the inside of the curb and previously assessed, sewer connection fees shall be $1.10 per foot (6 inch pipe required), and water connection fees shall be $13.60 for ⅝ by ¾ water meter, $4.25 for meter box, $4.00 for meter yoke, and $0.75 per foot for ¾ inch copper pipe; (b) where laterals have not been laid, or if laid to the curb line have not been assessed, 6-inch sewer connection fees at depths up to and including 6 feet shall be $20 on unimproved streets, $45 on improved streets, and at depths of more than 6 feet up to and including 8 feet, $25 on unimproved streets and $50 on improved ones, with connections at depths greater than 8 feet to be made at cost (these figures based on roadway 30 feet wide—if width is greater or less than 30 feet, the rate shall be prorated accordingly); and fees for ¾ inch pipe connections with ⅝ by ¾ size meters shall be $40 and $65 on unimproved and improved streets, respectively; for ¾ inch pipe with ¾ size meters, $47 and $72; and for 1 inch pipe with full size meters, $60 and $85. In all cases under (b) above where laterals were laid before a street was paved, the charges for an unimproved street shall apply.

The new schedule allows the following deductions in cases where water and sewer lateral pipes for connections can be placed in the same trench: on unimproved streets, $4.50; on improved streets, $29.50.

In cases where larger connections than those shown in the schedule are desired, they will be made at cost, if approved.

City Employees' Organization

Wilmington—C. B. Kornegay of the American Federation of Labor appeared before the council in the interest of certain departments of city employees, asking the council's cooperation and recognition of the organization, and requesting the council to appoint a committee to meet with a committee from the organization of employees to formulate a policy for working conditions. The AFL representative stated that the local unit was a non-striking organization, affiliated with the AFL, and that it hoped only for cooperation and good relations with the council, to the end that the problems of the employees could be solved peacefully.

After thorough discussion, the council voted unanimously to recognize the organization.

Municipal Abbatoir

High Point—The council authorized advertisement for 20 days for lease of the city's abbatoir for a three-year period, or for sale of the equipment to be operated on the present site not in excess of 5 years, rent-free for use of land and buildings. The equipment-sale offer would include provision granting the lessee the privilege of moving the equipment within the 5-year period, thus terminating the lease.

Sunday Amusements

Rocky Mount—A request from a skating rink operator that he be allowed to open his rink on Sunday, except between 10 a.m. and 1 p.m., was granted by the board.

Recent Supreme Court Decisions

Of Interest to City, County, and State Officials

By W. M. COCHRANE
Assistant Director
Institute of Government

The Supreme Court of North Carolina has recently:

Decided that the Act of the 1947 General Assembly, providing that veterans of either World War who have practiced barbering for three years or more prior to application are eligible for license without standing the examination required by the general law, prescribes a reasonable classification and is valid.

G.S. Ch. 86, which is known as the Barbers' Act, created the State Board of Barber Examiners, defined the practice of barbering and set up the procedures by which qualified barbers are issued "certificates of registration" without which barbering may not be practiced, under penalties provided in the chapter. An applicant for admission as a registered barber must have worked as a registered apprentice under a registered barber for at least 18 months, and must pass an examination required to be given by the Board four times a year.

Ch. 941 of the Session Laws of 1947 amended the Barbers' Act, making veterans of either World War who have had at least three years' prior experience in barbering eligible to demand certificates and become registered barbers, without the apprenticeship and examination otherwise required for admission, by paying the fees prescribed in the Barbers' Act.

Defendant Young, a veteran, tendered his fees and demanded a certificate from the Board, under the law as amended. Plaintiff Motley, a registered barber, sought and obtained a temporary order restraining the Board from issuing the certificate. Registered barbers Cox and Ellington became parties plaintiff on motion of counsel for plaintiff Motley.

The complaints of Motley and Cox were substantially similar, alleging that each had been a registered barber for many years, enjoying the full benefits and protection of the Barbers' Act; that admission of defendant Young as a registered barber would be an unconstitutional discrimination against them and others licensed because it would deny them the fruits of their labor, confer upon defendant Young a discriminatory privilege denied by the Constitution, deprive them of a property right, and deny them equal protection of the laws; that they and other licensed barbers will suffer irreparable injury, since the effect would be to destroy the security of plaintiffs' trade or profession and lessen the confidence of the public in the barbering profession as set up under the law. Plaintiff Motley's complaint further contended that his proprietary interest in a Raleigh barber shop gave him an actionable interest in the suit. Plaintiff Cox further contended that since he had been compelled to undergo examination to aquire the privilege of practicing barbering, the admission of Young and other veterans under the amended law without examination would be an unlawful discrimination and would deny him the equal protection of the law.

Plaintiff Ellington complained that although he had practiced barbering for many years, he had met with failure in three attempts to procure a certificate through the examination, and that the admission of Young under the amended law would be, against him, an unconstitutional discrimination and a denial of the equal protection of the law.

Defendant Board of Examiners indicated that although they would obey the law if so required, they joined with plaintiffs in resisting the demands made under the Act as being contrary to public welfare and as lowering standards of sanitation and health, and contend that the statute is discriminatory and unlawful. Defendant Young relies on his compliance with the amended law and maintains its constitutionality.

The court below (in Wake) heard the evidence and argument, dissolved the restraining order and dismissed the action. Plaintiffs appealed.

