

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

May, 1948

POPULAR GOVERNMENT



Board of Directors, County Commissioners' Association

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT
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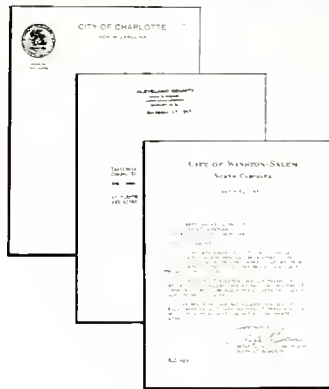
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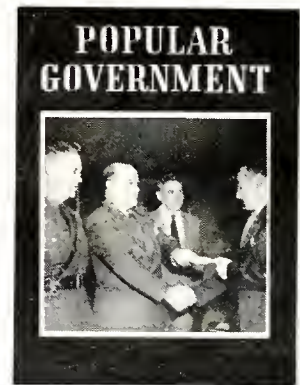
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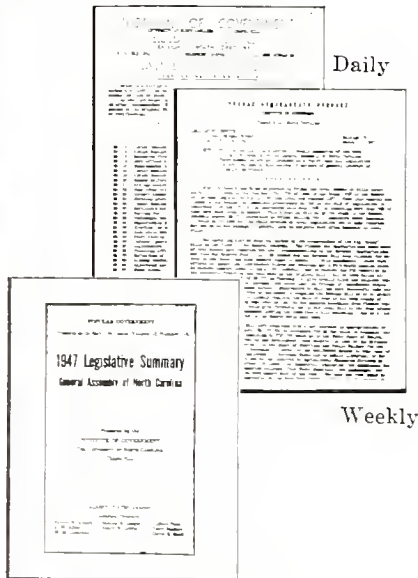


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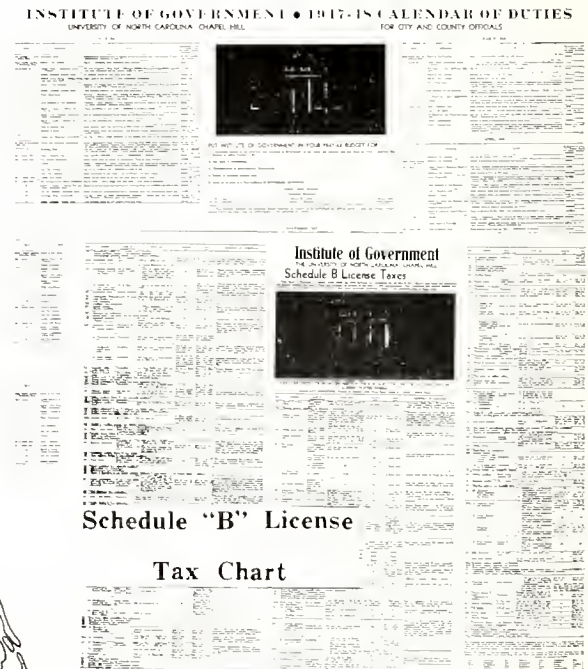
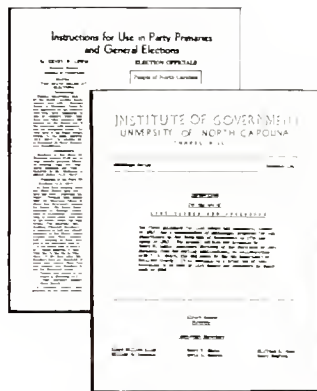
Calendar of Duties



Daily

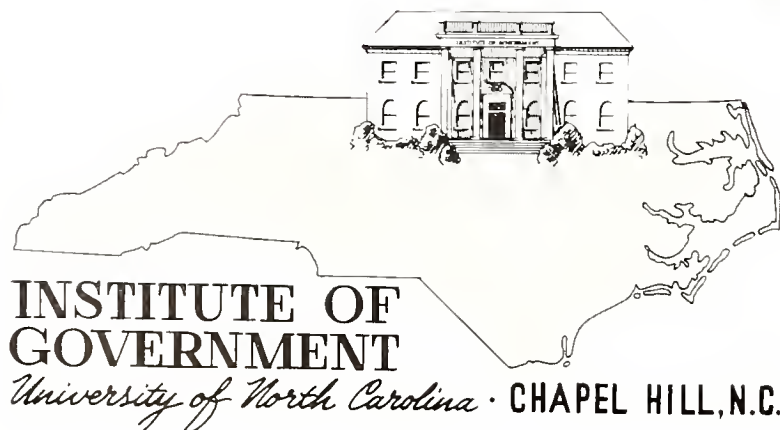
Weekly

Summary



Schedule "B" License

Tax Chart



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County Commissioners And Accountants Plan Joint Annual Meeting

Morehead City

On June 15, 16, and 17, county commissioners from all over North Carolina will sit down together at Morehead City to get acquainted and to discuss their common problems. The occasion will be the forty-first annual convention of the State Association of County Commissioners. The program will include entertainment for officials and their wives as well as serious study of the current needs of local government at the county level.

Legislative Program

An important task facing the assemblage will be the adoption of the Association's 1949 legislative program. In this connection, Association President J. Caldwell McDonald of Mecklenburg made the following statement: "In formulating our legislative program, we must make recommendations for legislation affecting the schools, public-local laws, welfare department, merit system, tubercular hospitals, roads, staggering terms of commissioners and extending them to four years, and other things vital to the operation of county government. It is imperative that every county commissioner attend the meeting."

District Meetings

In district meetings held since the first of the year in the ten district divisions of the Association, these subjects have already been threshed over by the commissioners attending. In the light of sentiment expressed at these district meetings, resolutions will be presented at the Morehead City convention for consideration and adoption by the whole Association.

Registration

The convention will open with

COVER PICTURE

Since early in 1948, the ten district divisions of the State Association of County Commissioners have been holding their district meetings all over the state, each presided over by the district's director. On April 17 the directors themselves met in Raleigh, to report on the work done at the district meetings, and to lay plans for the state-wide convention at Morehead City in June (See story on this page). The picture on the cover was made during the Raleigh meeting, and shown therein are: (sitting, left to right) R. P. Holding of Johnston, director of the fourth district and vice-president of the Association; J. Caldwell McDonald of Mecklenburg, president; John Skinner of Warren, secretary-treasurer; (standing, left to right) Clarence P. Parks of Rutherford, ninth district director; Mark Goforth of Caldwell, eighth district director; F. Knox Watson of Hoke, sixth; Addison Hewlett of New Hanover, third; Dan Taylor of Beaufort, second; Arnie D. Cashion of Mecklenburg, seventh; J. Henry Vaughan of Nash, past president; and Curtis Ellis, Nash County Accountant.

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registration at 2 p. m. on Tuesday, June 15, at the Ocean King Hotel in Morehead City, and the first session will begin at 7:30 o'clock that evening.

State Association of County Accountants

Meeting jointly with the commissioners will be county accountants and tax supervisors, and in accordance with a long standing custom, the accountants and supervisors will hold their annual separate session on Wednesday afternoon at 3 o'clock.

Program

The program will include addresses by Charles M. Johnson, Director of the Local Government Commission and State Treasurer; Grady Rankin, Chairman of the State Education Commission; A. H. Graham, Chairman of the State Highway Commission; Gordon Maynard, Secretary of the Portland Cement Association; Albert Coates, Director of the Institute of Government; and Dr. W. D. Daniel, Dean Emeritus, School of Arts and Sciences, Clemson College.

The full program will be published in the June issue of POPULAR GOVERNMENT.

In their announcement sent out in April to all members of the Association, President McDonald and Secretary John Skinner of Warren urged that all commissioners be on hand for the convention. They said: "This will be the biggest and best state convention the county commissioners have ever had. We need every county commissioner in North Carolina to be there—to help plan and learn how to run our counties better—to find out what other counties are doing—to advise and pass on our legislative program. Make your reservations now. May we see you at Morehead City."

Jail Conditions

Advisory Committee of Law Enforcement Officers Meets with State Welfare Commissioner to Study Needs of County Jails and City Lock-ups

Chapter 915 of the Session Laws of 1947, enacted by the last General Assembly, reads in part as follows: "The State Board of Public Welfare is hereby authorized and directed to consult regularly with an advisory committee of sheriffs and police officers regarding the personal safety, welfare, and care of inmates incarcerated in county and municipal jails and city lock-ups, taking into account variations in the financial ability of cities and counties to maintain up-to-date facilities for prisoners."

Advisory Committee Meets

The first meeting of the advisory committee of law enforcement officers authorized by this new law was held on 17 February in the office of Dr. Ellen Winston, Commissioner, State Board of Public Welfare. The committee met to study the administration, operation, and standards of the existing jails and lock-ups in North Carolina, and local, state, and federal representatives attended the meeting. Representing the North Carolina Police Executives' Association were its president, Chief L. L. Jarvis of Greensboro; Chief C. J. Lovett of Asheboro; and Chief John M. Gold of Winston-Salem. Representing the North Carolina Sheriffs' Association were its president, Sheriff C. J. McDonald of Moore County, its secretary-treasurer, John R. Morris of New Hanover, and Sheriffs C. V. Faulkner of Nash and George M. Andrews of Chatham. State officers present were Walter Anderson, Director of the State Bureau of Investigation; J. Mark Boone, Jr., State Insurance Department; J. M. Jarrett, State Board of Health; J. B. Moore, Inspector of Correctional Institutions for the State Board of Public Welfare; and Dr. Ellen Winston, Commissioner, State Board of Public Welfare. The Federal Government was represented by U. S. Marshal Ford Worthy. Representatives of the Institute of Government were Terry Sanford and W. M. Cochrane.

