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POPULAR GOVERNMENT

Snow Removal on Raleigh's Streets

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GOVERNMENTAL LABORATORY BUILDING
INSTITUTE OF GOVERNMENT

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		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 Informational Service	General Informational Service

LADIES OF THE JURY

By SUSIE SHARP
Attorney at Law
Reidsville, N. C.

(Miss Sharp, who is a prominent member of the bar of North Carolina, prepared this article last summer at the request of the Institute of Government and on behalf of the North Carolina Federation of Business and Professional Women's Clubs. She delivered it in the form of an address before the summer board meeting of officers of the Federation, which was held in Chapel Hill last August. Miss Mabel Bacon of Charlotte, president of the Federation, presided over that meeting, which was the annual leadership conference sponsored by the Federation cooperatively with the University's Extension Division and its director, Russell M. Grumman. The 1947 conference was devoted to a workshop on the new responsibilities of women in connection with jury service, and, as a part of the Federation's legislative study program, was under the direction of Mrs. Dess M. Gurganus, Legislative Chairman.)

As a result of the acts of the 1947 legislature you are now eligible to play the great American game—that of dodging jury service. Of course, under the constitutional guaranty of free speech, you have always been eligible, with the men, to indulge in that other good old American pastime of criticizing the way the law is enforced, the verdicts which juries render, and the courts in general. However, the most voluble critic of the courts has always been the man who himself got out of serving on the jury by presenting the doctor's certificate he got for the asking, or by representing to the judge that he could not hear well enough to understand the witnesses—though this same man throughout the week continued to attend to his own business affairs. Many a man has said that he had formed and expressed an opinion about a case or that he didn't believe in capital punishment for no other purpose than to get back to his business.

Somebody once defined a jury as "A bunch of men picked from the poll lists, who have not enough political pull to get off or who are out of a job and want to pick up three dollars a day". We all know that the jurors selected are frequently not intelligent enough to properly decide the issue placed before them—and this, in spite of the popular impression to the contrary, is not because the lawyers wanted 12 morons; they probably selected the best of the lot! Because business has grown more complex of recent years and persons of intelligence and business experience are needed to understand the cases which get into court, the efficacy of the whole jury system is being questioned daily by those who would like to streamline justice, as they say.

However, I say to you that there is nothing wrong with the jury system in North Carolina which cannot be cured by jurors possessed of intelligence, character, and a willingness to do what they have sworn to do. But I cannot tell you how to obtain such jurors. Jury trials are just one of the cogs in the wheels of democratic government. The machinery of democracy depends upon education and a high sense of civic responsibility to make it work.

The radio lately has been driving home the theme that "freedom is everybody's business; you must work to keep freedom; you expect your government to protect your freedom, but your government is you!"

The seeds of the destruction of our democracy are contained in this trait of the American people which makes them not only willing to shirk jury duty but willing to resort to any sort of dishonest or shabby device to avoid it. People who aren't willing to assume the duties of free men will surely lose their freedom sooner or later.

History

In 1215 when the barons of King John wrung from him the Magna Carta they guaranteed themselves jury trials by providing "that no

COVER PICTURE

This scene from Raleigh shows snow removal crews at work on South Salisbury Street, after one of this winter's unusually heavy snows.

Similar scenes in municipalities all over the state add up to heavy municipal expense as a result of the continual freezing heavy snow, and sleet, which have caused considerable cracking in paved streets. Durham's City Manager R. W. Flack estimated that the damage to Durham's 200 miles of paved streets would "run into thousands of dollars," on top of already large expenditures for emergency snow removal. (Photograph by courtesy of Raleigh News and Observer *— Lawrence Wofford, staff photographer).*

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freeman shall be deprived of his liberty or property except by the judgment of his peers." They did not take lightly either the right or the duty of jury service. But today this privilege seems cheap when nobody dies to get it.

The origin of trial by jury is lost in the past. We find it mentioned as early as 866. Blackstone says that it "has been used time out of mind in England and that it is the glory of the English law". The colonists brought this right from England and it has become a part of the birthright of our people. Of all the contributions which the Anglo-Saxon people have made to individual liberty none is equal to the trial by jury. The reason is very plain. Power concentrated in the hands of one person or of a few persons—whether he be a king or a judge—will always be abused. But juries are selected by lot from the people; you cannot possibly concentrate power in a jury because you have a new jury at every term of court.

I do not mean that juries do not have power and that they do not sometimes abuse it; they do. They have the power to find the facts in a case and that is the real power of the court. Before a jury's fact-finding power a judge is powerless to oppress. Juries, as you know, do not decide questions of law; for obvious reasons that must be the province of the trained judge. But in deciding questions of fact the judge, under our system, has no part. Whether the defendant killed the deceased; whether X was at fault when he ran over Y—these are questions of fact for the jury and the law says that if the judge even expresses an opinion about it, a new trial will be granted. If a single judge passed on the facts you can see how partiality and oppressions would have a wide field. For instance, in a dispute between a corporation and a labor union one judge might decide always that the union was telling the truth—or vice versa. But even the most powerful individual will be cautious about invading the rights of another when he knows that his acts must be passed on by 12 persons chosen from the body of the country. Mr. Millionaire is going to be careful how he accuses his poorest tenant of stealing because he knows that the facts will not be tried by his friend the judge with whom he probably had dinner the night before, but by 12 persons—few of whom are likely to be millionaires.

MISS SHARP

Safeguards

However, there is more danger to the individual from oppression by judges in a criminal case than there is in a civil action. In other words, in a criminal action a judge is more likely to be partial to the state than he would be to one of two litigants who were disputing over a boundary line, for instance. Therefore, the law has placed a twofold barrier between the liberties of the people and the prerogatives of the state—that of a presentment by a grand jury and a trial by a petit jury. Under the English law which we inherited, no man can be called to answer for any capital offense unless the grand jury has first returned a bill of indictment against him. Then he cannot be convicted upon that bill of indictment except upon the unanimous verdict of 12 jurors. And if anyone thinks these are old fashioned precautions which are no longer needed here, I remind you that human nature doesn't change. We have recently produced a Huey Long, a Mayor Hague; we have a well organized body of Communists here; and we will always have potential Hitlers and Stalins.

Here I would call your attention to the fact that as late as 1864 in this state it was the law that a husband could beat his wife to make her behave unless he inflicted some permanent injury or used an excess of violence. Do you think that could have been the law in a state where women sat on juries?

The guaranty that a person cannot be affected either in his property or his liberty except by the unanimous verdict of 12 of the fellow citizens of his county ought to be one of our most comforting assurances that we live in a free country.

Finding the Facts

James Cozzens in his book *The Just and the Unjust* said that it's a question how long any system of court could last in a free country if judges found the facts. It doesn't matter how wise or just the judge might be, resentment would build up against him every time he made a decision which ran counter to the current notions or prejudices. Pretty soon half the community might want to lynch the judge. But there is no focal point with a jury; the jury is the public itself. That's why a jury can say when a judge couldn't, "I don't care what the law is, that isn't right and I won't do it."

The point which Mr. Cozzens is making is that juries, in their fact-finding prerogative, have the power to overrule the law. That's what they do when they find not guilty a man who has shot down in cold blood his wife's lover—the doctrine of the "unwritten law" in application. Of course they violate their oaths when they do it.

Constitutional Provisions

Both the Federal and the state constitutions guarantee trial by jury. The N. C. Constitution now provides that "No person shall be excluded from jury service on account of sex." Of course, you know that prior to the last general election in 1946 the constitution said that a jury consisted of "good and lawful men" and it did not provide that no person shall be excluded from jury service on account of sex.

These amendments were the result of the activities of two bootleggers in Polk County (the case of *State v. Emery*, 224 N. C. 581, 1944). A jury of ten men and two women convicted Messrs. Bill Emery and Leroy Turner of violating the prohibition law. Lacking any other excuse they appealed on the ground that their constitutional rights had been violated—they had not been tried by a jury of good and lawful men! The Supreme Court, two judges dissenting, agreed with them. The reasoning was that at common law women were excluded from jury service except in case of writs *de ventre inspiciendo* (a common law writ to ascertain

whether a woman convicted of a capital crime was quick with child in order to guard against taking the life of an unborn child for the crime of the mother). Therefore, since in 1868 when our constitution was adopted, jurors meant men, Judge Stacy argued that it still ought to be so understood; that jury service was not a right or privilege guaranteed to anyone and that it was not an incident of suffrage. The minority argued that when the reason of a law fails the law itself should fail; that women were now doctors, lawyers, policemen, bus drivers, etc; that the law should keep up with the times and that the word men ought now to include women.

Well, as you know, the majority opinion was the law but this was a very unpopular decision with the women who saw to it that the law of the land was changed.

Selection of the Jury

Let us now examine in the machinery of the law and see how a jury is selected and constituted.