Speaking for a unanimous Court, Mr. Justice Seawell first raised doubt as to the community of interest of the parties plaintiff, and as to their standing individually as qualified suitors for equitable relief. Reviewing the complaints of plaintiffs Motley and Cox, he observed that neither had alleged a specific injury to a personal or property right such as might be in need of equitable protection. As to plaintiffs' point that admission of Young and others of his class without examination amounts to creating unlawful competition which might affect plaintiffs by diminishing their income from their trade or business, or might even amount to its confiscation, the Court found it difficult to understand how there is an *immediate* threat to such rights, or how the admission of Young to practice in the County of Yancey, where there are only two registered barbers for a population of 18,000, "could effect the number of persons seeking hirsute curtailment in Wake, and reduce their daily take."

Despite the doubt raised as to community of interest of the several plaintiffs, and as to their individual entitlement to aquitable relief, the status of the third plaintiff, Ellington drew the attention of the Court. Ellington was experienced at the trade and vainly had tried for his certificate three times, and the Court said "While there may remain some doubt as to his relation to the cause of action he seeks to assert, we prefer to consider the matter upon its merits without passing upon that question; and in so doing the constitutional question posed by his co-plaintiffs and the defendant Board will necessarily have attention."

First the Court disposed of the "serious question. . .", raised by defendant Young, as to "how far the Legislature may go in withdrawing from the public the opportunity of employment in what has heretofore been considered an ordinary trade or occupation by erecting it into an autonomous guild. . ." by saying that since *State v. Lockey*, 198 N.C. 551, which upheld the Barbers' Act, "that problem is no longer in the hands of the Court." In reaffirming *State v. Lockey*, however, the Court negated

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Retirement Fund

(Continued from Page 3)

At the present time we have $2,500,000.00 invested in bonds with an average yield of approximately 2.40%. This probably sounds like a lot of money but let us look at the other side of the picture. In order to allow credit for service prior to July 1, 1940 we have been required to set up and assume a liability of $1,660,000.00. This of course means that all of the members who have had service prior to July 1, 1940 will have set aside certain amounts for their benefit depending on their base salary and the number of years service. The method of arriving at the cost of the prior service is that the annual salary of each member between July 1, 1941 and June 30, 1942 or the 5 year period just prior to June 30, 1942, which ever is the greater, is multiplied by 8% which will give the amount for one year and this is multiplied by the number of years service a member has had prior to July 1, 1940. There is a little variation from the 8% determined by the age of the individual, but the average is 8% of the salary for the base period.

We have a potential liability of $3,500,000.00 which is to pay for the 4% compound interest on a member's contribution and also to pay for the matching part of the contribution when a member retires. Of course, the demand for this amount will be spread out over a period of years and with the present income there will be sufficient income on hand to meet this demand for retirement when time comes for the members to retire.

The Board action whereby a member was permitted to pay 5% of his salary beginning January 1st and also in making up the difference in his contribution for his back years back to July 1, 1940, incurred an additional liability of $155,000.00. The board felt justified in taking this action whereby a member's contribution account would be credited upon retirement with the difference in his contribution to bring it up to 5% retroactive to July 1, 1940 because this in effect will mean a lot to each member. All of these figures given in the above two paragraphs are reasonable estimates. I would not take the time to make all the detailed calculations, but these figures are based on an approximation.

The Law Enforcement Officers Benefit and Retirement fund belongs to the law enforcement officers of the state. The Board of Commissioners is charged with the responsibility of administering the Fund. It is the policy of the Board to do everything possible for the benefit of the members of the fund consistent with safety and sound business principles. The Board has to take a long range view of every question that comes up. We are concerned not only with those who are retiring now, but also with those who will retire 15 or 20 years from now. We cannot do anything or adopt any set of rules that would tend to jeopardize the rights of the members who will retire in future years.

Inspection Program

(Continued from Page 5)

example, when you drive at 20 miles an hour, you can stop in 22 feet; at 40 miles, you will travel four times (not just twice) as far, or 88 feet; and at 80 miles, you will travel 16 times as far before stopping, or 352 feet. One of our problems today is that we *think* in terms of 20 miles per hour and the ease of stopping at that speed, but we *drive* far too often at 80 miles per hour.

Braking Capacity

A reasonable maximum speed limit is, of course essential. But it is not the only answer to the problem raised by today's high speed. Maximum safe speed is limited by braking capacity, i.e., by the capacity of the brakes to stop the car. The law of North Carolina (G.S. 20-124) requires that on a dry, hard, approximately level stretch of highway free from loose material, the service (foot) brake shall be capable of stopping the vehicle going 20 mph within 25 feet with four-wheel brakes, or within 45 feet with two-wheel brakes. These are the basic requirements for passenger vehicles. There are other requirements for other types.

Equalized Braking

Also important is the requirement of equalization of braking force. For example if one front wheel grips well and the other does not, the driver may find himself in a ditch after pressing too hard on the brakes. Safe stopping requires that the braking effect of the two front brakes must be about equal. The same rule applies to the two rear brakes. If one of either pair supplies much over 60% of the total braking effect of the pair, then the brakes are hazardous. Moreover, the front pair of brakes should have a braking effect about equal to that of the rear pair. If front brakes are good and the rear ones poor, the rear of the vehicle will tend to rise up or slide around, which could cause it to side-swipe another car, or perhaps turn over.