Program

The meeting was presided over by Mr. Moore, and the discussion was opened by Dr. Winston, who stated the

purpose of the meeting and outlined the topics to be considered. Summaries of the remarks of the various committee members follow.

Federal Requirements

U. S. Marshal Ford Worthy spoke to the group with regard to the interest of his department in the jail system. He said that the Bureau of Prisons is interested in having clean, wholesome places in which to retain its prisoners. In his district are 44 jails and at this time only two of them are approved by the Bureau of Prisons. He stated further that the average citizen has little interest in the county jail and it is difficult to get local people interested. He thought

that the food in most jails is poorly prepared and a big problem is the type of kitchens as well as the fact that the Federal Government requires three meals a day for prisoners. Mr. Worthy observed that the present price paid for prisoners is not enough for adequate feeding and that in his opinion the Federal Government would probably be willing to pay a somewhat higher rate than is paid at present. He also pointed out that even when a jail is clean and sanitary, an incompetent person may be employed to manage the jail. Lack of personnel and general management, he said, are two main problems in the jails in Eastern North Carolina.

COUNTY JAIL INSPECTION FORM

County	Date	Inspector
A. Personnel		
1 Sheriff		
2 Jailer	Full or part time	
To whom responsible		
Salary	Maintenance	
Turnkey fees.	Per diem feeding	
3 Asst. Jailer	Maintenance	Salary
4 Matron	Maintenance	Salary
5 Other paid employees		
6 Physician (State)		
7 Physician (Federal)		
B. Administration		
1 How often does sheriff inspect?		
Date of last inspection		
2 Who is responsible for jail keys?		
No. of sets	Type locking device	
3 Is jail secure for safe custody?		
4 Does jail have adequate supervision?	Day	Night
5 Are rules for prisoners posted?		
6 How often are visitors allowed?		
Are visits supervised? by whom		
7 Kind of packages permitted		quantity
who examines?		
8 Are trustees used?	Adequately supervised?	
Basis of selection.		
9 Filing system used: Card	Book	
10 Are prisoners fingerprinted?		
11 Physical examinations within 48 hours?		
C. Building		
1 Location		
2 Type of construction		
3 Do fire hazards exist?		
Are exits accessible?	Extinguishers?	
4 How heated?	Adequate?	
5 Lights and ventilation adequate?		
6 Plumbing: Modern	Antiquated	
No. toilets for:		
White men	Negro men	
White women	Negro women	

Citizen Interest

Walter Anderson, Director of the State Bureau of Investigation, pointed out that one of our greatest problems is the lack of interest of lay people. He thought that if the citizens could be aroused to the needs of sheriffs and police officers, sufficient appropriations could be maintained. He felt that this committee is the beginning of a movement to arouse citizens to one of the neglected phases of governmental functions. He pointed out that if this committee can have a basis of understanding, it will be a means of elevating the administration and responsibility of all present today. He stated that law enforcement has come a long way in the last few years and that he considered this meeting to be another forward step.

Need for Improvement

Sheriff McDonald spoke for the Sheriffs' Association. He pointed out that we have come a long way in improvement of jails and handling of

prisoners but there is still a great need for further improvement. He feels that there is a great deal which can be done also to improve conditions in town lock-ups. Many of them are not safe to keep prisoners. He pointed out that it is hard to keep matches from drunks and therefore there is a fire hazard in most lock-ups. He suggested that the program can be developed by awakening the public to the needs of jails and lock-ups. It will be a long-time program.

Sanitary Inspection

Mr. Jarrett told the group that several weeks ago when Mr. Moore asked him to sit in on this session, they talked about the sanitation of jails and prisons throughout the State and tried to clarify the position of the State and local health departments. Since that conversation, he had reviewed the old laws under which they formerly operated and the present laws. In 1925 the State Board of Health had a section in the

law which specifically gave authority for sanitary inspections. At the time the Highway and Public Works Commission was reorganized, the laws were amended and sections were considerably changed. He pointed out that the local departments are called upon by the Grand Jury to submit reports of sanitary inspections of local institutions from time to time. He requested that a ruling be obtained from the Attorney General clarifying the present responsibilities of the State Board of Health. He pointed out that the State Board of Health works closely with the Highway Commission on prison camp plans. His office has received reports of the deplorable conditions in some of the smaller jails and lock-ups and he would like to see something worked out whereby these conditions would be eliminated. He stressed the point that the health department is willing and anxious to cooperate in any way possible and that the State Health Officer will do what he can to work with all interested agencies.

Safety Inspection

Mr. Boone told the group that the Insurance Department is charged according to law to inspect all State institutions at least once a year. It is also to approve or disapprove building permits, but jails are not listed in this category. The only mention in the building code, which was adopted in 1941, is to buildings in which persons are kept overnight. He pointed out that even if there is a jail of A-1 type, people may still be casualties from fires as often there is an accumulation of combustible material. He used the Winecoff Hotel fire as an example. He pointed out that approximately ten persons died in jails last year because of fire. He quoted statistics from the National Underwriters Company to the effect that 90 per cent of all fires could be eliminated and that about 75 or 80 per cent are caused by carelessness. He stressed the point that proper inspections be made to find fire hazards, with follow-up work to be carried out to see that the hazards are removed.

Institute of Government

Mr. Sanford and Mr. Cochrane expressed interest of the Institute of Government in all problems of law enforcement and offered the cooperation of POPULAR GOVERNMENT and the law enforcement division of the Institute.

No. Lavatories for:			
	White men	Negro men	
	White women	Negro women	
No. Showers or tubs			
Is drinking water available in each cell?			
7 Does jail have legal number of compartments?			
If not, explain			
8 Capacity:	White men	Negro men	
	White women	Negro women	
9 Population on day of visit:			
	White men	Negro men	
	White women	Negro women	
10 Is segregation adequate for:			
Juveniles		Mentally ill	
Contagious diseases		Those awaiting trial	
D. Equipment			
1 Type of beds		Condition	
2 Type of bedding		Quantity	
3 Storeroom—reserve bedding			
Janitorial supplies			
E. Food			
1 No. meals & hours: Brfst	Dinner	Supper	
2 Menu for day of visit:			
Breakfast	Dinner	Supper	
3 Do prisoners report food adequate?			
Prepared in jail kitchen		Cafe	
4 By whom prepared		Supervised	
5 Type of eating utensils			
F. Sanitation			
1 How often is jail cleaned?			
2 How often is bedding changed?			
3 Is there a "jail odor"?			
4 Does debris collect in cells & rooms?			
5 Condition of jail on day of inspection			
6 How often are prisoners required to bathe?			
Are towels furnished?		Soap?	
7 Is jail screened against flies?			
8 Garbage cans—number & condition			
G. Recreation and Rehabilitation			
1 Are religious services held?	How often		
2 Is reading matter available?			
3 Are prisoners allowed to exercise in corridors?			
4 What other activities are engaged in?			

Publicity Following Inspection Reports

Mr. Moore then told the group that after inspections are made by the State Board of Public Welfare copies of the reports are sent to persons directly interested in the recommendations, that is: the presiding judge, the sheriff, the chairman of the board of county commissioners, the foreman of the grand jury, the mayor of the town, and chief of police. He pointed out that the State Board of Public Welfare has no authority to bring about needed improvements but can call them to the attention of the local authorities. The presiding judge has the legal authority.

Inspection Forms

The discussion of the inspection form (reprinted herewith) used for jails was begun by Mr. Moore. He pointed out that it does not cover all subjects which are brought up when an inspection is made. Perhaps one of the most important phases of a jail is its personnel. He brought out the point that the Sheriffs' Association had gone on record as to the recommendations for good jail management.

Jail Management Responsibility

Mr. Moore raised the question of who should be responsible for the jails. Sheriff Faulkner and Chief Gold replied that they felt the county jail should be under the sheriff and the city jail under the chief of police.

Mr. Morris observed that he had visited many of the county jails and he felt that if the sheriff were given the proper amount of money to manage the jail, he would be glad to do it and would do a fine job. He suggested that citizens be invited to see the facilities as this will help to arouse them to needs and then perhaps will result in more help.

Administration

Mr. Moore resumed the discussion of the form used for inspection of jails, taking up the second section—"Administration." The eleven items under this section were discussed with special stress given to the question of physical examinations within 48 hours.

Further discussion of the form was continued and under "Buildings," the

question of segregation and the holding of juveniles in jails were points of special concern. It was suggested that children be supervised by someone other than the sheriff or chief of police. The law forbidding the holding of children in jail was emphasized.

Under "janitorial supplies" in section D, there was some discussion of the best supplies to be bought and the quantity needed. It was pointed out that often too many supplies are purchased.

Sanitation

In the discussion of "Sanitation," the officers pointed out that it is difficult to keep beds clean, that the mattresses are often cut and burned, and that there is difficulty in supervising to see that this is not done.