The board of county commissioners every two years (odd years) at the regular meeting on the first Monday in June causes the clerk to lay before them the tax returns for previous years and also a list of names of persons who do not appear on the tax lists who are residents and are over 21. The clerk may use any lists considered reliable: telephone books, city directories, poll books, etc. From this list the commissioners shall exclude the name of persons who have been convicted of any crime involving moralturpitude, persons who have been adjudged *non compos mentis*, and any person who himself has a suit pending to be tried. But they shall select all those persons who have paid all taxes assessed against them for the preceding year and who are of good moral character and of sufficient intelligence. A list of the names chosen shall be made out by the clerk and shall constitute the jury list. (G.S. 9-1)

At the next meeting in July the jury list is copied on small scrolls of paper of equal size and put into a box with two divisions marked 1 and 2 respectively, with two locks. The key to one is kept by the sheriff and the other by the chairman of the Board of Commissioners. The box is kept by the clerk to the board. (G.S. 9-2)

At least 20 days before each regular or special term of court the board causes to be drawn out of No. 1, by a child not more than 10 years old, the number of names considered necessary to get a jury. The number varies in the different counties. In Rockingham County 30 names are drawn for jurors for the first week of a civil court and 24 for the second; 42 for the first week of criminal court and 24 for the second. The scrolls so drawn are then put in Box No. 2. If any person drawn is dead, has left the county or otherwise become disqualified to serve, his scroll shall be destroyed and another drawn. (G.S. 9-3; 9-7)

When all the names are drawn out of No. 1 and placed in No. 2 they are then returned to No. 1 to be redrawn as needed. (G.S. 9-8) Should the commissioners fail in their duty to draw a jury the sheriff, the clerk of the commissioners in the presence of and assisted by two justices of the peace, shall draw a jury. (G.S. 9-9)

Within 5 days after the drawing the clerk shall deliver to the sheriff a list of jurors and he shall summon the persons therein named. The summons shall be served personally or by leaving a copy at the house of the juror at least 5 days before court. Jurors may also be served by telephone or by registered mail. When served by registered mail a return receipt is required. (G.S. 9-10)

After being summoned jurors shall appear and give their attendance until discharged.

Every person summoned who fails to appear shall pay to the county $20.00. (G.S. 9-13)

Jurors' Fees

Since July 1, 1947, the fees of all jurors in the Superior Court and inferior courts must be fixed by the boards of county commissioners between the minimum per diem of $2 and maximum of $5, but they are permitted to set different rates of compensation for different classes of jurors. All jurors will receive, in addition to the per diem, a travel allowance of 5c per mile while coming to the county seat and return to be paid on the basis of one round trip per calendar week for each week in which attendance is required. (G.S. 9-5)

In order to get the money to pay the jurors, in every criminal proceeding disposed of in the criminal court the party convicted or adjudged to pay the cost shall pay a tax of $4, and in every civil action in which a jury is impaneled, a tax of $5.00. This money goes into the county treasury to pay jurors. (G.S. 6-5)

If you don't cash your check for your jury service, the law provides that all moneys due jurors and witnesses which remain in hands of the clerk of the superior court on January 1st after publication of 3rd annual report showing same shall be turned over to the school fund. (G.S. 2-50)

Tales Jurors

So far I have been talking in the main about regular jurors—i.e., those whose names have been drawn out of the box. If the list of regular jurors has been exhausted and no jury selected, the law provides that the sheriff shall, from day to day, summon from the bystanders, being freeholders within the county where the court is held, the number of persons needed. These jurors are called *tales jurors*. The judge at the beginning of the term may direct that extra jurors be drawn from the jury box in the presence of the court. In order to keep down abuses, to avoid using professional jurors, etc., any tales juror not drawn from the box may be challenged on the ground that he has served on a grand or petit jury within two years next preceeding such term of court. And he must own land.

If the sheriff for any reason is disqualified, the judge may appoint some other person to serve in place of the sheriff.

Excuses

At the same time the General Assembly made women eligible for jury service it made it very easy for them to get out of serving. When a woman is summoned to serve as a regular or tales juror either she or her husband may appear before the clerk of court and "certify" that she desires to be excused for any one of the following reasons: (1) that she is ill and unable to serve (2) that she is required to care for her children who are under the age of 12 (3) that some member of the family is ill and that her presence is required to give that person attention. It is then within the clerk's discretion as to whether she will be excused, and he must notify the judge of any excused absence when court convenes.

Thus women are pretty much on their honor; it is up to them whether

they serve on juries or not. If they adopt the attitude of their male relatives more will certify than will serve.

Not every man or woman is liable for jury duty. The law exempts the following classes of persons. Their names are not supposed to get in the box and if they do they have to be excused upon request:

Practicing physicians, licensed druggists, telegraph operators in regular employment of any telegraph company or railway company, train dispatchers who have actual handling of either freight or passenger trains, regularly licensed pilots, ministers, officers or employees of state hospital for insane, active members of a fire company, funeral directors and embalmers, printers and linotype operators, all millers of grist mills, U. S. railway postal clerks, R. F. D. mail carriers, locomotive engineers, brakemen and railway conductors in active service, radio broadcast technicians, announcers, optomotrists; all members of National Guard, N. C. State Guard, members of Civil Air Patrol, Naval Militia, Officers Reserve Corps, enlisted reserve corps, and the naval reserves who comply with and perform duties required of them—but a list of these must be filed with the Clerk; licensed chiropractors, licensed dentists, registered and practical nurses, and attorneys at law.

Other Kinds of Juries

When one speaks of a jury the listener usually thinks of the petit or trial jury. However, there are all kinds of jurors, or commissioners, as they are sometimes called. You may be summoned to serve on a jury to allot a widow's dower or year's allowance, in an inquisition of lunacy, a restoration of sanity, to assess damages in a condemnation proceeding, to serve on a coroner's jury, in a justice of the peace court, recorder's or county court to mention just a few. However, if you are called to serve on one of these your duties will be explained to you by the sheriff, the clerk of the court, the judge, or other proper official. You will have no difficulties in performing your task.

The Grand Jury

The grand jury is likewise an old and important part of our administration of justice. When a term of criminal court convenes the judge directs that the names of all jurors drawn for the term be put in a box or hat and drawn out by a child under 10 years of age. The first 18 drawn constitute the grand jury; the residue are the petit jury. (G.S.-25)

The grand jurors do not pass upon the guilt or innocence of a defendant; they hear only one side of a case, that of the state. Their function is to decide whether or not the state has enough evidence to justify accusing the defendant and trying him. If, after hearing a part or all of the state's evidence, they think the defendent is *probably* guilty they return "a true bill" and he is put on trial before a petit jury. If they think the state cannot make out a case they return "not a true bill" and the defendant goes free without a trial.

The foreman of the grand jury, whom the judge appoints, administers oaths to any witnesses whose names appear on the bills of indictments sent in by the solicitor for the state. If, after hearing one witness for the state, the grand jury is of the opinion that the defendant is probably guilty it is not necessary that other witnesses be examined. The foreman marks on the bill the names of the witnesses sworn and examined. Each grand juror must take an oath to keep secret what he hears in the grand jury room.

The law requires every grand jury, while court is in session, to visit the county home, the jail and workhouse and to report to the court the conditions which they find. If women on grand juries can get these buildings cleaned up they will have performed a Herculean task. In some counties, by special act, the grand jurors serve for six months or longer but, as the work of the grand jury is usually completed in one day, this is no great burden and it expedites business because the jurors become familiar with their work.

Challenges

In a capital case, where the defendent has 14 peremptory challenges and the state has six, it is frequently impossible to select a jury from the regular jurors summoned. The judge, therefore, may order the sheriff to summon such number of persons qualified to act as jurors as he may think necessary to get a jury, or he may have the jury box brought into court and the names drawn by a child in the regular manner. If the case is one which has aroused much local prejudice the judge may order a jury brought in from another county. If the case is likely to be a long one, the judge will direct that an alternate juror be selected after 12 jurors have been chosen. Both the defendant and the state have two peremptory challenges to the alternate. If any one of the 12 chosen should become incapacitated during the course of the trial the alternate takes his place; if not, when the jury retires to consider the case, he is excused. He is kept with the regular jury until then. This procedure, of course, is to prevent a mistrial in a long case if a juror becomes ill or dies.

Every juror of every kind takes an oath. The oaths vary, but in general, they require "true verdicts, according to the evidence."

I have heretofore spoken of challenges. Any party or the court may question jurors on their competency to serve in general, or in a particular case. The judge, of course, decides whether a juror is competent if he is challenged for cause. Any party may challenge a juror for cause or he may challenge a certain number peremptorily without assigning any cause. For instance, if you were a lawyer defending a bootlegger you wouldn't want the president of the W.C.T.U. on the jury; if you were representing a woman who was suing her husband for alimony you wouldn't want on the jury a man who had just been sued by his wife. So—don't get your feelings hurt if the lawyer tells you to "stand aside" for no reason which you can see. He is just doing what he thinks is best for his client (which is his duty) and he may be paying you a compliment! In a civil case each side has six peremptory challenges and in a criminal case other than capital the defendent has six and the state four. There is no limit to the number of challenges a party may make for cause. Some challenges for cause are as follows:

That the defendant is not a bona fide resident of the county; that he has a suit pending and at issue at the term of court; that he is minor, an atheist, or an alien; that he is lacking in intelligence or character; that he is prejudiced or biased; that he has expressed an opinion about the case; or that he is related within the 9th degree to a party.