Brake Adjustment

Testing whether brakes operate properly cannot be done by rule-of-thumb methods. Braking capacity and the degree of equalization can be measured only by using scientific testing equipment. In North Carolina, the Mechanical Inspection Division uses the Weaver Brake Testing machine to determine the capacity of your brakes to stop your car. This machine measures three things: (1) the braking capacity of the brakes; (2) equalization between the two front brakes, and between the two rear ones; and (3) equalization between the front pair and the rear pair of brakes. By such means it is possible to determine scientifically whether the brakes on a particular car are *safe* brakes. In brief, under the new Motor Vehicle Inspection Law, your vehicle must pass each of 26 tests in order to qualify as safe. They are listed in detail on the official Safety Lane Inspection Form, which was reproduced in the November, 1947, issue of POPULAR GOVERNMENT.

IV. THE MECHANICAL INSPECTION PROGRAM

"To guarantee to motorists and pedestrians the safe use of the streets and highways of the State," the 1947 General Assembly passed a law calling for mechanical inspection of all the motor vehicles in the state. The law required that inspection begin on January 1, 1948, and that all vehicles registered in North Carolina be inspected at least once during 1948, and twice yearly thereafter.

Administrative responsibility for the inspection program was vested in the Motor Vehicle Department and its commissioner, Colonel L. C. Rosser. Col. Rosser created a new division within his department to carry out the program—the Mechanical Inspection Division—and appointed Arthur T. Moore as its director. $300,000 was set aside from

(Continued on Page 14)

The Attorney General Rules

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

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HARRY McMULLAN
Attorney General of North Carolina

I. AD VALOREM TAXES

A. Matters Relating to Tax Listing and Assessing

130. Penalties for failure to list

To Thomas C. Hoyle.

Inquiry: Under G.S. 105-331(3), is the penalty for failing to list a tax which is $10 or less per year a single penalty of $1, or is it a penalty of $1 per year plus interest?

(A.G.) Construing this minimum penalty provision in connection with the maximum penalty provision of 10% per annum, I am of the opinion that where the minimum penalty is to be applied, a penalty of $1 should be added to the tax for each listing period which has gone by without the property having been listed for taxation. For example, a listing which is picked up after the close of the 1947 listing period, for the year 1945, would have passed over three listing periods without having been listed for 1945.

The minimum penalty would, therefore, be $1 for each of the three years or the sum of $3 which would be added to the 1945 tax, and then the total of the 1945 tax, plus the $3 total penalty, would be treated for purposes of collection as a current tax and would be subject to the schedule of discounts and penalties applicable to the 1947 tax.

III. COUNTY AND CITY PRIVILEGE OR LICENSE TAXES

A. Levy of Such Taxes

58. On filling stations

To Kent Mathewson.

(A.G.) It is not clear from the language of Section 153 of the Revenue Act that a license issued under Subsection (3), relating to the tax on motor vehicle dealers, covers also the activity of a filling station subject to license under Subsection (1). The Department of Revenue has taken the position and administered the section as if the omission of the words "motor fuels" in Subsection (3) was an inadvertence and that it was the intention of the Legislature that a license under Subsection (3) would permit the licensee to engage in the business of selling motor fuels as well as conducting the other activities enumerated in Subsection (3) without obtaining an additional license under Subsection (1). It is believed that most municipalities follow the Revenue Department's interpretation of these two subsections, but its interpretation and administrative practices under the Revenue Act are not necessarily binding upon municipalities and the question of the tax liability may depend largely upon the wording of the particular municipal taxing ordinance involved.

IV. PUBLIC SCHOOLS

A. Mechanics of Handling School Funds

10. Special school tax funds

To J. T. Denning.

(A.G.) G.S. 115-362 authorizes supplemental elections to be held in any district in a county administrative unit having a school population of 1000 or more in order to provide funds to operate schools of a higher standard than that provided by State support. However, the funds to be derived from taxes levied, when authorized by this section, can be used only for the operation of the school and not for the construction of buildings. Unless a county has a local act authorizing the levy of taxes for school buildings on a district basis, the construction of buildings would have to be paid for by county-wide levies.

12. Gifts and donations

To Paul A. Reid.

(A.G.) There is no statutory authority for a board of education to accept, as a gift, a school bus from a local baseball club, the only consideration for the gift being that the baseball club be permitted to use the bus during the summer season for the transportation of its teams on baseball trips.

D. Powers and Duties of Present School Districts and Agencies

3. Eminent domain

To M. L. Lewis.

(A.G.) I do not find any statute which exempts church property from the power of eminent domain or condemnation by a county school board.

F. School Officials

41. School attendance

To W. K. Cromartie.

(A.G.) The only duty of the principal of a school with respect to the enforcement of the compulsory school attendance law is that such principal shall report the unlawful absence of students from school to the person charged with the duty of enforcing the law. In the absence of the appointment of a truant officer or attendance officer by the local school authorities, the duty is placed upon the county superintendent of public welfare to enforce the law.

G. Fines and Forfeitures Accruing to Schools

35. What constitutes a "penalty."

To Elkin Smith.

(A.G.) It is the opinion of this office that, in view of the language found in *Board of Education v. Henderson*, 126 N. C. 689, a penalty prescribed for the violation of a town ordinance is a civil and not a criminal matter and that such penalties which may be sued for and collected out of offenders violating town ordinances may be paid into the city treasury. A city, however, is required to account to the county school fund for all sums collected by the use of criminal process, whether the sums so collected are designated as fines or as penalties.

I. School Property

4. Leasing school property

To Clyde A. Erwin.