Proposed Jail Standards

The afternoon session opened with a discussion of proposed minimum standards for all jails. Item number one in the list of Jail Standards submitted to the committee read as follows:

"A jail should be under the direct management and control of a person qualified by training and experience to supervise and control prisoners. As many persons as are necessary to provide constant supervision over the prisoners should be employed and be under authority of a responsible official. Salaries should be sufficient to attract persons of high calibre." There was considerable discussion as to the number of counties and cities which could comply with having a person on duty at all times. It was pointed out that in Virginia when persons have committed a major offense, they are moved to a jail where there is a night attendant. It is not a matter of the length of time a man is held, but the problem is taking proper care of him while there. Most deaths in jails are caused by drunkenness and prisoners usually die at night. There was discussion of the need for 24-hour supervision if anyone is in the jail. The problem might be met in small towns by the attendant having a cot in the lock-up. The group suggested that in small towns whose police station is two or three blocks away from the jail, the jail and police station should be put in the same building. Another suggestion was that each person be thoroughly

searched when put in jail. The group agreed that the officer making an arrest should be accompanied by a deputy.

The group then passed a motion that, "when a person is in jail he must be closely supervised at all times."

Regulations

Item number two, that "*jail officials should have set policies and regulations for the operation of the jail, for the employees, and for the inmates,*" was discussed next. It was proposed that a list of suggested rules and regulations be set up. Dr. Winston asked the group if it would be appropriate for the State Board of Public Welfare to work with Mr. Morris and collect rules and regulations now in writing and then develop suggested rules and regulations for consideration at a future meeting. The group agreed that this was a good idea.

Records

In discussing the third item, "*A uniform system of records for county and city jails, either a card file or ledger system, should be approved which would permit quick reference at all times, and covering charge, race and sex, date and hour of admission and same information covering release from jail. This system would provide a location record for prisoners at all times. The full and complete documentation of these records should be recognized.*" The word "uniform" was changed to "permanent." The question of handling a prisoner's possessions came up. One system is to have a big envelope in which all belongings of the prisoner are put, sealed, and kept in a vault for him. It was further suggested that there should be a witness to this procedure. It was the opinion of the group that this is usually done. The envelope should have a place for the person to sign when the belongings are returned to him. Mr. Anderson commented that he thought this standard was adequate and the group agreed.

Buildings

There were no questions with regard to item four, "*The building should be structurally sound, secure, fire resistant, properly heated, ventilated, and lighted; windows should be screened; there should be a good*

locking system and the devices should be kept in good operating order."

There were no questions with regard to item five, "All parts of the jail should be kept immaculately clean."

Kangaroo Courts

Item number six, "Kangaroo courts or similar inmate organizations should be prohibited. No prisoners should be allowed to have authority over any other prisoners. Employees should fulfill their own responsibilities and not turn them over to prisoners any more than a hospital superintendent turns over his responsibilities to the patients," was discussed at length with agreement that the courts have been abolished for some time. Mr. Moore brought up for special emphasis the sentence that, "No prisoner should be allowed to have authority over any other prisoners."

Trusties

There was considerable discussion of item number seven, "Brutal treatment by employees or prisoners should be prohibited. No prisoner should be permitted special privileges. Trusties, so called, should be under the supervision of employees." It was agreed that each individual must use his discretion in using trusties but that a trusty should not supervise another prisoner.

Medical Care

Sheriff Andrews pointed out that it was sometimes impossible to comply with item number eight, "A competent physician should be available to take care of the medical needs of the prisoners, and to give each prisoner a medical examination when admitted to the jail." Some counties have no county physician. Chief Lovett suggested that the county department of public welfare could help impress the importance of this item on the local units.

Juveniles

There was considerable discussion of item number nine, "Juveniles should not be held in jails. Under state laws, a child under 14 years of age must not be committed to jail. Children 14 and 15 years of age must not be committed unless charged with a felony, the penalty for which must be 10 years or more, and when committed should be definitely segregated and well

supervised, and the county superintendent of public welfare should be notified at once." To their question of what to do with the children Dr. Winston replied that the child could be turned over to the welfare department and that the State Board of Public Welfare would recommend detention in a good boarding home with security features. She stated that Winston-Salem already has a home of this type for Negro boys and that Mecklenburg is developing homes for juvenile delinquents. These homes should be set up over the state. There would not need to be one in each county. The homes would be called boarding homes with detention facilities. It was emphasized that we need an educational program with regard to the law and the need for these homes. Chief Gold pointed out that a close working relationship between the police department and the welfare department is essential in working with delinquents. He also suggested that the police department might have men who are trained social workers and have a crime prevention bureau. The group agreed that a fair statement under number nine would be that the need for boarding homes with security features is recognized.

Mental Patients

A lengthy discussion was held on item number ten, "Mental patients should not be held in jails. Persons requiring confinement and care until admission to State Hospitals should be held in local hospitals where adequate confinement can be provided. Hospitals should be encouraged to provide quarters of an approved type for temporary confinement. These isolation quarters could be so constructed that they could be used for general hospital purposes at other times." The officers pointed out that this was one of their greatest problems. Efforts directed toward the development of security rooms in hospitals for mental patients were discussed. One suggestion was to work with local hospital boards with regard to developing a security room. The group requested that Dr. David Young be invited to the next meeting so that care of mental patients might be further discussed.

Segregation

There were no questions about item eleven, "Prisoners with contagious

diseases, hardened criminals, and the sexes should be segregated. All jails are required to have the legal number of compartments."

Women Prisoners

There was little discussion of item number twelve. "Women prisoners should be under the supervision of a matron at all times. No male employees should have keys to the women's quarters or be permitted to go there unless accompanied by a matron. Male prisoners should not be permitted to go to the women's quarters to carry food or for any other purpose." It was pointed out that in most places women prisoners are taken to the county jail.

Food

Item number thirteen, "Prisoners should be fed three times a day. The food should have proper nutritive value and be prepared and served in a wholesome and palatable way. The eating utensils should be returned to the kitchen and washed with soap and scalding water after each meal," was discussed. The question of the fee system was brought up and it was pointed out that it is better to have an appropriation than to use the fee system. It was thought that this item should be discussed further and it was decided that it would be brought up at the next meeting at which time the discussion of the standards would be completed.

After a summary of the day's work, the Committee adjourned to meet again on May 4th.

In addition to items carried forward the discussion at the May meeting will center on the remaining items of the proposed Jail Standards:

Item Fourteen—"Adequate bathing and toilet facilities should be available, and water, soap and towels should be supplied to each prisoner. These are essentials to the health of any person.

Item Fifteen—"Convicted prisoners should be kept employed. An ingenious jail official can find many ways to occupy the prisoners working for the county, city or state, without interfering with private industry. They should be required to keep their quarters and other sections of the jail clean, always under the supervision of a competent employee.

(Continued on page 15)

THE CLEARINGHOUSE

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

Counties

Radio

Orange—The board authorized its chairman, Collier Cobb, to make application to the Federal Communications Commission for a two-way radio station to be installed in the police station at Chapel Hill. The move was made after City Manager Gilbert W. Ray of Chapel Hill had appeared before the board to outline the plan under which the station will serve on a county-wide basis, as well as in Chapel Hill. The sheriff's car and Chapel Hill's police cars will be equipped with two-way radios, and the Chapel Hill police department will furnish operators 24 hours per day.

Pitt—After discussion of a request by Sheriff Ruel W. Tyson for the installation of a radio remote control system in his office, the board approved the installation, and recommended that the cost be assumed by the County Alcoholic Beverage Control Board as a part of its program of law enforcement.

County Hospitals

Warren—The board voted to fix the number of trustees for Warren County's hospital at 15, with five to serve for two-year terms, five to serve for four-year terms, and five to serve for six-year terms. Thereupon, the board proceeded to elect 15 citizens as trustees for the hospital.

Washington—After canvassing the returns of a special election held on the question of the county's issuance of \$50,000 worth of bonds to be used toward the county's part in construction of a public hospital, the board announced that the result was in favor of the bond issue as follows: 1183 registered and qualified voters for the election; 718 votes cast in favor of the bond issue; and 49 votes cast against the proposal.

Pitt—A request by the trustees of the proposed county hospital for an appropriation of \$1,500 to cover cost of preliminary topographical and engineering surveys of the hospital site, and preliminary architectural plans and studies, was approved by the

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board. It was explained that such preliminary plans and studies, when drafted by the architects and accepted by the board of trustees, would then be forwarded for approval to the State Medical Care Commission and to the appropriate Federal agency. The appropriation made by the county for this purpose will constitute a part of the total cost to be shared by the county, the state, and the federal government. The trustees stated that these plans would be for a hospital of 120 beds.

Bertie—The county will have a special bond election on the question of issuing \$163,000 in bonds to cover the county's share of the proposed Bertie County Hospital project.

Electrical Fees

Hertford—A fee of \$2.50 per house for electrical inspection of premises wired by the Rural Electric Administration was set by action of the board, the fee to be paid by the home owner to the electrical inspector.

Insect Control

New Hanover—The board voted to extend the program for elimination of house flies through the use of DDT throughout the county outside the city limits of Wilmington, under the supervision of the health department.

Pitt—\$1,400 was appropriated by the board to the Board of Health, to carry out the county's part of the insect control program sponsored by state, county, and municipal health authorities. The program will be carried out during the spring and summer, and the appropriation covers the period until July 1.