Arguments of Counsel

After a jury has heard the witnesses comes the time for it to hear the

speeches of the lawyers, the arguments of counsel. The lawyers have the right to argue both the facts and the law to a jury and, except in a capital case, the number of speeches and the length is in the discretion of the judge. Except in very long or important cases you will not usually have to hear over two speeches to a side, with a time limit of two hours to a side.

Lodging for the Jurors

It is only in capital cases that a jury is kept together during the progress of a trial. In other cases the judge cautions the jurors not to discuss the case with any person, including the other jurors, until after the charge of the court when they go into the jury room to reach their verdict. In a capital case an officer (or two officers, one a woman, if the jury is mixed) is put in charge of the jury. He furnishes the jury such accommodations as the judge may order and they are paid for by the county, or by one of the parties as the court may order. No longer must the officer in charge of the jury swear to keep the jury together although he must swear to keep them in some private and convenient place. He no longer swears to keep them without meat or drink (water excepted). Most of these changes, of course, are in deference to the ladies of the jury.

Judge's Charge

After the arguments of counsel comes the charge of the judge in which he recapitulates the evidence and explains the law with reference to the case. No judge in giving a charge to the petit jury either in a civil or criminal action shall give an opinion whether a fact is fully or sufficiently proven, that being the true office of the jury, but he shall state in a plain and correct manner the evidence given in the case and declare and explain the law arising thereon. (G.S. 1-180.)

That is the law; so if you as a juror render a verdict which the judge does not like and he "blows his top" don't be unduly alarmed. If you have acted honestly, without bribery or corruption, there is absolutely nothing he can do to you about your verdict except gripe. You are the judge of the facts as he is the judge of the law. He has no more right to blame you for an error of fact than you have to blame him for an error of law. The only difference is that the Supreme Court can correct his errors, but there is no higher authority to correct yours.

Reaching the Verdict

After the charge of the court the jury retires to reach a verdict if it can. A verdict must be unanimous. Frequently all 12 jurors do not agree and then we have a "hung jury." The case must be tried over again until some jury does agree.

In a criminal case a jury may render a general verdict of guilty or not guilty of a particular crime, or a special verdict in which the jury finds the facts only and leaves it to the judge to say whether or not upon those facts the defendant has committed a crime. In civil actions the questions or issues are written out and given to you. You answer the questions and the answers are your verdict. The judge may not set aside a verdict of "not guilty," but any other verdict he may set aside, and order a new trial for errors committed in the trial, if he thinks your verdict is not warranted by the evidence, or if you have given either excessive or insufficient damages.

Immunities and Obligations

The law gives to jurors certain protections and imposes certain obligations. No juror may be arrested under civil process during his attendance on or going to and returning from court. If any person shall intermeddle with or deter any person summoned as a juror or witness he shall be guilty of a misdemeanor and fined and imprisoned in the discretion of the court.

If a juror should take a bribe both he and the person giving it are guilty of a felony and can be imprisoned for 10 years. The judge has the power to punish jurors for impropriety, conversing with parties or others in relation to any case to be tried or receiving improper communications. However, good manners, common sense, and elementary honesty will keep any juror on the track; you have no reason to fear that you will unwittingly get yourself into trouble. The judge's instructions are very plain; you need only follow them.

No Reason for Embarrassment

I want to assure you that there is no reason for any woman to be frightened or embarrassed by the prospect of jury service. The courts are required to be open and public; every official except the lawyers and the jurors, is elected and all of them, from the judge down, are dependent upon the public, which you will represent, for their jobs. They are not anxious to offend you or anyone else. If any person attempted to be offensive to you the judge and/or the sheriff would be equal to the occasion.

Now, of course, anybody who goes to court long enough is going to hear a case involving a sex crime. The Lord put sex in his plan of creation and it's apparently here to stay—at least in the forseeable future. The courts are going to have to deal with it as long as they attempt to regulate people. It's appropriate that they should, and nothing which is appropriate is immodest. A bathing suit would be immodest on the dance floor but it's the thing to wear at the beach. Therefore, if the business of the court in which you serve as a juror is to try a sex crime there is no impropriety in your discussing the evidence of the case. After all, you know the facts of life. You don't render yourself more alluring by pretending you don't. There couldn't have been a seduction or a rape in the first place if there hadn't been a woman present; so it's equally appropriate that there should be a woman at the payoff. Indeed, it's in this type of case that you may be able to make a peculiar contribution because you can furnish the woman's point of view—a woman can come nearer telling when another woman is lying than a man can, I believe. And women do sometime accuse men falsely.

The Jury and Liberty

In the closing, I want to call your attention to the words which Blackstone spoke in the 18th century. Even in those days there were those who were advocating trial by judges and bureaus instead of juries. He said: "Let it be remembered that delays and little inconveniences are the price which all free nations and men must pay for their liberties in more substantial matters. It is therefore, a duty which every man owes to his country, his friends, his posterity, and himself to maintain to the utmost of his power this valuable right of trial by jury and to restore it to its ancient dignity."

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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

Cities and Towns

House Numbers

Sanford—A levy of 50 cents on each water user in the town was levied under an ordinance adopted by the board, to cover partially the cost of numbering the houses in town. The ordinance recited that it was necessary that the houses be numbered in order that water accounts might be handled more easily, and directed the clerk to add that amount to the next water bill sent out.

The board also enacted a comprehensive ordinance setting out a system for the house numbering operation. Among other things, the ordinance provides that in cases where question arises as to the proper number to be assigned, the town clerk is to fix the number. Numbers are required on every building fronting on any street or alley, and violations of the ordinance are made misdemeanors. Numbers are required to be at least three inches high and six inches wide, so as to be seen easily from the street.

Garbage Disposal

Raleigh—The city's incinerator and dump will be closed, and in the future all garbage will be disposed of by the land-fill method. The council authorized City Manager Roy Braden to purchase a bull clam shovel and tractor for use in constructing sanitary fills for disposal of garbage by this method.

Salary Increases

Hickory—A "cost of living increase" in the monthly salaries of nearly every member of the police department, including radio dispatchers, deputy clerks and special officers, ranging from $15 to $20 per month, was adopted by the board. It was pointed out that salary increases were not granted to police department personnel when such action was taken last July as to other departments. The present increase is a temporary one, to extend until next year's budget is prepared, at which time a permanent schedule will be adopted, based on rank, length of service and other factors.

New Bern—A $20 monthly salary increase for all members of the police department (to become effective on July 1) was voted by the board, after they had received a petition from the force for an increase in that amount.

Minutes

Concord—"A letter from the Institute of Government requesting that the city furnish the Institute with copies of minutes of the board of aldermen was presented. The purpose of the minutes would be for the Institute to prepare a digest of the minutes of the several municipalities in the state, so that each municipality would know what the others are doing. After discussion Dr. Davis moved that a copy of the minutes of the board of aldermen of the City of Concord be sent to the Institute of Government after each meeting. Mr. Sherrill seconded the motion and the motion carried."

Radio Cars

Albemarle—The fire chief's automobile will shortly be equipped with radio sending and receiving equip-

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COPIES OF ORDINANCES

The full text of any ordinance or resolution reported in "The Clearinghouse" will be sent promptly to any municipal or county official making the request. This service is offered on the theory that it will be helpful to officials contemplating a proposed ordinance or resolution to have in their hands copies of similar ordinances or resolutions adopted in other local units. Write to "The Clearinghouse," POPULAR GOVERNMENT, P. O. Box 990, Chapel Hill, N. C.

Counties

County-Municipal Tax Agreement

Guilford—The board approved a contract with the council of the Town of Hamilton Lakes, under which it was agreed that it will be "mutually beneficial that no tax be levied by either of the above bodies upon the property of the other acquired for governmental purposes, by tax foreclosure sales, by conveyance in lieu of taxes or otherwise, and held by said bodies for any purpose whatsoever." The contract may be cancelled by either party upon 30 days notice in writing, and applies to taxes levied for 1948 and thereafter.

Electrical Inspection Fees

Rowan—The county's electrical inspection code was amended by adoption of the following schedule of inspection fees:

Outlets and wall switches, 1 to 12 in number, minimum fee $2; over 12, each 5 cents; 1 motor, $2, and 25 cents for each additional motor; electric range, water heater, electric water pump, electric sign, electric fence, oil burner and stoker furnace connections, and rectifiers and all machines of like nature, each $2.

The new schedule provides, however, that if these items are inspected when the original installation is made, the minimum fee shall be $1.

Police Radio

Mecklenburg—The Town of Pineville requested permission to use the county rural police wave length for radio equipment to be installed in their police car, for connection with the county rural police department. The commissioners granted the request, subject to revocation at any time, and provided that no expense should be incurred by the county.