(A.G.) I know of no statutory authority for school boards to enter into leases for the use of school property and I do not think that the use of such property as authorized by G.S. 115-95 contemplates an exclusive use by a professional athletic team or the authority to enter into a lease for a given period of time even though its use as provided for in the lease would not interfere with other school functions. It seems to me that no agreement should be entered into which would deprive the school board from exercising sole and complete use of school property at any and all times. However, I reaffirm the opinion previously expressed that, subject to the approval of the State Board of Education, a local school board can authorize the use of school property when such use does not interfere with school functions and when the board reserves the right to terminate such use on its own motion.

V. CITY AND COUNTY FINANCE

J. Local Improvements

6. Special assessments—foreclosure

To George Uzzell.

(A.G.) The foreclosure of the lien of special assessments for local improvements is related directly (by Article 9, Chapter 160, General Stat-

utes, the article on local improvements) to the current method for foreclosing ad valorem tax liens; and I am of the opinion that an independent action to foreclose special assessment liens may be maintained either under G.S. 105-391 or G.S. 105-414 at the option of the municipality in which the improvement is located. Even in the absence of the provision contained in G.S. 160-91, it seems reasonable to me that if an action on special assessments can be joined in an action to foreclose taxes under G.S. 105-391 (which the statute seems clearly to permit), that such an action could be maintained under the section independently of an action to foreclose taxes.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

P. Costs Payable by the Counties

16. Court costs

To Algernon L. Butler.

Inquiry: Where a defendant has been convicted of a capital felony, and has appealed in forma pauperis to the Supreme Court from the sentence of death, and is represented by private counsel who have not been assigned by the court, is it the duty of the county in which the alleged capital felony was committed, upon the order of the presiding judge, to pay the necessary cost of obtaining the transcript and preparing requisite copies of record and brief?

(A.G.) As indicated by you, the answer depends upon the construction of G.S. 15-181. As you point out, Ch. 197, S.L. 1933, upon which section 15-181 is based, is written in one paragraph and the proviso in the original text uses the word "act" and does not use the word "paragraph." This error first appears in Michie's Code, and the General Statutes followed Michie's Code in this respect. Section 15-181 is now the law in its present form, since the 1943 General Assembly enacted all of the General Statutes as the law of the state, and repealed (G.S. 164-2) all public and general statutes not contained therein. This results in repealing Ch. 197 of the Public Laws of 1933, and in enacting the error into law.

We are of the opinion, therefore, that as the statute now stands, it is the duty of the county in which the alleged capital felony was committed, upon order of the presiding judge, to pay the necessary cost of obtaining the transcript and preparing requisite copies of records and briefs.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

F. Contractual Powers

4. Contracts with other municipalities

To William C. Lassiter.

Inquiry: In 1934 the Town of Smithfield sought an injunction against the City of Raleigh to enjoin the latter from discharging raw sewage into certain streams in alleged violation of G.S. 130-117. The injunction was denied and the decision was affirmed in *Smithfield v. Raleigh*, 207 N.C. 597, 178 S.E. 114.

Recently the Board of Commissioners of Smithfield have renewed their complaint against the City of Raleigh, insisting that steps be taken to discontinue the alleged pollution. During a joint meeting of the Board of Commissioners of Smithfield and the City Council of Raleigh the question was raised whether, under existing powers or under powers that might be conferred by legislative enactment, the City of Raleigh could legally and constitutionally expend public funds of the municipality for the purpose of providing the Town of Smithfield with a source of water supply other than the present source (Neuse River) either by constructing wells, or by constructing water lines to an existing lake or creek and providing other facilities necessary for the purpose stated.

(A.G.) I have read the case referred to, and note that it left the question open for future determination upon change of circumstances, so that the matter is not finally determined as to a violation of G.S. 130-117.

I find no applicable statute. G.S. 160-250 provides for joint construction and operation of sewerage works by adjoining and adjacent municipalities, and obviously would not apply, because the two municipalities are not adjoining. Notwithstanding that I find no statute expressly authorizing municipalities to enter into such a contract, it is not at all certain that the authority to make such a contract might not be within the implied powers of the municipalities. G.S. 160-202 provides that the enumeration of particular powers by the sub-chapter in which that section is found shall not be deemed to be exclusive, but that in addition to those powers enumerated or implied therein or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the constitution and laws of the state now are or may be hereafter granted to cities.

Assuming that some contract beneficial to both municipalities could be entered into, under which Smithfield would discontinue use of the Neuse as its water supply, thereby saving large sums to the City of Raleigh which might be involved in the construction of sewerage disposal plants, I think it quite likely that our Court would hold such an arrangement to be within the implied powers of a municipality, particularly in view of the very broad provisions of Article 10 of Ch. 130 of the General Statutes, and the provision of G.S. 160-239, *et seq.*

Since there is no provision which in direct terms deals with this matter, I would recommend that in the event the two municipalities are able to agree on a course of action, the same be submitted to the Court in the form of a declaratory judgment proceeding in order that the question could be legally determined before any expenditures are made.

K. Grants by Cities and Towns

12. Miscellaneous

To J. H. Stockton.

Inquiry: May a town furnish cash contributions, fuel, electric power, stone and other property to a non-profit corporation organized therein for the purpose of building and operating a hospital?

(A.G.) If no part of the net earnings of such a corporation inures to the benefit of any private shareholder, it is my opinion that Ch. 933, S.L. 1947, is applicable, and that it confers authority for the town to make such contributions.

N. Police Power

12. Storage and sale of petroleum products

To Henry A. Tolson.