Hertford—The board voted to cooperate with the health department in its program of spraying homes in the county with DDT, and approved expenditure of not exceeding \$2,000 for that purpose, with a maximum of \$1,000 of that to be spent during this fiscal year.

Lost Colony

Dare—The sum of \$10,000 was appropriated by the board to the use of the Roanoke Island Historical Association, Inc., to aid in its production of Paul Green's drama, "The Lost Colony." The money will come from unappropriated ABC store revenues.

Nurses' Home

Mecklenburg—Contracts were awarded to the low bidders for construction of a new nurses' home at the county sanatorium, amounting to a total of \$65,076.

Roads and Highways

Scotland—Dr. W. H. Jordan, District Highway Commissioner, and District Engineer L. E. Whitfield met with the board of county commissioners in April to confer regarding the road program in Scotland County.

Tax Collection

Scotland—County Auditor Thomas J. Gill's report to the board of commissioners showed 1947 tax collections to date of the April meeting as being a total of \$183,006.64, this amount being 84% of the total levy of \$218,148.21.

Tax Sales

New Hanover—After being advised that in some instances tax delinquent real property is being sold for less than the amount of county and city taxes due, by commissioners appointed to sell the property, the board adopted a policy recommended by Wilmington's City Attorney, W. B. Campbell, as follows: In all such sales, the attorney will be required to report the sale to the city manager and to the chairman of the board of county commissioners, giving the amount of taxes due, the amount of the bid, and the estimated value of the property being sold. Such information will be required to be given in time for the city and county to determine if either of them should raise the bid.

College Center

Mecklenburg—The board took under consideration a proposal made by a group of citizens that there be established a "Charlotte College Center" by the County of Mecklenburg and the City of Charlotte.

Cities and Towns

Washing Automobiles—Waste Water

Hickory—An ordinance was adopted in March which prohibits the discharging or emptying of water used for washing vehicles into or upon any gutters or side ditches of any street in the city. The preamble to the ordinance states that the emptying of such waste water upon the sidewalks and streets and into the gutters "tends to create unsightly, unhealthy, and unsanitary conditions" constituting a nuisance.

Subdivision Control

Greensboro—In February the city council adopted an ordinance rewriting the chapter in its code dealing with real estate subdivisions and plats. The ordinance affects territory within the city and outside, within one mile of the corporate limits. Approval of the council is required for subdivision of property and recording of plats, within this area. Sketches of proposed subdivisions must first be submitted to the planning and zoning commission, then to the council for final approval. The ordinance contains detailed provisions regarding: requirements and minimum standards of design for subdivision of land; location, width, and direction of streets and alleys; street naming; size and shape of blocks and lots; easements; and procedure for review of plats.

Smoke

Winston-Salem—A resolution requesting the Winston-Salem Southbound Railway Company to use diesel engines for its shifting operations within the city was adopted by the board. The request was made in the hope of reducing the smoke nuisance "which is being aggravated by the use of coal burning engines. . . in close proximity to the historic part of Salem . . ."

Equipment

Raleigh—At the request of City Manager Roy S. Braden, the council voted its approval of the purchase of a postage meter machine.

School Tax Supplements

Winston-Salem—The board unanimously adopted an ordinance calling a special tax election for May 11, on the question of increasing the present school supplement tax from a maximum of 20 cents to a maximum of 35 cents on the \$100 valuation. The election will be held within the

city administrative school district, which is coterminous with the boundaries of the city, and the ordinance calls for a new registration of voters.

Retirement

New Bern—Acting under Article 3 of Chapter 128 of the General Statutes, the board of aldermen voted to make application to the board of trustees of the North Carolina Local Governmental Employees' Retirement System to enroll employees of the city in the system.

City Employees' Insurance

Greensboro—An ordinance recently adopted provides that when any permanent employee (employed by the hour or day) by reason of sickness

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or absence does not have a sufficient amount of wages due him for the pay period when the compulsory life insurance premium is due, the city treasurer shall pay on behalf of such employee his portion of the life insurance premium. Department heads are required to notify the payroll clerk when a person employed by the hour or day is to be dropped from the payroll.

Automobile License Tags

Raleigh—The city's license tax ordinance applying to automobiles and automobile trucks was amended so as to require payment of a tax of \$1, not prorated, license to be issued for each year beginning on January 1. The ordinance provides for a charge of 50 cents for duplicate tags in case of loss or destruction of original ones. Subject to the tax are automobiles and trucks owned by or under the control of residents of the city and which are used wholly or partially within the city; and automobiles and trucks regularly maintained and used in connection with any business

operated in the city, and which are normally stored within the corporate limits when not in use. The term "residents" is defined as including only persons who have or intend to have a place of abode within the corporate limits for a period of six months or longer.

Taxicabs

Greensboro—The city's taxicab ordinance was amended by adding the following provision: "No driver of a taxicab shall permit a female passenger to ride on the front seat of a taxicab unless there are at least three passengers then occupying the rear seat of such taxicab."

Fire Departments

Raleigh—A request from the members of the fire department asking that they be placed on a basis of 24 hours on duty and 24 hours off duty was approved for a 90-day trial period by action of the council.

Parking

Raleigh—Parking and storing of trucks, buses, trailers, and similar vehicles on the city's streets is forbidden under a recently adopted ordinance. Operators of such vehicles must use private property for parking or storing them, and they are prohibited from using the public streets "except for the purpose of travel and of transporting, loading and unloading passengers and freight, and except for temporary parking in cases of emergency involving a mechanical breakdown necessitating repairs . . ."

Greensboro—The council adopted an ordinance prohibiting parking in driveways around the city hall except by persons designated by the city manager. The preamble to the ordinance recites that "in order to properly render necessary governmental services, it is found necessary that parking space be provided for certain designated employees of the City of Greensboro . . ."

Albemarle—The board of commissioners adopted a resolution calling on property owners of the city to cooperate with the board in making available to townspeople and visitors additional off-street parking space. The resolution recited both the need for additional off-street parking space, and the beneficial results of such space already provided by property owners through cooperation with the city authorities. The board offered to make such property suitable for off-street parking use as follows: "BE

IT FURTHER RESOLVED that the citizens of Albemarle who have available property that can be used for off-street parking be notified of the desire of the board of commissioners to secure additional off-street parking space and the willingness on its part to make said property usable, for them and other people generally, for parking."

Students

Raleigh—Invitations to selected groups of students in the city schools to attend meetings of the council will be extended by the city manager, following adoption of a motion to that effect by the council.

Loading Zones

Greensboro—The council adopted an ordinance amending the city's code with respect to loading zones, so as to prohibit any parking in such zones except for the purpose of actually loading or unloading a truck. The amendment states that a "service truck is not a truck within the meaning of the definition above set out, except a service truck may be parked temporarily in a loading zone for the purpose of and while actually engaged in loading or unloading materials for use in rendering service or repairs, but a service truck shall not be parked in a loading zone while the service is being rendered or repairs made."

Sunday Ordinances

Raleigh—The city's code was amended by provisions allowing base-

ball games, swimming pools, merry-go-rounds and recreation parks to be operated on Sundays between the hours of 1:30 and 6:30 p.m. Other Sunday amendments make it unlawful to open any shop, store, or other place of business for the purpose of buying or selling, or to expose for sale, sell, or offer to sell any merchandise of any kind between the hours of 10 a.m. and 12 noon on Sundays.

Sale of beer and wine is prohibited between the hours of 12:01 a.m. and midnight on Sundays.

Rabies

Greensboro—Dog licenses will not be issued until dog owners have presented a certificate showing that the animals have been vaccinated against rabies, under an ordinance adopted in March.

Books Received

Humor in Government

LAUGHING WITH CONGRESS.
By Alexander Wiley (*U. S. Senator from Wisconsin*). New York: Crown Publishers, 419 Fourth Avenue, 1947. \$3.00. Pages xxiv, 228.

A Senator at a Congressional luncheon was going hungry while his fellow diners ate heartily. When asked by a colleague why he didn't help himself to more "vittles," he replied, "I have been waiting for my food from those blankety blank Representatives at the far end. You know how long it takes the House to pass anything."

Such is the tempo of *Laughing with Congress*. Many of the stories are dull or twice-told; the reader may feel in spots that the book is "too much of a good thing." But there are enough chuckles per chapter to hold interest. The Senator is able to prove that Congress is, after all, "the best show in Washington."

Senator Wiley is not concerned solely with Congressional jokes. He also treats the problem of the traditional attitude of the public towards its elected representatives. (We are "so down on politicians," said one newspaper, "because we are so up on them.") The politician "has three hats: one to cover his head, one to toss in the ring, and the other to talk through.") With all its shenanigans, "politics is essential to Government, for politics is the science and the art of human relations in governing."

Senator Wiley points out that public misjudgment of Congress often comes from a lack of understanding. Visitors to Congress are almost invariably surprised at how few legislators are on the floor; they do not realize that most Congressmen spend their days busily at work in commit-

tees. He explains that Congressmen generally have the good of the nation at heart. Debate comes when they disagree as to the nature of that good. In spite of the statistics—a poll taken by the National Opinion Research Center indicated that 65% of the American people "did not want their sons to grow up to become politicians"—Senator Wiley feels that the public can be educated to think of their Congressmen as men and women of ability and sincerity.

Although there are bits of information buried among the governmental anecdotes, the main purpose of this book is, as the title indicates, "laughing with congress." (Reviewed by Sara Tillett).