Federal Prisoners

Mecklenburg—Chairman S. Y. McAden was authorized by the board to sign a contract with U. S. Marshal Charles Price for the Federal Government, providing for feeding federal prisoners in the county jail at $1.75 per day per prisoner. This sum

is also to include the up-keep of federal prisoners in the jail.

Poll Taxes

Alamance—Any veteran having a disability rated at 10% or more will be exempt from payment of poll tax, under a resolution adopted by the board. Each such veteran will be furnished with a certificate to be presented to the tax lister.

Schools

Mecklenburg—The county attorneys were instructed by the board to take the necessary steps to obtain the approval of the Local Government Commission for the issuance and sale of $3 million worth of school building bonds, approved by the county board in 1946. Of this sum, $1 million will be for the use of the county school board and $2 million for the City of Charlotte.

Bertie—The commissioners approved a petition, subject to approval of the State Board of Education, asking that a special school tax election be held in the Windsor School District on the question of levying there an annual tax not exceeding 20 cents on the $100 valuation, to supplement funds available for the nine months term for the following purposes: to employ a full time music instructor who would teach music appreciation, and to establish a high school band; to supplement the salaries of key personnel, in order to hold them in the local school system; and "for any other worthy cause which the Board of Education deems necessary for the continuance and promotion of a superior school."

County Home

Beaufort—The board approved an order authorizing withdrawal of $50 thousand from the county's capital reserve fund for the purpose of building a county home. Tentative plans for the home call for an 8-room, two-storied, brick-veneered building.

Artificial Breeding of Cows

Rowan—Members of the board of agriculture, together with the farm agent, requested space and the use of equipment in the county agricultural center for a laboratory to be used in connection with the artificial breeding of dairy cows. The commissioners went on record as being sympathetic to this proposal, and instructed County Manager Harry Weatherly to work with the agricultural committee in furnishing such space and equipment.

Farm Agent's Laboratory

Alamance—The board appropriated $1,000 for the purpose of constructing a laboratory for the county farm agent, together with $350 for purchasing equipment for the laboratory.

Sale of County Property

Rowan—The board adopted a motion that all property now held for sale by the county be listed with the Salisbury Real Estate Board.

Hospitals

Washington—A bond order authorizing issuance of $50 thousand worth of county hospital bonds was adopted by the board, along with a tax levy of 10 cents on the $100 valuation to finance the operation, maintenance and equipment of the hospital. The bond order and tax levy are subject to the approval of the voters at a special election set for March 26.

Sanatorium Nurses' Home

Mecklenburg—After studying blueprints for a proposed new home for nurses at the Mecklenburg Sanatorium, which will cost approximately $63,000, the board authorized the Sanatorium Board to call for bids for the construction.

Cities and Towns

(Continued from page 6)

ment in order to have the fire department in touch with the base station in case of emergency.

Telephone Service

Gibsonville—The board adopted a resolution under which it will send representatives to appear before the State Utilities Commission at a hearing involving the quality of service rendered by the Central Carolina Telephone Company, which possesses the telephone franchise in Gibsonville. The resolution stated that service now being rendered locally "is not of the quality deemed adequate and sufficient."

Disabled Veterans

Winston-Salem—The police department was directed by the board not to enforce the time limitations in parking ordinances of the city, including the parking meter ordinance, against vehicles belonging to former members of the armed forces who lost either one or both of their legs, or the use of them, as a result of their war service. This privilege applies only where such veterans have obtained windshield certificates signed by the chief of police, and does not extend to parking in "No Parking" or "Loading and Unloading Zones."

Bond Issues

Sanford—The board voted to apply to the Local Government Commission for issuance of bonds for the following purposes: improvements to water system, $118 thousand; sewerage system, $70 thousand; fire station, $25 thousand; fire alarm system, $25 thousand; fire truck, $17 thousand; and street equipment, $20 thousand. The total of these issues will be $275 thousand.

Hickory—Pursuant to a bond ordinance adopted in 1945, the board voted to ask the Local Government Commission to sell $200 thousand worth of city bonds for the improvement of the municipal airport.

Burlington—In March of last year the citizens of Burlington approved an ordinance authorizing issuance of $650 thousand worth of sewer system bonds, and in September they approved an ordinance authorizing $1,150,000 worth of water bonds. In January of this year the council voted to ask the Local Government Commission to proceed with sale of bonds for parts of these authorized totals, as follows: for sewer system, $325 thousand; and for water system, $475 thousand.

Recreation

Raleigh—An ordinance adopted in 1946 (which created a parks and recreation commission) was repealed by the council, and a new ordinance was adopted in its place, providing for a parks and recreation advisory commission of ten members, who will serve without compensation. Members of the new commission will be appointed by the mayor with approval of the council, and will serve for two-year terms.

The commission's chief function will be advisory. It will be its duty to "investigate, study and consider" the recreational needs of the city, and make recommendations to the council and city manager. The city's recreational facilities are to be operated under the supervision of the director of parks and recreation, who is an appointee of the city manager.

Whiteville—A seven-member park commission was created by the board of commissioners, to consist of four men and three women, and to serve without pay. The commission's first responsibility will be that of obtain-

ing a municipal park, and thereafter it will govern the development and maintenance of parks.

Winston-Salem—The board voted to purchase a ferris wheel, a merry-go-round, and a "kiddie auto ride" (all used) from a company at Charlotte, for $15 thousand. The equipment will be operated at Reynolds Park.

Parking Meters

Lexington—The city commissioners voted to install parking meters on the principal streets, and instructed the parking meter committee to make a study of various types of meters, methods of installation, etc. At the same meeting it was decided to change from parallel to angle parking on the main street.

Raleigh—Contract for 1150 new automatic parking meters was awarded to the Karpark Corporation, after bids had been received from five of the six companies known to be selling meters in this country. The Karpark company offered to furnish the meters, with standards, collars, and accessories, at the following prices F.O.B. Cincinnati: Model KSP, 12 minute, 1c, at $67.50; Model KSPPN, 1 hour, and any other time and coin combination, at $71.50. If standards and collars are not needed, these prices are reduced for each meter by $3.25. Extra material furnished includes one coin carrying case for each 30 meters furnished; one extra coin box for each meter; three mechanisms and one housing for each 100 meters purchased; sufficient spare parts for one year; and the services of a company engineer to supervise installation and train city service men.

Among numerous other provisions in the offer was one under which the company would allow $28 for each used meter replaced by a Karpark meter.

Sunday Observance

Raleigh—The city code's provisions with respect to Sunday observance were amended by an ordinance permitting baseball games, merry-go-rounds, swimming pools and recreation parks to be operated on Sundays between the hours of 1:30 and 6:30 p.m. The new ordinance makes it unlawful to open any shop, store, or other place of business (except restaurants, cafes, and hotels) for buying and selling, or to expose for sale, offer to sell, or sell any goods or merchandise between 10 a.m. and 12 noon on Sundays. And it prohibits the sale of beer or wine between 12:01 a.m. and midnight on Sundays, as well as the delivery of beer or wine from the premises during those hours. Violation of any of the provisions of the ordinance is made a misdemeanor, punishable by not more than $50 fine or 30 days' imprisonment.

Milk Inspection

Greensboro—An ordinance amending the city code with respect to foods and drinks was adopted by the council, so as to authorize the health department to test milk for other governmental units, when personnel and facilities are available without impairing service to the city. The following charges will be made for such tests: for direct microscopic bacterial count, 50 cents; for plate count on milk specimens, $1.

Building Line Requirements

Lexington—An ordinance establishing permanent building line requirements on certain streets was adopted by the board, for the purpose of allowing for broadening of the streets involved. The ordinance makes it unlawful to build within the space set off by the building lines; provides that if the lot owner and the city commissioners cannot agree upon a price for the part of the property within the new lines, then upon petition of the owner or of the city commissioners the damages to the owner may be determined by arbitrators as provided in the city's charter, or under the general law; provides that upon the actual widening of the street upon which each lot faces, the benefits of the lot owner shall be assessed according to law; sets a penalty of $25 for each day's violation of the ordinance; and provides that wherever on the streets concerned there is a block on which business property has been erected for a distance of 50% or more of its frontage, then the owners may request the City Planning Board to change the building line requirements so as to conform with the buildings already constructed.

The same ordinance also has a provision making it unlawful for any person to subdivide any property within the corporate limits without first submitting plans to the planning board, showing location of streets, their names, size of the lots, etc.

Penalties for Traffic Violations

Raleigh—The city code was amended so as to permit persons who commit traffic violations involving double parking, parking in loading, bus, or fire hydrant zones, to present themselves at the Traffic Violations Bureau and pay voluntarily a penalty of $5, provided they waive in writing the issuance and service of a warrant, and provided they plead guilty. As to all other traffic violations, the penalty will be $1, under the same arrangement as above outlined. Acceptance of penalty and plea by the Traffic Violations Bureau shall be deemed a complete satisfaction for the violation, and the violator is to be given a receipt which so states.