(A.G.) The power to regulate storage and sale of such fuels as kerosene, gasoline, etc., is expressly given to municipalities by G.S. 160-200(16). This and the other provisions in G.S. 160-200 would give the town commissioners ample authority to adopt reasonable regulations covering the handling of gasoline and kerosene within the corporate limits.

Y. Streets and Sidewalks

4. Title to land

To Clyde A. Erwin.

(A.G.) If a city originally acquired a street by outright purchase or gift or by condemnation, it could convey such property to the school board, for example, upon abandonment and closing of the street; but in order to do so it would first have to advertise the property and sell it to the highest bidder. On the other hand, if the street had been dedicated by its original owners for street or alley purposes, then, upon its closing, the property formerly occupied by the street would revert to the original land owners.

7. Parking meters

To W. Ralph Campbell.

Inquiry: Would a parking meter ordinance be valid which, among other things, permits any person to park in front of any meter, without deposit of a coin therein, for the purpose of loading or unloading materials into such person's place of business, provided only that the minimum time required for the operation is used; but which provides that such loading or unloading will not be permitted if the place of business has a rear entrance which could be used for that purpose?

(A.G.) Under the statutes, municipalities are given broad powers with respect to control and use of streets. Your particular attention is invited to G.S. 160-200(11).

It is the opinion of this office that the ordinance in question is valid and comes well within the authority of a municipality to enact ordinances for the use and maintenance of its streets.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

B. Clerks of the Superior Court

24. Duties with respect to incompetents

To J. P. Shore.

(A.G.) It is the opinion of this office that a clerk of the superior court may, under the provisions of G.S. 35-4.2, pass upon the competency of a person not having a legal guardian who has been discharged as improved from a State institution. The petitioner, however, may request that the matter be heard before a jury at his option. (See Sec. 23, Chap. 537, Session Laws of 1947.)

To George A. Hux.

Inquiry: Can a veteran be committed to a Veterans Administration facility for mental care before the certificate of the Veterans Administration showing eligibility and availability of space is received?

(A.G.) I think it is desirable that the certificate referred to in G.S. 34-16 be in hand in order that there will be a record of the eligibility and availability of facilities. If a clerk is advised by authentic letter or telegram that the veteran is eligible and that facilities are available, I believe that he would be justified in treating this as an adequate compliance with the requirement of the statute in this respect.

79. Decedents' estates—distribution and administration

(A.G.) You state that an administrator who qualified about 1930 has neglected to file his final account and now wishes to do so, and you inquire as to whether it would be legal for the clerk of superior court to receive his final account unless publication of notice to creditors has been made and affidavit of same filed with the clerk. You further state that it is now impossible for the administrator to get the affidavit of publication, and that it is altogether possible that publication was never made.

It is true that some jurisdictions take the position that publication of notice to the creditors is mandatory. It would appear, however, that North Carolina, along with many other states composing the weight of authority, takes the position that publication of notice to creditors is merely an auxiliary matter and is designed to speed up the administration of estates. See *Morrisey v. Hill*, 142 N.C. 355, which definitely places North Carolina in that group of states holding that this publication is for the protection of the administrator. It enables him to go ahead with the administration and to make a distribution of the assets.

I cannot find that publication of this notice is a condition precedent to final settlement of an administrator. The question is not whether a notice has been published, but whether the final account offered by the administrator to the clerk is a true and accurate final settlement which should be allowed.

D. Register of Deeds

4. Books and records

To William D. Kizziah.

(A.G.) Under G.S. 47-30 it seems that a map should be recorded only at the instance of the owner of the land and upon an affidavit being made as required by that section.

I know of no authority for the register of deeds to permit any party to make changes in a map, once it has been filed and recorded as provided by this statute.

I do not think the register of deeds, at his own instance, would have any right to file in the book of maps any map of land other than is authorized by this statute, and I would not advise that this be done.

G. Registrar of Vital Statistics

2. Fees

To C. P. Stevick.

Inquiry: In some cities where there are hospitals, a certain amount of money has to be paid under present law by the city for registration fees for births and deaths of persons not resident in the city. Would it be permissible in such cases for the county

in which the city is located to pay a part of the registration expense of the city?

(A.G.) I find no authority which would allow a county to make such payments. G.S. 130-101 requires counties to pay for registrations outside of incorporated municipalities and requires cities and towns to pay for registration work within the incorporated cities and towns. There is no provision for these units to supplement or aid each other without further legislative enactment.

L. Local Law Enforcement Officers

3. Prohibition law—transportation in state

To Ralph J. Jones.

Inquiry: What is the maximum amount of whiskey which may be transported legally in a privately owned bus?

(A.G.) This office has heretofore expressed its opinion that the driver of a taxicab, transporting persons who had in their possession more than one gallon of whiskey being carried from a wet to a dry county, would probably be guilty of illegal transportation, on the theory that the driver, knowing that his passengers possessed the liquor, would be doing the actual transporting.

It would seem that this same reasoning would apply to a privately owned bus.

It would not, in our opinion, apply to a franchised public carrier making regularly scheduled trips, for the reason that such carriers are required by law to accept any passenger who offers to pay his fare.

This question has not been passed on by our Supreme Court, however, and we cannot be certain what view the Court might take were the question presented.

To S. K. Mortimer.

Inquiry: May each occupant of an automobile legally transport one gallon of legally purchased whiskey?

(A.G.) This office has rendered numerous opinions to the effect that the operator of a motor vehicle which transports more than one gallon of tax paid liquor from a wet to a dry county in this state would be guilty of violating the prohibition laws.