Biography

THE LIFE OF ROSCOE POUND.
By Paul Sayre. Iowa City, Iowa: The College of Law Committee, 1948. 412 pages.

Law

AN INTRODUCTORY SURVEY OF THE PLACE OF LAW IN OUR CIVILIZATION. By Kenneth Redden. Charlottesville, Virginia: The Michie Company, Law Publishers, 1946. Pages vi, 272.

LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE. By Esther Lucile Brown. New York: Russell Sage Foundation, 1948. \$3. 258 pages.

Municipal Government

MUNICIPALITIES AND THE LAW IN ACTION (1947 edition). Edited by Charles S. Rhyne. Washington: The National Institute of Municipal Law Officers, 730 Jackson Place, N. W. 1947. 660 pages.

MUNICIPAL HOME RULE CHARTERS IN TEXAS. By Wilford D. Webb, Austin, Texas: The Bu-

(Continued on page 15)

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Biggest Fire-Fighting Idea In Fifty Years

By PAUL W. KEARNEY

(This is a Reader's Digest condensation of a story originally published in the National Safety News; it is reprinted with permission of the Reader's Digest and the National Safety Council. Copyrighted 1948 by National Safety Council, Inc.)

For eight days last October, John E. Holden, chief of the volunteer fire department in tiny Newington, N. H., was frantically sought after by a dozen mayors and the governors of two states.

"Come to Biddeford, Maine, with everything you can spare," was the first plea. "We are surrounded by a forest fire."

Before Holden and his men could move, other appeals poured in—from Sanford, Kennebunk, Goodwins Mills. The question of where to go first was settled by a direct appeal from the Governor of Maine to go to Kennebunk. After a night's battle there, the weary men received an urgent plea from the Governor to go immediately to nearby Waterboro. In that week, Holden and his men had a scant 14 hours' sleep.

Newington's fire department was in special demand because Chief Holden had put into practice one of the most effective ideas to hit the fire service in 50 years—converting secondhand oil-tank trucks into fire apparatus. These trucks can operate where standard equipment fails from lack of water—and they cost much less. Today more than 25 New England communities, from hamlets to cities as big as New Haven, have adopted Holden's idea. At least a dozen more have placed orders for equipment. One of the largest manufacturers of fire engines has already put this "bastard rig" on its assembly line.

The father of the idea, Jack Holden, is a large-scale fuel distributor who supplied oil and gasoline for the Portsmouth Navy Yard during the war. One day he was mulling over the fire hazard created by the 8,000,000 gallons of petroleum products stored at his Newington plant. He had his own fire protection—but suppose a flare-up should get out of hand? Portsmouth, five miles away, was supposed to protect the village, but Newington actually didn't have a single hydrant from which the city engines could pump.

Rusting away in Holden's garage were two 800-gallon oil trucks, such

as are used for house-to-house deliveries. Holden stripped them of useless gear, mounted a rack for ladders atop the tanks, added a heavy-duty fire pump. Hose went in one locker, tools in another; a foam generator and several extinguishers were fitted in here and there. Fog nozzles and a wetting agent make the tankful of water as effective as four times that much hydrant water in a solid stream.

For long-distance oil deliveries Holden had six trailer tanks, each with 4400 gallons' capacity. "We'll mount a deck gun on each of those," he said, "equip them with suction hose and fire hose, and make them roving fire engines. One is always on reserve in the yard, so we'll keep it filled with water for emergencies. If we need others we can dump their oil and refill with water in about seven minutes."

Holden recruited a 30-man volunteer brigade. Twelve of his drivers attended the Fire Fighters' School at the Portsmouth Navy Yard to form a trained nucleus for the force.

A few weeks after the department was organized, a call came from a large estate some distance out of town. Standard apparatus had already arrived, but there was no water within a mile; the situation looked hopeless. Holden's men killed the blaze and saved a \$50,000 home.

Shortly afterward, in another town, Newington apparatus blacked out a blaze that had spread to three houses while a \$20,000 city pumper stood by, helpless without water.

Probably the Holden crew's most dramatic feat was the rescue, about a year ago, of a family of four cut off by a forest fire. The woods were ablaze on both sides of the road to the isolated house. Holden lined up

two of his big tankers. The first swept the flaming roadsides with its powerful deck gun; the second covered the leader with a steady stream of fog to keep the men from being fried. They reached the house in the nick of time.

Every year half our "large-loss fires"—outbreaks costing \$250,000 or more—occur in towns under 10,000 population; about 3500 lives and 75,000 buildings worth \$100,000,000 are lost on farms alone. In such areas Jack Holden's equipment can be indispensable. Even within a hydrant area, dwelling fires have been knocked down by the small line from a tank truck before a regular pumper could stretch in from the nearest hydrant.

The Holden plan has especial significance for small-town volunteer departments. A regulation pumper costs from \$16,000 to \$20,000. A new 1000-gallon oil-tank truck fully equipped for fire-fighting can be had for \$6,000—a secondhand one for about half that. And you can get delivery of a new oil truck in two weeks as against 18 months for the standard apparatus. During spring and fall when the country is plagued with brush and woods fires, empty tankers from local oil companies can be pressed into service.

Once, for example, Holden had to take his apparatus to Alfred, Maine, to save that town from being wiped out. To cope with another forest fire raging at the same time he asked the State Police to commandeer every empty oil and milk truck on nearby highways. More than 50 thus obtained were supplied with fog nozzles.

Carrying 4,000 gallons of water each, some were used in relays to feed pumpers; others were located along roads to pump lines into the woods. At one point, the blaze was moving through the treetops as well as through the undergrowth directly toward a group of 15 houses and a convalescent home. A tanker was driven into each yard to wet down the buildings; three others were assigned to each of two city pumpers to make a firebreak on the highway. Not a life or a building was lost.

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

5. Exemptions—city and county property

To Gray Friday.

Inquiry: Is a municipality subject to ad valorem taxation by the county with respect to rural electrical lines and a sewerage disposal plant located outside the city limits?

(A.G.) As to the electric lines, I assume that they are owned by the town or an agency thereof and are for the purpose of serving consumers beyond the corporate limits.

This office has advised in previous opinions dealing with situations similar to yours that where the lines and poles owned by the municipality are outside the corporate limits and serving the surrounding territory, and are not in any sense essential to the service which is rendered to the people within the municipality, such outside property would be subject to taxation by the county. See *Benson v. Johnston County*, 209 N.C. 751, and *Board of Financial Control v. Henderson County*, 208 N.C. 569.

The case of *Weaverly v. Hobbs, Commissioner*, 212 N.C. 684, has cast some temporary doubt upon the extent to which a municipality's property might be subjected to taxation. However, in view of the strong reaffirmance of the doctrine of the *Johnston County* and *Henderson County* cases by the majority of the Court in *Warrenton v. Warren County*, 215 N.C. 342, I am of the opinion that the conclusions reached earlier by this office are still the law.

With respect to the sewerage disposal plant, I am of the opinion that it is exempt from taxation by the county as it is operated and maintained by the municipality in its governmental capacity for the public purpose of safeguarding the health and welfare of the inhabitants of the municipality.

130. Penalties for failure to list

To Fred P. Parker, Jr.

Inquiry: Have County Commissioners authority to waive penalties imposed under G.S. 105-331 for late listing of taxes or failure to list within the prescribed period?

(A.G.) Subsection (4) of the section referred to authorizes the Board of County Commissioners or the gov-



HARRY
McMULLAN

Attorney
General
of
North
Carolina

erning body of a municipal corporation to settle or adjust all claims for taxation arising under this section or any other section authorizing them to place on the tax list any property omitted therefrom. Subsection (32) G.S. 105-271 defines "tax" to mean any tax, special assessment, cost, penalty and or interest imposed upon property or other subject of taxation. While the statute imposing a penalty for failing to list property or polls before the close of the regular listing period appears to be mandatory on its face, Subsection (4) cited above authorizes the settling or adjusting of all claims for taxation arising under the section and as taxes by definition include penalties. I am of the opinion that the section authorizes the commissioners to compromise the tax and penalty in such manner as to amount to a waiver of the penalty in a proper case.

B. Matters Affecting Tax Collection

1. Turning over books to collecting officers

To W. C. Hardison.

Inquiry: Can any legal method be worked out whereby the tax collector can receive the new tax books by June 1 in order to avoid the wasteful duplication of work involved in handling prepayment receipts after the prepayment period has started and before the new taxes are placed in the hands of the collector?

(A.G.) Under present law, the tax books may not be turned over to the collector before the 1st Monday in July. Section 1707 of the Machinery Act provides that the books may not be turned over to him before he has made annual settlement for the previous year's taxes. Section 1718 (a)(3) provides that settlement for current taxes shall be made on the 1st Monday of the month following sale of certificates but not earlier

than the 1st Monday in July. That is, if the tax certificate sale is held in May, final settlement still cannot be made prior to the 1st Monday in July, and this final settlement is a prerequisite to delivery of the new tax books to the collector.

In one county, according to my recollection, this matter is handled by having one of the girls in the office of the tax collector designated as the collector of prepaid taxes and so bonded. The original books are placed in her hands; the work is carried on in the same office but the necessity of dealing with prepaid tax receipts is eliminated.

Unless resort is had to some such device, I am of the opinion that legislation will be required in order to enable the tax collector to receive the books prior to the 1st Monday in July.