Privilege License Taxes

Gibsonville—The town's ordinances were amended so as to levy new annual privilege license taxes as follows: On every person, firm or corporation engaged in selling fresh meats at retail, $10; and on laundries, launderettes and/or any type self-service laundry, $12.50.

Poliomyelitis Drive

Concord—The city will contribute $300 to the local drive against poliomyelitis, the money to come from non-tax revenues.

Taxicab Regulations

Greensboro—The council adopted an ordinance amending the city code with respect to taxicabs. Under the

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Recent Supreme Court Decisions

Of Interest to City, County, and State Officials

By HENRY W. LEWIS
Assistant Director
Institute of Government

The Supreme Court of North Carolina has recently:

Decided that having admitted a will to probate in common form the Clerk of Superior Court has no power thereafter to enter an order vacating the probate once a caveat has been filed and the cause transferred to the civil issue docket of the Superior Court for trial in term.

The events giving rise to the litigation in the case *In re Will of Hine*, 228 N. C. 405 (opinion filed 19 December 1947), ran in this sequence: The Clerk of Superior Court upon proper petition found that a paper writing purporting to be a will together with two other paper writings purporting to be successive codicils to the purported will comprised the last will and testament of the decedent. As the will, the Clerk admitted the three paper writings to probate in common form. Subsequently a caveat to the second codicil was filed by two beneficiaries under the first codicil, and the Clerk transferred the cause to the civil issue docket for trial in Superior Court before the judge. Pursuant to G.S. 31-33 the Clerk caused citations to the proper parties to be issued and served. At this point the executor and a beneficiary under the second codicil filed a motion before the Clerk praying that the entire probate proceedings before the Clerk be stricken out, and that the will and second codicil only be probated in common form and re-recorded as such *nunc pro tunc*, assigning as the reason for this petition the fact that the second codicil had the effect of revoking the first codicil. Before the motion to expunge was heard, an answer was filed to the caveat to the second codicil by the same parties that had filed the motion to expunge. The caveators then appeared specially before the Clerk and moved to dismiss the motion to expunge on the ground that the Clerk had no jurisdiction to entertain the petition or to enter an order granting the relief demanded. Later the Clerk heard the petition to expunge the original probate, and found as a fact that the original probate was "erroneously and improvidently ordered by this court and that the same should be set aside in its entirety and that the true will and codicil . . . should be probated in common form *nunc pro tunc*" and ordered that the record of the original probate be stricken and that the will and second codicil be probated in common form *nunc pro tunc*. The caveators appealed from this order to the Superior Court where the Judge found that the second codicil revoked the first and that the first codicil should not have been admitted to probate. He held that the Clerk had jurisdiction to entertain the motion to strike out the original probate, that there was no defect of parties, and that the order of the clerk should be affirmed. From this judgment of the Superior Court the caveators appealed to the Supreme Court.

The Supreme Court unanimously agreed that the probate jurisdiction of the Clerk of Superior Court is original and independent. When a Superior Court Judge considers an appeal from a Clerk in probate matters he acts in an appellate capacity, and does not take jurisdiction by virtue of the provisions of G.S. 1-276, the statute requiring the Superior Court judge to hear and determine "all matters in controversy" where a civil action or special proceedings instituted originally before the Clerk has "on any ground whatever" been sent to the Superior Court before the judge.

When a will has been admitted to probate in common form by the Clerk and properly recorded the "record and probate is conclusive in evidence of the validity of the will, until it is vacated *on appeal* or declared void by a competent tribunal." At the time of application for probate, and at any time within seven years thereafter, any interested person may enter a caveat to the probate before the Clerk (G.S. 31-32), at which time the Clerk, after proper bond is filed, must transfer the cause to the Superior Court for trial.

This is not to say that the Clerk has no power to set aside a probate in common form in a proper case. It does mean, however, that the Clerk has no power to set aside a probate in common form upon grounds that should be raised by caveat. That, the Supreme Court held, was the situation in the *Hine case*. While the Clerk may, on motion of a party, correct clerical errors in the records so as to make them express the truth, "this power cannot be extended to the correction of judicial errors, so as to make a judgment different from what was actually rendered," although that judgment may be erroneous. "It is intended to correct an error in expression, and not an error in decision."

Reversing the trial court, the Supreme Court held that in the present case, the order of the Clerk from which the appeal was taken went far beyond the limits of the rule. It did not merely correct, or purport to correct the record so as to show what actually happened in the original probate proceeding. It wiped the slate clean and started anew. "This the Clerk may not do."

Decided that the 1947 Act of the General Assembly designed to protect the right to work by outlawing contracts requiring membership in labor unions as a condition of employment does not violate either the Fourteenth or First Amendment of the Constitution of the United States, or Article I, Section 17, of the Constitution of North Carolina; State v. Whitaker, 228 N. C. 352 (opinion filed 10 December 1947).

The pertinent portions of the Act in question here, Ch. 328, Session Laws of 1947, make any agreement between employer and union to make union membership a condition of employment "an illegal combination or conspiracy in restraint of trade." It further prohibits employers from requiring a person to refrain from joining a union as a condition of employment (i. e. prohibits "yellow dog" contracts), and provides that no employer shall require any person to join a union or pay fees of any kind to any union as a condition of employment or continuation of employment. Chapter 75 of the General Statutes makes combinations, conspiracies, and contracts in restraint of trade illegal and punishable as

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The Attorney General Rules

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

★

I. AD VALOREM TAXES

A. Matters Relating to Tax Listing and Assessing

13. Exemptions—private business enterprises

To Charles E. Johnson.

Inquiry: Is it permissible for a county to extend a tax exempt status to a new manufacturing enterprise for a period of years in order to encourage new enterprises to locate in the county?

(A.G.) In my opinion such an exemption is not authorized by the Constitution or by the Machinery Act governing **ad valorem** taxation. Property used for commercial purposes is not exempt even if owned by municipalities. The Constitution of North Carolina, Article V, Section 3, lays down the rule of uniformity with respect to taxes on property. To exempt the property of one manufacturing enterprise for a period of years, while taxing the property of another, would be contrary to this constitutional requirement of uniformity. Article V, Section 5, grants to the Legislature the power to exempt certain property. Pursuant to this grant of power, the Legislature has provided in Section 600 of the Machinery Act (G.S. 105-296) that "the following real property, and no other, shall be exempted from taxation." An exemption to commercial enterprises, in order to encourage their locating within the county, is not included among the exemptions provided by the General Assembly.

15. Exemptions—cooperatively owned power lines

To Matthew A. Stroup.

Inquiry: Is property of the REA stored in a town subject to **ad valorem** taxes?

(A.G.) The answer to the question is found in Section 117-19 of the General Statutes, which reads as follows: "Whenever an electric membership corporation is formed in the manner herein provided, the same shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said electric membership corporation and is used for the purposes for which the corporation was formed."

HARRY McMULLAN
Attorney General of North Carolina

30. Situs of personal property

To Robert T. Wilson.

Inquiry: Should musical machines, record players and piccolos, owned by non-residents, be listed for taxation in the county where located?

(A.G.) I call your attention to Chapter 836 of the Session Laws of 1947, which amended Section 800, Subsection (4), of the Machinery Act of 1939 by adding the following clarifying provision: "When tangible personal property, which may be used by the public generally or which is used to sell or vend merchandise to the public, is placed at or on a location outside of the county of the owner or lessor, such tangible personal property shall be listed for taxation in the county where located." In view of this provision, I think it is clear that music and vending machines owned by non-residents, but located in various stores in your county, should be listed for taxation in your county in the name of the owners of such machines.

51. Nature of property

To Robert T. Wilson.

Inquiry: Should bathtub and fixtures be listed for taxation separately from the realty?

(A.G.) I am of the opinion that bathtubs and other bathroom fixtures, being permanently affixed to the realty are a part of the realty itself and should be assessed as a part of the realty. Of course when the realty is subject to reassessment, the presence of a bathtub and other bathroom fixtures, as well as other permanently attached fixtures such as heating plants, should be taken into consideration when arriving at the assessed valuation of the real estate. Such fixtures, however, are not to be regarded as personal property subject to annual and separate valuation.

88. Deduction in case of loss by fire

To Louis C. Allen.

Inquiry: A building was destroyed by fire on April 10, 1947. Please advise whether or not there can be an adjustment of the *ad valorem* taxes due the county for the year 1947.

(A.G.) No. Section 102-279 of the General Statutes, which lists those types of property which may be reassessed or revalued in years other than quadrennial assessment years, paragraph (c), reads as follows: "As decreased in value to the extent of $100.00 by virtue of improvements or appurtenances damaged, destroyed or removed since the last assessment of such property." Therefore, the board of county commissioners would have the right to revalue real estate upon which buildings have been destroyed by fire to an extent greater than $100.00. However, Section 105-280 requires property to be listed and assessed, as the case may be, in accordance with ownership and value as of the first day of January. It thus appears that a property owner whose buildings were destroyed by fire after January 1, 1947, would not be entitled to any relief until the board passed upon the valuation during the 1948 listing or assessment period, and then for the year 1948 or subsequent years and not prior years.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

62. Soft drink bottlers and dealers

To C. P. Hinshaw.