39. Motor vehicle laws

To I. Dan Sanders.

Inquiry: What is the penalty now for speeding and reckless driving?

(A.G.) G.S. 20-140, defining reckless driving, and G.S. 20-141, fixing the speed limits, provide that the punishment for a violation of either shall be that prescribed by G.S. 20-180. G.S. 20-180 provides that every person convicted of violating G.S. 20-140 or 141 shall be guilty of a misdemeanor. Paragraph (b) of G.S. 20-176 provides that where no other penalty is fixed for offenses which are declared to be misdemeanors by the motor vehicle laws, a person convicted of a misdemeanor shall be punished by a fine of not more than $100 or by imprisonment for not more than 60 days, or by both. The effect of these statutes is, in my opinion, to fix the maximum penalty for speeding or reckless driving at a fine of $100 or 60 days imprisonment, or both. This was not the effect of the original bill introduced in the 1947 General Assembly, but it is the effect of the law as finally passed.

To J. W. Harris.

(A.G.) All persons exceeding the speed restrictions set out in the laws of this State are violating State law and not municipal ordinances for the reason that these speed restrictions are fixed by statute and the State law governs regardless of any provision of a municipal ordinance.

It is the information of this office that it is customary throughout the State for police officers, in case of traffic violations, to cite a man to court for a hearing, and in order not to inconvenience the alleged violator, to accept a nominal bond for his appearance at the hearing. Of course, if the person so charged fails to appear at the time and place fixed for the hearing after giving such bond, the bond would be forfeited and the proceeds thereof are required to be paid into the school fund of the county in which such forfeiture occurred. Fines imposed by the police court of a town for violations of the speed

laws of the State may not be paid into the town treasury, but are required by the Constitution to be paid into the school fund of the county in which such violations occur.

To J. W. Tappan.

(A.G.) Under no circumstances may privately-owned motor vehicles be equipped with sirens, even though such vehicles are used by volunteer firemen when in the performance of their official duties. The use of red lights on the front of vehicles is prohibited except on police cars, Highway Patrol cars, ambulances, wreckers, fire-fighting vehicles or vehicles of a voluntary life-saving organization which have been officially approved by the local police authorities and manned or operated by members of such organization while on official call. It is my opinion that the latter class of vehicles would have to be owned by the organization itself and would have to be approved by the local police authorities, and then could be operated only when the members of the organization were on official call.

69. Concealed weapon

To I. Dan Sanders.

(A.G.) Our courts have held many times that it is a question of fact to be determined by the jury whether or not a weapon is being carried concealed, in violation of G.S. 14-269. *In State v. McManus*, 89 N.C. 555, the court said that if the weapon be within reach and control of the defendant, it is sufficient to bring the case within the meaning of the statute. It is my opinion that if a person carried a weapon under the seat of his automobile, and within his reach and control, this would be a violation of the law. However, this is a question of fact to be determined by the jury.

72. Pyrotechnics—dynamite

To Tom Davis.

(A.G.) Dynamite or dynamite caps may not be used for "celebration fireworks" without violating the provisions of Chap. 210, Session Laws of 1947. Such explosives may be legally used in this State only in the course of ordinary business or industry.

S. Mayors and Aldermen

2. Powers—general

To Tom Davis.

(A.G.) G.S. 47-2 authorizes mayors, among other officials, to take acknowledgements of any instruments or writings which are permitted or required by law to be registered.

IX. DOUBLE OFFICE HOLDING

9. School committeeman

To W. F. Veasey.

(A.G.) Under the provisions of G.S. 115 132, no person is eligible to be elected as a teacher in any public school or private school receiving public funds while serving as a member of any district school committee or as a member of the county school board. Should such person be elected to teach in any public school or private school receiving public funds before resigning as a member of the committee or board, such election would be void. This statute is applicable to the employment of instructors in the Veterans Farmer Training Program for the reason that this program is under the control and direction of the Department of Public Instruction of the State.

54. County physician

To L. B. Prince.

(A.G.) This office has held on a number of occasions that the county physician as distinguished from the county health officer is not an officer within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

59. Municipal recreation commission

To Henry B. Edwards.

(A.G.) In view of the broad powers conferred upon municipal parks and recreation commissions under G.S. 160-158, which includes, among other things, the right of eminent domain, it is the opinion of this office that membership thereon would constitute holding a public office, and that one person could not hold this office and at the same time occupy another public office.

This office is advertent to the provisions of G.S. 160-161, which provide that the commission shall consist of five members, one of whom shall be affiliated with the government of the unit, one with the school system, one with the health department, and one with the welfare department. However, notwithstanding the language used by the statute, this office has never considered it safe to advise that membership on the commission thus established would not constitute a public office. This is true for the reason that rather severe penalties are imposed against any person who might presume to occupy two public offices at the same time. This opinion is based upon the further reason that the rights of a person presently holding office and who might accept a position on the commission might be jeopardized. As you know, under many decisions, our Court has held that acceptance by a public officer of an additional public office has the effect of automatically vacating the former one.

XII. STATE TAXES

C. Income Taxes

10. What constitutes income

To Bernard and Parker.

Inquiry: May the interest paid by an ABC board on negotiable instruments issued by it be excluded from the income of a taxpayer in determining said taxpayer's gross income for income tax purposes?