33. Statute of limitations

To O. G. Anderson.

(A.G.) I know of no statute of limitations applicable to tax liens. However, G.S. 105-422 declares all tax liens held by governmental agencies for the year 1926 and all prior years to be barred and uncollectible.

You also inquire as to whether or not the county commissioners are authorized to reduce old taxes. I suggest that you discuss this question with your county attorney, as there may be some public-local act applicable to your county with which I am not familiar.

II. POLL TAXES AND DOG TAXES

A. Levy

2. Exemptions — veterans — how obtained

To Melvin R. Daniels.

Inquiry: Are members of the armed forces of the United States, including members of the merchant marine, exempt from the payment of poll taxes?

(A.G.) It is the opinion of this office that the exemption provided by G.S. 105-341(4), enacted in 1943, continues as to members of the armed forces and the merchant marine service on active duty for so long as the existing state of war exists between the United States and any foreign nation. As yet, no peace treaties have been signed; until such event occurs, members of the armed forces and the merchant marine who are on active duty are exempt from the payment of poll taxes in this state.

10. Power to levy

To R. B. Jackson. (A.G.) The payment of a poll tax as a requirement to the right to vote was abolished by constitutional amendment in 1920, but the Constitution, in Article V, Section 1, authorizes a poll tax not to exceed \$2.00 to be levied on all male persons over 21 years and under 50 years of age, and authorizes cities and towns to levy a poll tax not to exceed \$1.00. The payment of this tax or failure to pay it has nothing whatever to do with the qualifications of a person to vote.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

40. License tax on peddlers

To W. Ralph Campbell. (A.G.) Section 121(g) of the current Revenue Act is authority for the levying by a municipality of a graduated license tax upon peddlers using mechanically propelled vehicles. Ordinarily such articles as washing machines and refrigerators are not sold directly from a truck to the customer but are delivered as a consequence of orders previously taken or received. As to what constitutes peddling, see annotations under Section 105-23 of the General Statutes.

To F. R. Jarman. Inquiry: Are salt water fish deal-

ers who own businesses or are peddlers passing through, required to pay a privilege tax to sell such fish in an incorporated town?

(A.G.) An ordinance levying a tax on fish peddlers is within the taxing power of a municipality. The authority for such a tax is found in the general grant of authority to municipalities in G.S. 160-56. That G.S. 105-53 taxing peddlers does not apply to persons selling fish does not prevent a municipality from levying a tax on such persons even though the last paragraph of Subsection (g) contains a limited prohibition against some local taxes. This limited prohibition applies only to taxes levied by municipalities under G.S. 105-53 and not to those levied under the authority of G.S. 160-56. State v. Bridgers, 211 N.C. 235. In the absence of a public-local law to the contrary, G.S. 160-56 is authority for levying a tax on persons who own businesses in the town and sell fish therein. To levy such a tax an ordinance must be adopted by the municipality and such ordinance must be so drawn as not to discriminate against fish dealers.

IV. PUBLIC SCHOOLS

A. Mechanics of Handling School Funds

16. Letting contracts

To Charles McCrary. (A.G.) Where advertisement for

bids on the erection of a school building have been made pursuant to G.S. 143-129 and the bids exceed the availability of funds therefor, the City School Board need not readvertise for bids but may let the contract on a cost plus fixed fee basis provided the cost does not exceed the availability of funds on hand for the purpose. If the contract is so let, it is suggested that the Board require a guarantee from the contractor, supported by bond, that the cost of construction shall not exceed the available funds on hand for the purpose.

D. Powers and Duties of Present School Districts and Agencies

6. Location of school buildings

To John D. Shaw.

(A.G.) There is no statute prohibiting city administrative units from acquiring sites and erecting buildings located outside of such units' boundaries but it has been the uniform practice to confine the location of school buildings to sites within the boundaries of the administrative unit having jurisdiction and this seems to be in keeping with certain provisions of the school laws. Section 115-84 G.S. strongly indicates a legislative intent that school sites be located within the city administrative unit if the school is to be under the administration of the city administrative unit. As to whether the proper

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school authorities may enlarge a special school district of the city to include a site outside the present unit and connect the same to the present limits by a narrow strip of land, with no taxes being levied on the property since it would belong to the city administrative unit, in the absence of a local act the enlargement of the city administrative unit boundary must be made by the State Board of Education. I would not want to express an opinion on this question unless requested to do so by the State Board.

9. Handicapped children

To H. J. MacDonald.

Inquiry: Does the law fix responsibility for providing education for children who because of physical disabilities are unable to use the established educational facilities? In the absence of responsibility to do so, would the state or local school authorities have authority to use school funds to employ private tutors for children unable to use the established educational facilities?

(A.G.) I find no provision in our statutes which would authorize the local authorities or the State Board of Education to employ private tutors for such children. In order for this to be done, in my opinion, there would have to be enacted legislation directly dealing with this subject.

L. Laws Governing

To A. H. Anderson.

Inquiry: Does the law of North Carolina place responsibility for all phases of school operation in the hands of the State Board of Education?

(A.G.) The Constitution, Article IX, Section 8, provides that the general supervision and administration of the free public school system and of the educational funds provided for the support thereof shall be vested in the State Board of Education. Section 9 of that Article provides that the State Board shall have the power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of textbooks; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State, and to make all needful rules and regulations in relation thereto.

This section further provides that all the powers enumerated in this section shall be exercised in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly.

Under authority of these Constitutional provisions, the Legislature has enacted laws dealing with the operation of our public school system,

authorizing appointment of a Controller and defining the duties of the State Superintendent of Public Instruction, all of which you will find in Chapter 530 of the Session Laws of 1945.

The Constitution and acts of the General Assembly have placed the responsibility for all phases of the operation of the public schools in the hands of the State Board of Education.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

R. What Constitutes Special Purposes

To Wade B. Matheny.

Inquiry: Where there is a public-local act authorizing a county to levy a special property tax not exceeding 10 cents on the \$100 valuation for several special purposes including, "for the expenses of the quadrennial valuation or assessment of taxable property," may the board of commissioners make such a special levy (instead of general fund levy) for the purpose of covering the expense of revaluation?

(A.G.) I assume that if you make a levy of 10 cents to meet the revaluation expense, no other special levy will be made under the authority of the public-local act in question, which authorizes special levies for any of several purposes, the total levy not

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to exceed 10 cents. In other words, it seems to me that the maximum amount which could be levied for all of the purposes combined would be 10 cents on the \$100 valuation.

I am not sure that our Supreme Court would say that the expense of the quadrennial revaluation is such as constitutes a special purpose, but I am inclined to think that it would do so.

I call your attention to *Power Company v. Clay County*, 213 N.C. 698, where one of the purposes for which a special tax was authorized for a special purpose was "tax listing expense, four cents." The Court held that the listing of taxes is a general expense recurring regularly, and is not for a special purpose, so that taxes therefore could not be levied therefor except within the constitutional limitations. While it may be argued that the expense for the quadrennial revaluation is a regular recurring expense, it does not occur every year, but rather every four years and in recent years such revaluations have been postponed from time to time. And, further, the quadrennial revaluation statute permits a horizontal reduction or increase in lieu of an actual revaluation which would necessitate only a small expense.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

B. Matters Affecting Municipal Utilities

5. Rates and charges

To C. P. Hinshaw.

Inquiry: A taxpayer has overpaid the sewer rent authorized by the legislature under a private act, to the extent of \$24 per year since 1939, and because of a mutual mistake between the town and the taxpayer. May the municipality refund this overpayment? The overpayments were not made under protest.

(A.G.) The first question is whether the sewer rental charged falls within the classification of a tax, and it is my understanding that a sewage rental or assessment is not a tax. See *Charlotte v. Cavanaugh*, 221 N.C. 259.

All of the statutory prohibitions against refunds relate to taxes, and not to assessments or sewer rentals. See G.S. 105-403, 105-405.1, and 195-407. I am of the opinion that the municipality may make such refunds to the taxpayer as it may determine he has overpaid.

H. Principal Courts

3. Traffic courts

To W. P. Creech.

(A.G.) There does not appear to be any legal authority for the establishment of so-called "traffic courts" by municipalities. A number of towns and cities in the state have enacted ordinances whereby minor traffic violators may voluntarily pay one dollar

into the town treasury and avoid criminal prosecution.

K. Grants by Cities and Towns

1. Free libraries

To Staton J. Peele, Jr.

Inquiry: May the Light and Water Commission of a Town contribute to the Town's public library?

(A.G.) The governing body of a city, town or county may in lieu of supporting a library enter into a contract or make an appropriation to library associations or corporations as shall maintain a library whose books shall be available without charge to residents of such city, town or county under rules approved by the governing body thereof. If the earnings of the Light and Water Commission are available to the town, the latter may appropriate from such income for the support of a library. I have not examined the act creating the Light and Water Commission of the town in question but it is assumed that such act does not provide authority on the part of the Commission to make contributions of this character. Ordinarily, the earnings of such commissions are used for the payment of its obligations and any surplus is paid to the municipality.

M. Sunday Closing Laws

1. In general

To Miss Elizabeth Bate.

Inquiry: What is the law of the State relative to Sunday closing of retail stores, particularly food stores?