Inquiry: Does a city have authority, under Section 134 of the current Revenue Act, to levy a license tax upon a bottler's warehouse in which soft drinks are stored and from which they are distributed?

(A.G.) I am of the opinion that a municipality might levy a reasonable tax upon a warehouse, not the principal place of business, of a company taxed by the State under Section 134, under the general taxing power given to municipalities by Section 160-56 of the General Statutes. The limitation with respect to taxation by municipalities of bottlers and distributors of soft drinks is contained in Subsection (f), Section 134 of the Revenue Act, which does not appear to place any limitation upon the right of a municipality to tax a beverage warehouse located within its corporate limits, unless the municipality levying the tax happens to be the one

in which is located the principal place of business of the operator of the warehouse.

77. Representatives of out-of-state concerns

To W. G. Newby.

Inquiry: May a municipality levy a tax on a salesman who sells shoes and vacuum cleaners by sample from house to house, taking orders and forwarding them to companies outside of the State, which orders are shipped directly to the customer?

(A.G.) I am of the opinion that the case of *Nippert v. City of Richmond*, 327 U.S. 416, 90 L. Ed. 760, decided by the Supreme Court of the United States in 1945, invalidates a tax levied by a municipality upon a person carrying on activities described by you.

95. Population basis of tax

To A. J. Riddle.

Inquiry: If there is an official enumeration of the inhabitants of a town, the limits of which were increased in 1947, could the town levy taxes based upon the increased population according to the new census, provided such official enumeration is made prior to the beginning of the fiscal year 1948-49; and should this increased population be recognized by the Revenue Department in the *pro rata* distribution of wine and beer taxes collected in said town?

(A.G.) In my opinion, the 1940 Federal census should be used in making the distribution. Subsection (t) of Section 517 of the Revenue Act fixes the population of the city as of 1940 as the basis upon which the distribution shall be made and there is no provision for a change in the population by any subsequent census. Section 333 of the Revenue Act applies only to the levying of license taxes and, in my opinion, should not be used in distributing funds under Section 517.

IV. PUBLIC SCHOOLS

A. Mechanics of Handling School Funds

2. Signing of vouchers

To A. C. Edwards.

Inquiry: Would a chairman of a school committee, who signs the monthly school payroll for his district as prepared by the principal, be financially responsible in the event there is some defalcation on the part of the principal?

(A.G.) I do not find any statutory requirement that the chairman sign a payroll report for his district, but I do understand that such is required by State Board of Education regulation. In the absence of any collusion, acquiescence in, or knowledge on the part of the chairman of a false report prepared by the principal of the school and signed by the chairman, I am of the opinion that the chairman would not be financially liable for any discrepancy which may later appear in the report.

F. School Officials

6. Liability for tort

To Paul A. Reid.

Inquiry: Is the State Board of Education or the County Board of Education liable for medical expenses incurred by a parent for a child who was injured by the breaking of equipment of the school playgrounds?

(A.G.) No. The only cases in which compensation is provided to be paid by the State are those in which a child is injured by the operation of a school bus on the school grounds,

and the operation of school buses going to and from the schools.

20. School district committeemen

To C. H. Pinner.

Inquiry: Does the school committee have the authority to prohibit persons from soliciting or selling merchandise to school children during school hours?

(A.G.) Section 14-238 of the General Statutes provides that it shall be a misdemeanor for any person to solicit or attempt to sell or explain any article of property or proposition to any teacher or pupil of any public school on the school grounds or during the school day without having first secured the written permission and consent of the superintendent, principal or person actually in charge of the school and responsible for it.

41. School attendance

To J. R. Owen.

Inquiry: May a child, upon reaching his sixteenth birthday, be required to attend the public schools if that birthday does not come until after the opening of the school term?

(A.G.) Under the provision of G.S. 115-302, a child upon reaching the age of sixteen years may not be required to attend the public schools of this State. This is true regardless of the fact that the sixteenth birthday comes after the opening of a school term.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

k. Unanticipated Revenue and Surplus

To J. R. Davis.

Inquiry: Do the county commissioners have the right to use funds derived from the beer excise tax in repairing the county home, where the sum of $30,000 has been appropriated, but is not sufficient to do the work the board desires done?

(A.G.) Section 11 of Chapter 1084 of the Session Laws of 1947, which provided for the increase in the beer and wine excise taxes and distribution thereof to counties and municipalities, provides: "The funds allocated to counties and/or municipalities under this Act may be used by said counties or municipalities as any other general or surplus funds of said unit may be used." I am of the opinion that the transfer may be made from a surplus in the general fund, to be used for the purpose of completing repairs upon the county home, after taking care of all other appropriations by making an appropriate amendment to the appropriation resolution and by observing the requirements of G.S. 153-127.

To J. R. Davis.

Inquiry: May the county commissioners spend $600, out of the beer and wine excise tax allocated to the county, for the breeding of cattle?

(A.G.) Section 11, Chapter 1084, Session Laws of 1947, which provided for the increase in the beer and wine excise taxes and distribution thereof to counties and municipalities, provides "The funds allocated to counties and/or municipalities under this Act may be used by said counties or municipalities as any other general or surplus funds of said unit may be used." I am of the opinion that if the expenditure for breeding cattle is a "public purpose," and I do not have sufficient facts before me to determine this, proceeds from the beer excise tax could be used for such purpose by adopting an appropriate amendment to the appropriation resolution. I believe this is justified in this instance, in view of the receipt after adoption of the resolution of an unusual amount of miscellaneous revenues, and the restriction contained in G.S. 153-124 which prohibited the board from estimating miscellaneous revenues at a figure greater than 10% of the actual receipts from miscellaneous revenues in the preceding year.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

F. Contractual Powers

5. Lease of city property

To William Medford.

Inquiry: A town purchased a lot about twenty years ago for the pur-

pose of building a town hall, but those plans have never materialized, and only a small part of the lot is used for a building that is used as a town hall. The town proposes now to lease the remainder of the lot to an oil company for the purpose of erecting a filling station, by the terms of which the building would become the property of the town at the end of ten years. May the town validly enter into such a lease, and if so, must the board of aldermen advertise as in the case of a sale of municipal property?

(A.G.) In the case of *Asheville v. Herbert*, 190 N.C. 732, it was held that a municipality could not sell property which had been dedicated to a public use except by a special Act of the Legislature and a vote of the people. Here, however, the town proposes to lease the property for a period of ten years. G.S. 160-200 (2) authorizes municipalities to sell, lease, hold, manage and control the properties it is authorized to acquire under subsection (1) of said section. This office has expressed the opinion, in a number of instances, that it is not necessary to advertise for bids for thirty days on property that is leased, as G.S. 160-59 is thought to apply only to sales of property. It is possible that a lease could be of such length as to be considered in the nature of a sale, but that is not the case here. I am therefore of the opinion that the town could validly enter into a lease of the portion of the lot without advertising as required in the case of the sale of municipal property.

N. Police Power

19. During state and national emergencies

To John D. Shaw.

Inquiries: In connection with civilian defense a group of men known as auxiliary police were appointed, and the city feels that the need still exists for the continuation of such a police force. The wartime emergency need for such police has expired, so the Civil Service Act has no bearing. May the city designate a body of men, who would take one oath during the year, to handle such matters as might be assigned to them?

(A.G.) The authority granted by Sec. 66, Ch. 366, Public-Local Laws of 1939 is limited to that of naming special police if and when an emergency arises for the protection of designated public or private premises. I do not think that the statute is broad enough to authorize the governing body to appoint an unlimited number of special police on a specified date to serve for a term of one year in any emergencies which might arise; but that on each occasion when an emergency exists which necessitates the guarding of public or private premises, special police could be designated on each particular occasion.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

A. County Commissioners

5. Trading with member of board

To C. S. Alexander.

Inquiry: A bond company for a number of years has written the bond of the clerk of the superior court, and their agent has been appointed to the board of county commissioners. Would it be a violation of the law for this agent to write the renewal bond?

(A.G.) Yes, I am afraid that this would be a violation of G.S. 14-234, which prohibits any person elected as a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested, from making any contract for his own benefit under such authority, or from being in any manner concerned or interested in making such contract or in the profits thereof, either privately or openly, singly or jointly with another. In this case the violation would apparently be only technical but I would not recommend that you become in any manner interested in the renewal of the bond as a representative of a surety company.

L. Local Law Enforcement Officers

30. Slot machines

To R. T. Allen.

Inquiry: Is the following described machine an illegal slot machine within the meaning of G.S. 14-304 through 14-309: A long rectangular box, with a glass top, in one end of which there is a device in the form of a large pistol, and in the other end a target. The device is tripped by the insertion of a penny in the slot, and a shot may be aimed and fired at the target. There is no score to be made, but

merely a question of whether or not the shooter hits the target. There are not prizes or free games given.