(A.G.) Section 317 of the Revenue Act provides that the words "gross income" do not include interest upon the obligations of a political subdivision of North Carolina. The Revenue Department interprets this provision to exclude the interest paid on obligations of the type described. Since the language employed in the statute is susceptible of this interpretation, I advise that the interest on these obligations is not to be included in the gross income of a taxpayer for income tax purposes.

Inspection Program

(Continued from Page 9)

department funds for the program, and the inspection lane equipment

was purchased from the Weaver Manufacturing Company.

INSPECTION PERSONNEL

Then began the process of selecting competent persons to administer the program. More than 1,500 men responded to the call for applicants for jobs, and half of these were rejected after careful evaluation of application data. The others appeared for oral interviews and written examinations, and 204 were finally selected for possible appointment as either inspection lane supervisors, or as inspectors.

TRAINING

Director Moore called on the Institute of Government to provide training schools for the men selected. Three schools were organized. About one-third of the 204 men were trained at each school. The first one, conducted in December and lasting three weeks, was primarily for training lane supervisors. The next two, both conducted in January, lasted two weeks apiece and were for inspectors.

Twenty-three courses of instruction were set up for these men, including courses on: The motor vehicle inspection program; the wheel of traffic control; motor vehicle inspection laws; practical demonstration of inspection equipment use, organization and administration; rules of the road; registration and driver's license laws; identification of automobiles; public relations; department rules and regulations; and departmental forms and reports. Seven to nine hours of instruction were given daily, except Sundays, with lecture courses in the mornings and field training in the use of lane equipment in the afternoons. Two actual lanes, complete in every detail, were set up for training purposes.

The staff of instructors included Director Moore; the three Zone Supervisors of the Inspection Division, William L. Bishop, L. V. Blalock, and George Dale; W. E. Koonce, Director of the State Automobile Theft Bureau; R. H. Booth of the Automobile Underwriters Detective Bureau; Charles Price of the State Bureau of Investigation; Mrs. Cora Rice, Director of Public Relations of the Motor Vehicles Department; A. R. Sawyer, chief engineer of the Weaver Manufacturing Company; and the staff of the Institute of Government.

Counties

(Continued from Page 6)

The commissioners recognized the need for repairs and construction, pointing to their recent action in increasing the budgetary appropriation for current school expense and capital outlay from $119,721 for 1946-47 to $126,898 for 1947-48. However, they felt that "now is not the time" to borrow so heavily, for the following reasons: (1) statutory limitations on borrowing for school purposes would prevent the county from issuing bonds for such purposes for more than about $2,300,000; (2) "building costs are now approximately three times what they are in normal times, and in addition thereto, the building materials that can be secured, after long delays and a great amount of trouble, are usually inferior in quality. . . .it is the better part of wisdom to wait a reasonable time for these costs to come down. ."; (3) the proposed bond issue, "if voted, would cause the tax rate for Davidson County practically to double, and. . . would work a hardship on thousands of people. . . ."; (4) spending such

a sum at this time "would help to produce the ever-increasing danger of inflation. . . . .This Board does not desire to have any part in producing more inflation than we have now;" (5) "The Board is of the definite opinion that the said bond issue would be overwhelmingly defeated and that the net result from the calling of an election would be the spending of approximately $2000 and a severe blow to the cause of education in our county"; and (6) "While this Board deplores the real needs of schools and repairs to schools throughout the county, it feels that since the matter has already been left so long during normal times when building costs were reasonable that it should not be forced upon the people now at a time when costs are so high and materials "so scarce."

Supreme Court

(Continued from Page 8)

plaintiffs' contentions that the 1947 amendment was hurtful to approved standards of sanitation, public health and the barbering trade or profession in general, by observing that the same authority which conferred upon the Barbers' Board power to regulate admission to the trade (upheld in *State v. Lockey*), may repeal or alter the power of the Board, or may provide alternative conditions of admission, unless plainly forbidden by the Constitution, and it was the Court's opinion that the 1947 amendment is not so forbidden. In short, the questions of sanitation, public health and professional standards were regarded by the Court as being "matters of public policy within the control of the Legislature and not available to the plaintiffs in support of their present proceeding."

Then the Court turned to the State and Federal constitutional provisions upon which plaintiffs had chiefly relied. They were (in the North Carolina Constitution) Article I, Section 1, providing "that all men are created equal and are endowed by their Creator with certain inalienable rights, including the enjoyment of the fruits of their own labor"; Article I, Section 7, providing "that no man or set of men are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public service"; Article I, Section 17, providing "that no person ought in any manner to be deprived of his life, liberty or property but by the law of the land"; and (in the Federal Constitution, 14th Amendment) providing "that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