(A.G.) The only State law on the subject is G.S. 103-1, which provides a penalty of \$1 for anyone carrying on any business or work on the Lord's Day. Municipalities have the power to regulate the opening and closing hours of stores on Sundays. *State v. Medlin*, 170 N.C. 682. In that case it was held that the town ordinance providing for closing of certain places of business within certain hours on the Sabbath was valid and not in conflict with the State statute.

Q. Town Property

10. Sale of town property

To O. B. Crowell.

Inquiry: May a town sell its assets consisting of unpaid taxes, tax certificates, town hall and other equities, retire its bonded indebtedness with the proceeds of such sale, dissolve the corporation and, prior to dissolution, use the proceeds of such sale for street improvements?

(A.G.) Dissolution may be accomplished through compliance with the provisions of Article 23, Chapter 160 G.S. but is ordinarily effected through special act of the legislature. There is no authority for the sale by a Board of Commissioners of unpaid taxes and tax certificates and it would be desirable if not necessary to have such procedure authorized by special act of the legislature. Where the bonded indebtedness has been paid off in full and the bonds had been

originally issued for the purpose of street improvement, I believe the Commissioners of the Town could use surplus funds for further improvement. Here also the action of the municipality should be authorized by special act. The various actions proposed are so unusual that sufficient instructions for the Commissioners to follow is unlikely to be found in the general laws of the state. It is suggested that liquidation be postponed until the next General Assembly and that no further levies be made in the meantime.

Z. Workmen's Compensation

To William C. Lassiter.

Inquiry: If an employee of a city receives injuries in the line of duty, causing disability which makes it impossible for the employee to resume his duties for a period of time, does the municipality have authority to continue the regular salary payments to such employee during this disability, provided that the employee endorses the Workmen's Compensation checks covering temporary total disability over to the city, the effect of which is for the city to pay the difference between the compensation payments and the amount of his regular salary from the city?

(A.G.) I find no case in North Carolina which furnishes the answer to this question. G.S. 97-6 provides that the employer accepting the provisions of the Workmen's Compensation Act is liable for personal injury or death by accident, to the extent and in the manner provided in the Act. In the event the municipality should desire to assume liability beyond the provisions of the Act, it would certainly be necessary that an ordinance of general application be adopted in such a manner as to treat the additional

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liability as a provision for additional compensation to its employees for services rendered.

In the absence of clearer statutory authority to the municipality to provide such a method of compensation to its employees for injuries received in line of duty, I regard it as doubtful whether a city would be authorized to make payments over and beyond the liability of the Workmen's Compensation Act. However, this would not interfere with authorized payments for sick leave to which the employee was entitled.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

D. Register of Deeds

5. Probate and registration

To George A. Digges, Jr.

Inquiry: Is it necessary for the Register of Deeds to sign his own signature on each document filed in his office for recordation? Does failure to sign such document render the registration invalid?

(A.G.) G.S. 161-114 provides that "He shall endorse on each instrument in writing the day and hour on which it is presented to him for registration, and such endorsement shall be entered on his books and form a part of the registration . . ."

I am not sure whether this section requires him to affix his signature on each instrument, but I do know that it is the general practice for registers of deeds actually to affix their signatures in such cases. I think that the safe course to adopt is either to affix your signature yourself, or to adopt a facsimile of signature and authorize a particular clerk to affix the same to all instruments filed in

your office. If you conclude to adopt this latter policy, I suggest for your consideration the case of *Lee v. Parker*, 171 N.C. 150.

However, I do not think that failure actually to sign invalidates the registration of the instrument. See *Cunningham v. Peterson*, 109 N.C. on page 27, where the Court said, "but the statute does not make such endorsement essential to the validity of the registration." "When made it is prima facie true but it is not conclusive." In *Metts v. Bright*, 20 N.C., on page 249, the Court said: "The register is subject to an action and an indictment if he omits this duty. Certainly it is not essential to the validity of a registration that the day of delivery to the register should be endorsed on the deed and registered with it in the book of the office."

Since you make reference in your letter that instruments are recorded in your office under the "photostat system," I suggest that you discuss this question with your county attorney as it may be that there is some public-local law applicable to your county. I do not know of any state-wide statute which would relieve the register of deeds of his duty because instruments are recorded under the "photostat system."

L. Local Law Enforcement Officers

39. Motor vehicle law

To Paul A. Swicegood.

(A.G.) G.S. 20-176 provides that the punishment for operating a motor vehicle without displaying the registration number plates issued therefor shall be a fine of not more than \$50.00 and not less than \$10.00, or imprisonment not to exceed thirty days. It appears, therefore, that this is an offense over which justices of the peace have final jurisdiction.

To Charles W. Mauze.

(A.G.) The provisions of G.S. 20-24(a), which requires the court to make certain notations on the back of drivers' licenses in certain cases, are mandatory and, in my opinion, when the license of a convicted defendant is enclosed in a plastic case, the court should require that the license be removed from such case in order that the proper notation may be made thereon.

To William M. Poteat.

(A.G.) Subsection (b) of G.S. 20-154 provides that the signal required by that section shall be given by means of the hand and arm "or by any approved mechanical or electrical signal device." I am informed by the Department of Motor Vehicles that practically all of the electrical or mechanical devices now appearing on new automobiles have been approved. Thus, it would seem that the use of flashing light turn indicators is a sufficient compliance with G.S. 20-154 insofar as the giving of signals for turns is concerned.

42. Operating vehicle with improper license

To L. C. Rosser.

(A.G.) It is my opinion that the Department of Motor Vehicles is required by G.S. 20-28 to take action when an individual is convicted of an offense, an element of which is the operation of a motor vehicle, after his license has been suspended or revoked and the individual has been given notice of such suspension or revocation. The fact that the driver was not charged with driving after suspension or revocation of license is immaterial. The statute directs the department to take action when an individual *drives* after suspension or revocation; it does not require a conviction of that offense.

However, it is also my opinion that the department has no authority to extend the period of suspension or revocation when an individual is arrested after his license has been suspended or revoked and charged with that offense and is then found not guilty by the court. In such a case, a court of competent jurisdiction has considered the question and answered it in favor of the operator. Although your records may disclose a different state of facts, I still am of the opinion that you should abide by the judgment rendered. The fact that the individual is also charged with and found guilty of some other driving offense, such as reckless driving, does not alter the opinion expressed.

100. Witness fees and rewards

To F. R. Leagans.

Inquiry: Is a salaried peace officer, such as a sheriff or city policeman, entitled to a witness fee in cases coming before a court of the justice of the peace?


(A.G.) G.S. 6-52 provides that any sheriff, deputy sheriff, chief of police, policeman, patrolman, state highway patrolman, and/or any other law enforcement officer who receives a salary or compensation for his services from any source or sources other than the collection of fees, shall prove no attendance, and shall receive no fee as a witness for attending at any superior or inferior court sitting within the territorial boundaries in which such officer has authority to make an arrest. In view of this statute, I am of the opinion that no such peace officer who has authority to make an arrest within the territorial boundaries within which a court of the justice of the peace is sitting would be allowed to prove his attendance as a witness in a case being heard before such justice of the peace.

S. Mayors and Aldermen

2. Powers—general


To M. L. Galloway.

(A.G.) Mayors of cities and towns in this State are not, under the provisions of G.S. 47-1, authorized to take acknowledgements of instru-

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ments or writings permitted or required by law to be registered.

T. Justices of the Peace

10. Jurisdiction

To J. Q. Beckwith.

(A.G.) G.S. 7-129 provides, with certain exceptions, that justices of the peace have exclusive original jurisdiction of all criminal matters arising within their counties where the punishment prescribed by law does not exceed a fine of \$50 or imprisonment for thirty days. G.S. 7-127 provides that a justice of the peace may issue summons or other process anywhere in his county, but he shall not be compelled to try a cause out of the township for which he was elected or appointed.

IX. DOUBLE OFFICE HOLDING

1. Member board of education

To Wade B. Matheny.

(A.G.) The position of vice-chairman of the County Democratic Executive Committee is not a public office within the meaning of Article XIV, Section 7, of the State Constitution, which prohibits double office holding. Therefore one person may hold this position and that of membership on the county board of education at the same time.

14. Board of aldermen and commissioners

To K. A. Harwell.

(A.G.) The office of membership on a town board and that of a special police officer are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

XI. GENERAL AND SPECIAL ELECTIONS

C. Registration

To Miss Mary Price.

Inquiry: Under our laws providing the method by which recognition may be given to a political party, is a "registered voter" a voter who has registered for any election duly held in his precinct, ward or other election district?

(A.G.) In my opinion, a voter must be registered so as to be eligible to vote in the general election for the purpose mentioned, and it would not include voters who had registered in special or municipal elections.

D. School Elections

To Robert W. Proctor.

Inquiry: May a supplemental school tax election be held other than on a Tuesday?

(A.G.) G.S. 115-188 provides that such elections shall be held in accordance with the laws governing general elections except as otherwise provided. Section 115-187 reposes in the Board of County Commissioners or the governing body the duty of calling the election and fixing the date thereof. It is my opinion that it is within the discretion of the governing body of the county to fix the date. It would be preferable absent

any prevailing reason to hold the election on a Tuesday to obviate any issue as to the legal requirement of a Tuesday election.

F. Special Election for Member of General Assembly

To A. H. Harris.