(A.G.) It is my opinion that this is an illegal machine within the meaning of the statute regardless of whether prizes are given; the fact that the operator of the machine may or may not hit the bull's-eye when firing the pistol would, in effect, be a varying score or tally ". . . . upon the outcome of which wagers might be made . . ."

37½. Financial responsibility act

To W. H. S. Burgwyn, Jr.

Inquiry: Does the Financial Responsibility Act apply to a person whose license was revoked for twelve months upon conviction of drunken driving on December 20, 1946, which was prior to the passage of the Act?

(A.G.) G.S. 20-230 provides that a person whose license has been revoked under the provisions of the Uniform Driver's License Act will not be entitled to have said license again issued until he "shall have given and thereafter maintains proof of his financial responsibility as provided in this article." A revocation of an operator's license because of a conviction of drunken driving is a revocation under the Uniform Driver's License Act, and I am of the opinion that the person must give and maintain proof of financial responsibility before he is issued a new license.

45. Operating auto-passing school bus

To Arthur A. Atkins.

Inquiry: Is it a violation of the law for a motorist to pass a school bus which has its "stop signal" displayed but which is still in motion?

(A.G.) No, for G.S. 20-217 provides that the motorist must come to a full stop only when the bus is stopped and engaged in receiving or discharging passengers therefrom upon the roads or highways or upon any street.

Q. Municipal Officers

4. Residence

To T. R. Spruill.

Inquiry: Is it legal for a town to employ a policeman who maintains his permanent residence outside the corporate limits of the town?

(A.G.) A police officer is a municipal officer and must be a qualified voter of the town which employs him, as Chapter 160, Section 25, of the General Statutes requires. However, it is my opinion that the officer, though not a qualified voter, when once appointed by the proper authorities, is at least a *de facto* officer and his acts are just as effective as if he were a resident and qualified voter of the municipality. Such a police officer's title to office cannot be challenged collaterally but only through a *quo warranto* proceeding brought for that purpose.

Ladies of the Jury

(Continued from page 5)

Duty to Serve

In the days of total war women are military targets as well as men; in every European country they were drafted as men and in the next war they will be drafted here. After all, there's no reason why they shouldn't. To preserve our civilization today requires total participation by us all —men and women—and the impartial administration of justice is the final goal of civilized society. A jury dodger ought to get the same contempt and treatment as a draft dodger—they are both shirking a duty which they owe to their country. The soldier doesn't tell his government when he is drafted that he can't afford to go to war to defend his country; the juror shouldn't tell his government that he can't afford to go to court to participate in the administration of justice. Actually, he can't afford not to. It's not only a duty but it's a liberal education for you.

Women didn't revolutionize politics the day they got the vote; they are not going to revolutionize the courts by serving on juries. However, you can definitely improve the administration of justice and you can set an example to jury dodgers by cheerfully going to court when you are called. So far I know, when women got the right to serve on juries the last barrier to their full participation in government was removed. The time has come for the women to put up or shut up.

The right to a trial by jury is one of our most priceless heritages—don't neglect it.

Cities and Towns

(Continued from page 8)

new ordinance, it will be unlawful after July 15 for any taxicab to be operated within the city unless it is upholstered with leather or plastic fabric. The object of the ordinance is to insure that taxicabs have clean upholstery, and owners are required to replace any upholstery found by the police department to be unsanitary.

The ordinance divides the city into two zones for taxicab rate purposes, and sets the following maximum schedule of fares: for each whole uninterrupted trip within a zone, for 1 to 5 passengers, 40 cents; for each whole uninterrupted trip when more than one zone is entered, for 1 to 5 passengers, 60 cents; for each additional piece of hand luggage over three per trip, 10 cents; for steamer trunks carried within the cab, each 25 cents; for trunks carried outside the cab, each 50 cents; for each stop of not more than five minutes in duration before the cab is discharged, 25 cents additional, with waiting time computed on a basis of $2.50 per hour; and for an interrupted trip when the first passenger employing the cab consents to an additional passenger or passengers, a maximum of 25 cents per passenger when all passengers are discharged within a zone, and a maximum of 35 cents per passenger for passengers entering an additional zone.

The ordinance requires that a map of the zones and a schedule of fares be posted in each cab, that the fares be painted on the sides of the cab in letters at least two inches high, and that a copy of the schedule be filed with the city clerk.

Under the new ordinance, all operators' permits expire on March 1 of this year, and will expire annually thereafter on March 1. Temporary or beginners' permits will expire six months after date of issuance.

Planning and Zoning

Burlington—The council adopted a resolution providing for appointment of two alternate members to serve on the zoning board of adjustment, acting under authority of Chapter 311

of the Session Laws of 1947. Under this amendment to the General Statutes, municipal governing bodies are authorized, in their discretion, to take this step; and the alternate members so appointed are empowered to serve at board meetings in the absence of regular members for any cause. The alternates are appointed for the same terms as regular members and, while attending meetings in place of regular members, have all the powers and duties of regular members.

Burlington—The city planning and zoning commission was requested by the council to make a study of the possibility of widening and numbering the city's streets, with particular consideration for the future growth of the city.

Albemarle — The board approved appointment of a committee to act as an advisory planning council to work with the city's planning board. The new committee is made up of representatives from the Rotary Club, Lions Club, Chamber of Commerce, Junior Chamber of Commerce, Veterans of Foreign Wars, American Legion, and from the county government.

Raleigh—The council's zoning and planning committee recommended that the council start preparation of a modern building, electrical and plumbing code, and that this work be begun by a committee composed of three architects (one to be a landscape architect, three engineers (one to be a sanitary engineer and one an electrical engineer), two building contractors, two electrical contractors, two plumbing contractors—all to work with the city manager, city attorney, building inspector and director of public works. The recommendation was unanimously approved by the council.

City Automobiles

Winston-Salem—The police committee recommended to the board that as a matter of policy police cars should be sold or traded after they have been driven for 50,000 miles.

Driveways

Burlington—Persons desiring to construct driveways across sidewalks in the city will be required first to obtain a permit from the building inspector, and pay a fee of $2 for the permit, under an ordinance adopted by the council. In addition, bond in an amount equal to twice the cost of the driveway must be filed with the inspector by the property owner, conditioned upon faithful compliance by the owner with the provisions of the ordinance. Furthermore, all driveways constructed henceforth must be removed by the property owner within 60 days after the property changes to a use which does not require driveway facilities. In that case, the owner will be required to re-set the curb and re-lay the sidewalk to the correct grade.

Albemarle—Driving vehicles across sidewalks, curbs or gutters except where driveways are located is prohibited under an ordinance adopted by the board. Persons expecting to cross sidewalks, etc., where driveways are not provided, are required to post bond in an amount not less than $100 to protect the city from loss or damage resulting from the crossing. In addition, the ordinance prohibits driving across any sidewalk through a driveway when the vehicle is of such weight as to cause damage to sidewalk, curb or gutters.

Floor Furnace Regulation

Greensboro—The council adopted a comprehensive ordinance regulating the installation of floor furnaces using gas or oil for fuel. Some of the requirements are as follows: Permits for installation, at a fee of $2, must be obtained from the permit clerk before installation begins; no floor furnace may be installed which does not bear the seal of approval of a recognized testing laboratory; and no such furnace may be operated until it has been inspected and approved by the city inspection department.

Other regulations relate to required sizes, placement, floor bracing, air for combustion, clearance, protection from water seepage and storm water overflow, access for servicing, venting and chimneys, with special regulations for oil burning furnaces.

The ordinance contains a provision that it shall not be construed as imposing liability upon the city for damages resulting from any defect in any piping or appliance covered by the ordinance, nor as imposing liability upon the city by reason of the inspection authorized in the ordinance.

Delinquent Water Accounts

Burlington—An ordinance was adopted authorizing the city clerk to apply any deposit made by a water consumer against any sum due the city for water furnished more than 12 months previously. If the amount of the deposit is insufficient to cover the indebtedness of a delinquent water consumer, the clerk is authorized to charge off the remainder against the reserve set up for bad accounts, provided the clerk has determined that the remainder is not collectible.

Water Rates

Hickory—The following schedule of charges for water became effective in February, by action of the council: First 500 cubic feet, at .24 of one cent per 100 cu. ft., $1.20; next 3,000, at 22½ per 100, $6.75; next 3,000, at .21 per 100, $6.30; next 8,000, at .18 per 100, $14.40; next 20,000, at 17¼ per 100, $34.50; next 20,000, at 16½ per 100, $33.00; next 40,000, at 15¾ per 100, $63.00; next 40,000, at .15 per 100, $6.00; next 66,500, at .14 per 100, $93.10; next 66,500, at .13 per 100, $86.45; and next 130,00 at .12 per 100, $156.00.

Supreme Court Decisions

(Continued from page 9)

misdemeanors. *State v. Bishop*, 228 N. C. 371 (opinion filed 19 December 1947) holds violations of the 1947 Act punishable misdemeanors.