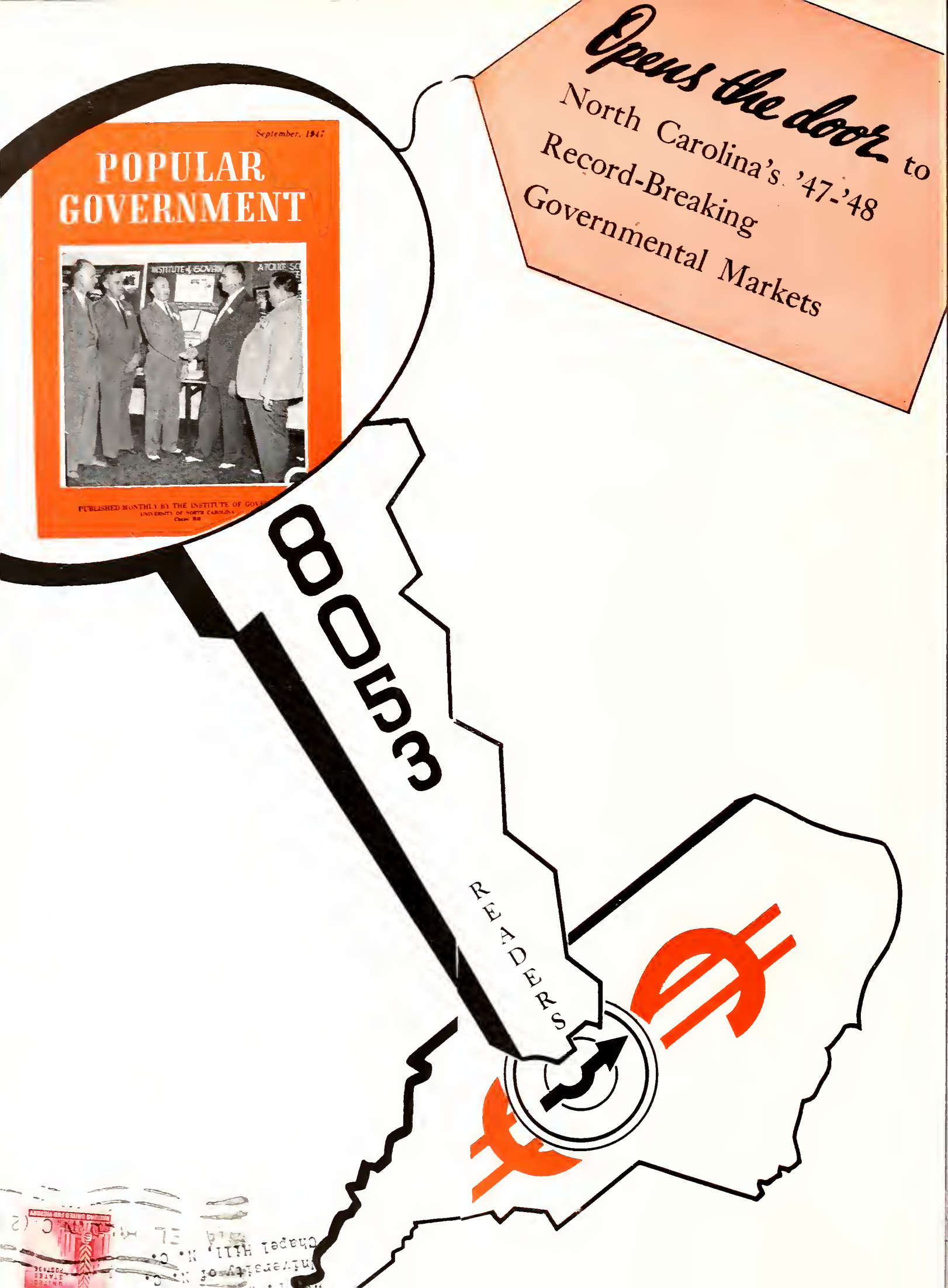
Taking all four of these provisions together, the Court answered the "discrimination" contention by denying that they are "so naive as not to contemplate the classifications and distinctions which orderly government is required to make with respect to the subjects of its control," and added that only when classification "is arbitrary and unjustifiable upon any reasonable view" does it become offensive to the Constitution.

The Court then justified the classification here involved by reviewing the history of the relationship between civilized nations and their veterans, observing that from the beginning of civilization "nations and governments have recognized an obligation" to those who have fought to preserve their country and its institutions. Which custom, said the Court, "is not based altogether on sentiment or gratitude, or even common justice . . . .", but also on more practical and compelling considerations. "It is an inevitable sequence of war that there will be found in the growth of our institutions, as well as in the life of these people, the lean, hand ring of winter." Holding that the rehabilitation of the returned soldier is a matter of public concern throughout the nation, the Court felt that "the present relief which the challenged amendment intends for the qualified veteran may be correlated with that necessity." The Court also thought it a "simple matter of equality and justice" to restore in a measure the opportunities lost to men and women who served in the Armed Forces while others were able to remain at home, and said that "it is of importance to the continued peace and prosperity of the nation that they should be seasonably returned, in an orderly way, to self-supporting occupations and to the productive enterprises essential to the public welfare and progress."

The objection which plaintiffs raised under the prohibition against "exclusive or separate emoluments or privileges" was considered answered by the last part of that provision, which excepted emoluments or privileges granted "in consideration of public service."

Citing numerous authorities, the Court pointed out that nearly all the states have given preferential treatment to returned veterans, drafted into service as many of them were, and that in many instances these preferences have been of even more "discriminatory" character than those protested here; and observed that the 14th amendment to the Federal Constitution, relied on by plaintiffs, has not prevented Congress from insuring bonds of veterans, or from expressing hope that the states would recognize in their public employment "the propriety of preferential treatment of veterans accorded by the Selective Service Act."

Finally, the Court affirmed the power of the Legislature to extend the process of classification, even as to a "class within a class," i.e., qualified veterans, those with three years' barbering experience, "as far as it deems proper . . . unless the classification becomes capricious, arbitrary, and without reasonable relation to the end sought," and the Court thought the provision permitting admission of qualified veterans with three years' experience in barbering while in the service "is based upon a sufficient finding of fitness which the Legislature, in its appraisal both of the necessities of the trade and the experience of the veteran, might substitute for the examination . . ." otherwise required, without serious invasion of the rights of the plaintiffs.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