(A.G.) Under our Constitution, the only way in which a vacancy in the membership of the House of Representatives of the General Assembly can be filled is by special election. If found to be necessary, the special election could be called and the vacancy filled by vote of the people. It would not be filled by action of the county executive committee.

O. Liquor Control Elections

21. Petition to hold election

To John N. Watkins, Jr.

Inquiry: Is the Chairman of the County Board of Elections required to permit the inspection and examination of the petition for an election under the ABC Act by persons interested in the election?

(A.G.) Under G.S. 132-1 the petition is a public record and under G.S. 136-6 the Chairman, as a person having custody of public records, is required to permit inspection and examination at reasonable times and under his supervision by persons interested therein.

XII. STATE TAXES

To Julian Allsbrook.

(A.G.) In my opinion, city bus transportation companies which operate only within the city limits should continue to pay the 6% gross revenue tax to the Department of Revenue as required by Section 203 of the Revenue Act, and the Department of Revenue should credit the collections made pursuant to this section to the General Fund of the State. If a carrier operates both within and without a municipality, the gross revenue tax should be paid to the Revenue Department on all receipts derived from such operations within and without the municipality unless the company has secured a franchise from the Utilities Commission for the particular outside-of-the-municipality operation. If such a franchise has been secured from the Utilities Commission, the gross revenue tax should be paid to the Department of Motor Vehicles on the revenue derived from the operation under the particular franchise granted by the Utilities Commission. The taxes collected by the Revenue Department should be credited to the General Fund, and the taxes collected by the Motor Vehicles Department should be credited to the Highway Fund.

Jail Conditions

Item Sixteen—"There should be good reading material available,—a little planning will produce an adequate and continuous supply,—exercise, preferably outdoor, should be required, and planned arrangements for religious services.

Item Seventeen—"The legal rights of prisoners should be protected and prisoners should be given every reasonable opportunity to confer with their attorneys, but the jail officials should see that they are not exploited by unscrupulous persons.

Item Eighteen—"Regular visiting by family and friends of the prisoners should be permitted under reasonable conditions and under supervision. Any packages arriving at the jail for prisoners should be carefully examined for contraband.

Item Nineteen—"Itinerants or vagrants should not be allowed to sleep in jails for obvious reasons."

Books Received

(Continued from page 8)

rean of Municipal Research, The University of Texas. 1947. \$1. Fifty-four pages.

Parking

MUNICIPALLY OWNED PARKING LOTS AND GARAGES. By Charles S. Rhync. Washington: National Institute of Municipal Law Officers, 730 Jackson Place, N. W. 1948. \$3. Fifty-four pages.

Ordinances

SUGGESTED FIRE PREVENTION ORDINANCE. New York: National Board of Fire Underwriters, 85 John Street. 1947. 102 pages. "An ordinance providing for the establishment of a bureau of fire prevention, providing officers therefor and defining their powers and duties, and prescribing regulations for fire prevention and life safety in connection with hazardous materials and processes."

State Government

THE BOOK OF THE STATES: 1948-49. Chicago: The Council of State Governments, 1313 East Sixtieth Street, Frank Bane, Executive Director. 1948. \$7.50. Pages xi, 780.

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"B" GROUP

Records and Calculations, 3 hours; Drinking Water Standards, 1 hour; Chemistry, 3 hours; Coagulation, 2 hours; Bacteriology (lecture and lab), 4 hours; Pumps, 3 hours; Corrosion, 2 hours; Tastes and Odors, 2 hours; Sedimentation and Filtration, 2 hours; Chlorination, 2 hours.

"A" GROUP

Main Sterilization, 2 hours; Analysis of Chemicals, 1 hour; Hydraulics, 6 hours; Industrial Water Requirements, 2 hours; Demonstration of Laboratory Instruments (lecture and lab), 3 hours; Corrosion, 2 hours; Pumps, 3 hours; Water Quality Problems, 2 hours; New Methods of Laboratory Analysis, 3 hours.

ADVANCED GROUP

Main Sterilization, 2 hours; Industrial Water Requirements, 2 hours; Demonstration of Laboratory Instruments (lecture and lab), 3 hours; Personnel Problems, 2 hours; Fluorides, 2 hours; Legal Problems, 2 hours; Water Quality Problems, 2 hours; New Methods of Laboratory Analysis, 3 hours.

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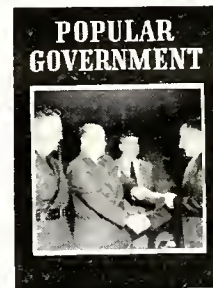
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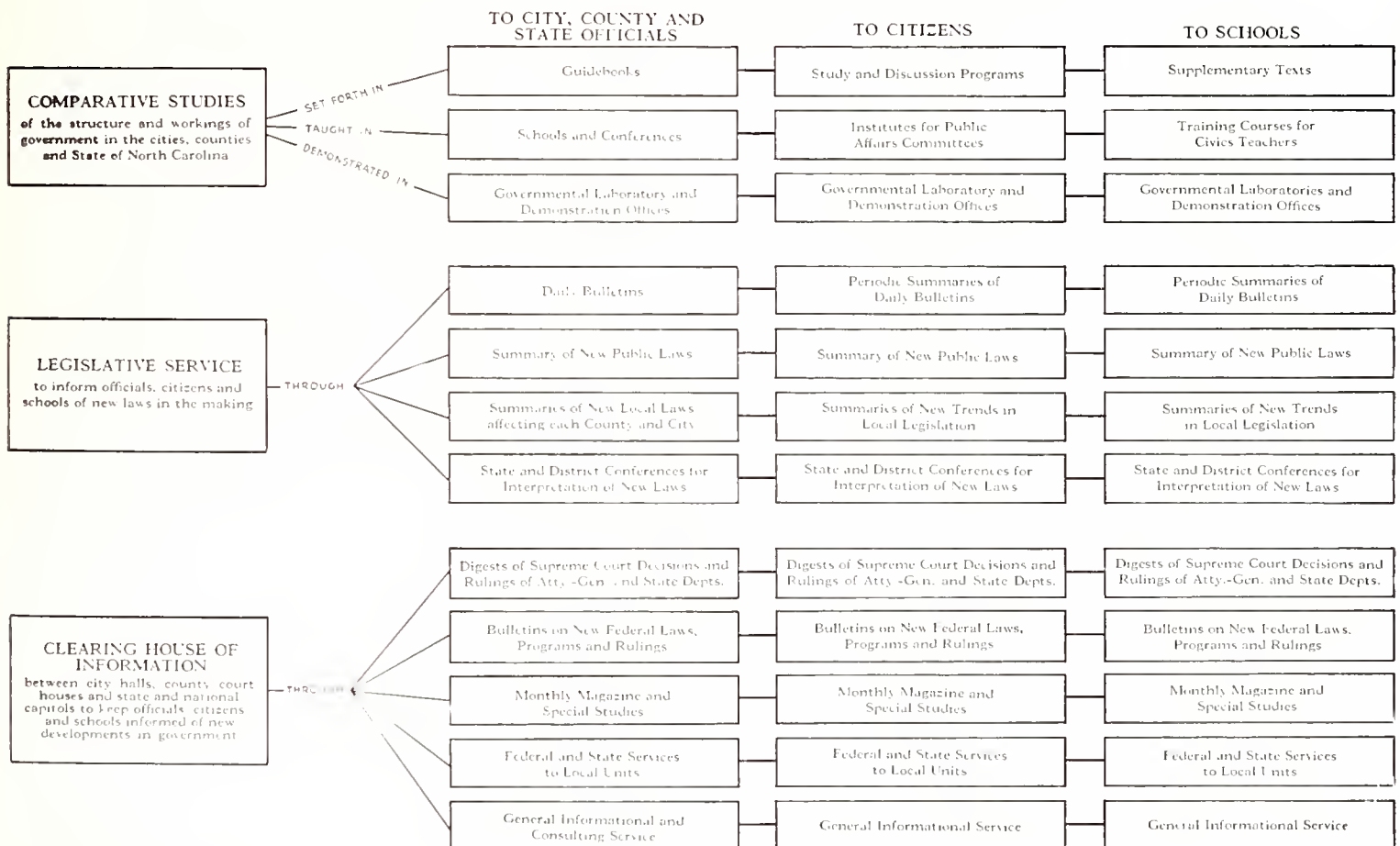
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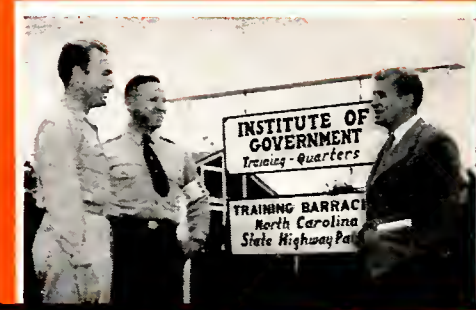
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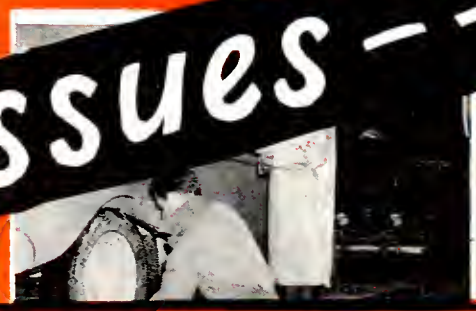
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