Subsequent to the ratification of this Act the defendents, a building contractor as employer, and an officer of a local trades council, and the officers and agents of local American Federation of Labor trades unions, as representatives of the employees, entered into a written contract providing among other things that the employer recognize the unions as spokesmen for the workmen in the industry, and that the employer would hire none but union members affiliated with the contracting unions. The contract was to continue for two years and from year to year thereafter unless either party expressed a

desire for a change ninety days prior to any annual termination date.

At the trial upon indictment in the local police court the defendants were convicted. Upon appeal to the Superior Court where there was trial *de novo*, they were again convicted and fined $50 each and costs.

On appeal to the Supreme Court the defendants asserted that the North Carolina statute violated the Fourteenth Amendment of the United States Constitution (i. e., the prohibitions against any state's abridging the privileges or immunities of United States citizens, against taking life, liberty or property without due process of law, and against denying the equal protection of the laws to any person in its jurisdiction, Article I, Section 17 of the Constitution of North Carolina (i. e., the state prohibition against depriving a person of his life, liberty or property "but by the law of the land"), and also the First Amendment's guarantee of freedom of speech and of assembly as derived through the privileges and immunities clause of the Fourteenth Amendment.

Mr. Justice Seawell wrote the Supreme Court's unanimous opinion sustaining the convictions below, and holding the statute constitutional.

The Court reasoned that the statute under which the defendants had been indicited was an attempted exercise of the police power reserved to the individual states by the Tenth Amendment of the Federal Constitution. The power of the State by general legislative act, in the exercise of its police power, to condemn private contracts found to be injurious to the public welfare, to declare them contrary to public policy and prevent their consummation, is generally conceded. It is simply a question of whether this power has been exercised within constitutional limitations, the limitations in this case being the requirement that "due process of law" be observed. If within those limitations, the exercise of power is within the legislative discretion.

Due process of law is an elastic concept changing with both the times and the problems to be solved. The right of contract, whether called natural or merely civil, is a property right, but neither property rights nor contract rights are absolute, "for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. . . . . The guarantee of due process [in regulating such rights in the common interest] . . . . demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." This requirement as to means must be judged in the light of the conditions under which the General Assembly saw fit to enact the statute.

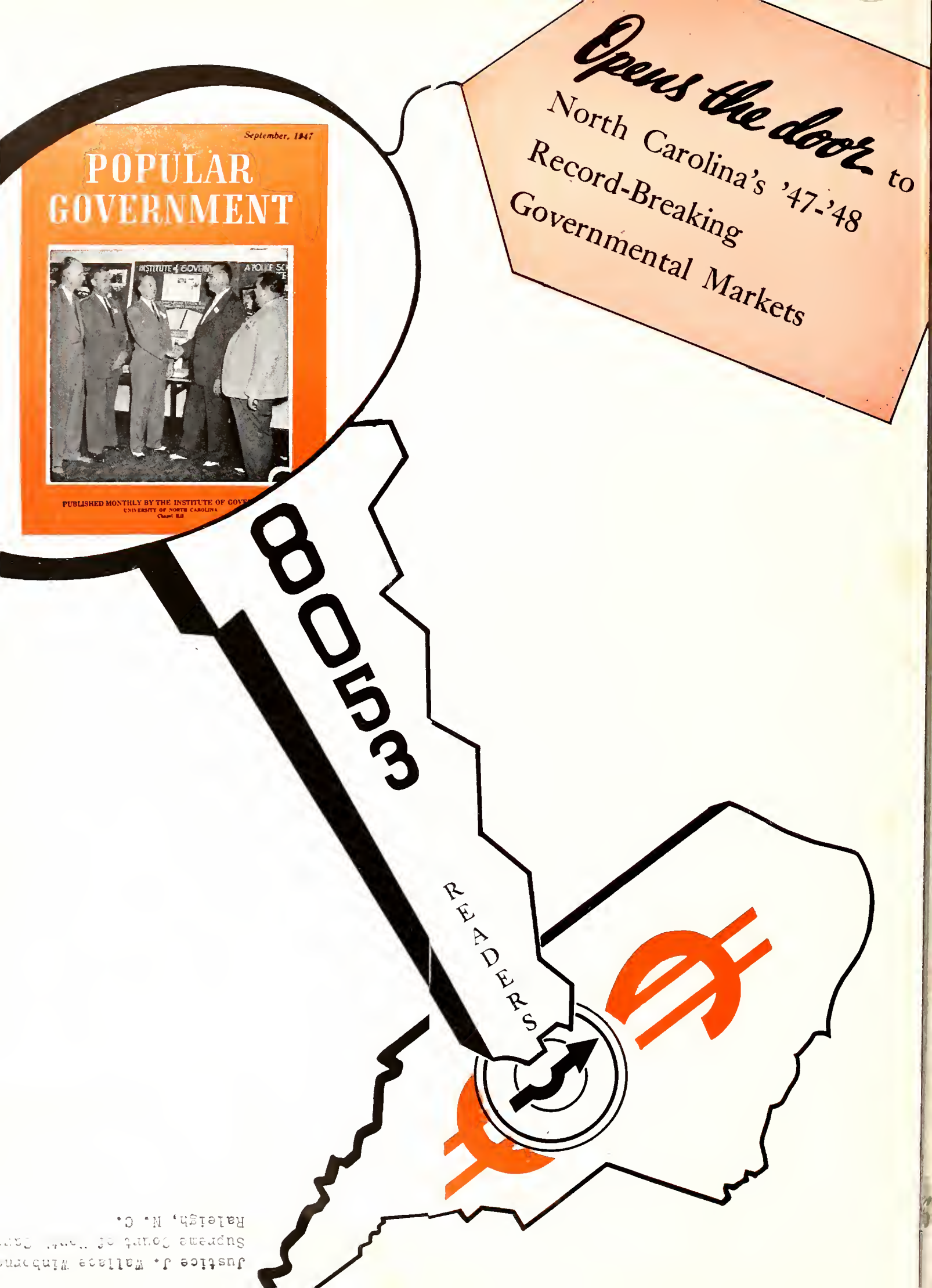
Mr. Justice Seawell, after reviewing the history of labor-management relations in the United States, pointed out that both the National Labor Relations Act of 1935 and its 1947 successor, the Taft-Hartley Act passed contemporaneously with the North Carolina statute in question, specifically provided that neither Federal Act was to be construed as authorizing closed-shop contracts in any state where they are prohibited by state law. The committee report accompanying the Taft-Hartley Act to the floor of Congress clearly stated that this provision "expressly declares the subject of compulsory unionism one that the States may regulate concurrently with the United States, notwithstanding that the agreements affect commerce, and notwithstanding that the State laws limit compulsory unionism more drastically than does Federal law."

The Court was also impressed by the fact that at least 15 other states within a short length of time had seen fit to exercise their police power in the same manner and for the same purposes. "The composite will of such a broad cross section of our country cannot be lightly discarded as unreasonable, arbitrary or capricious or lacking in substantial relationship to its objective."

To the defendents' contention that the North Carolina statute is class legislation and as such discriminated against the defendants so as to deny them "equal protection of the laws," the Court answered that the employer-employee relationship itself had been long recognized as a constitutional justification for legislation affecting only persons in that relationship, and that the only inquiry was whether the statute applies alike to all employers and all employees within its scope found in like circumstances. Police power legislation necessarily affects different persons and groups in different degrees, and thus the Act may make it possible for a non-union worker to get a "free-ride" by receiving benefits from the expense and effort of union workmen. In the Court's opinion neither this nor other "illustration of variable incidences can render the Act discriminatory." It applies to the whole geographic area of North Carolina, and its provisions apply with equal force to all employers and all employees within those boundaries. Within the scope of its authority it could hardly be more uniform.

On the argument that the statute abridges the rights of free speech and assembly the court spent less time. It was pointed out that while statutes prohibiting peaceful picketing and statutes making the procurement of an organization card a prerequisite to soliciting workmen to join unions have been held unconstitutional as violating the natural rights secured by the First Amendment. the North Carolina statute bears no resemblance to such statutes. The court felt that on the contrary it might serve to secure the rights of free speech and assembly to all concerned, since it protects the workmen's right to organize and protects their rights to express individual opinion by refusing to join unions. The right of both sides in a labor controversy to assemble and publicize their own ideas remain inviolate. Regardless of the value of closed-shop agreements, it was felt that the freedom of discussion and dissemination of ideas in labor disputes are more restricted by such agreements than by a statute stressing individual initiative and liberties by prohibiting the use of union membership or its absence as a condition of employment.

The Court noticed the fact that the defendents did not dispute the constitutionality of the section of the statute prohibiting "yellow dog" contracts while violently assailing the validity of the rest of the Act. "We cannot accept this view. In either instance the State is merely delineating the area within which two factions with largely conflicting aims may wage their disputes without transgressing the public welfare. If the State may say to the employer, 'you cannot deny work to anyone because of his membership in a union,' we think it follows *a fortiori* that the State may say to the parties, 'you cannot deny work to anyone because he is not a member of a union'."



Justice J. Wallace Winborne
Supreme Court of North Carolina
Raleigh, N. C.