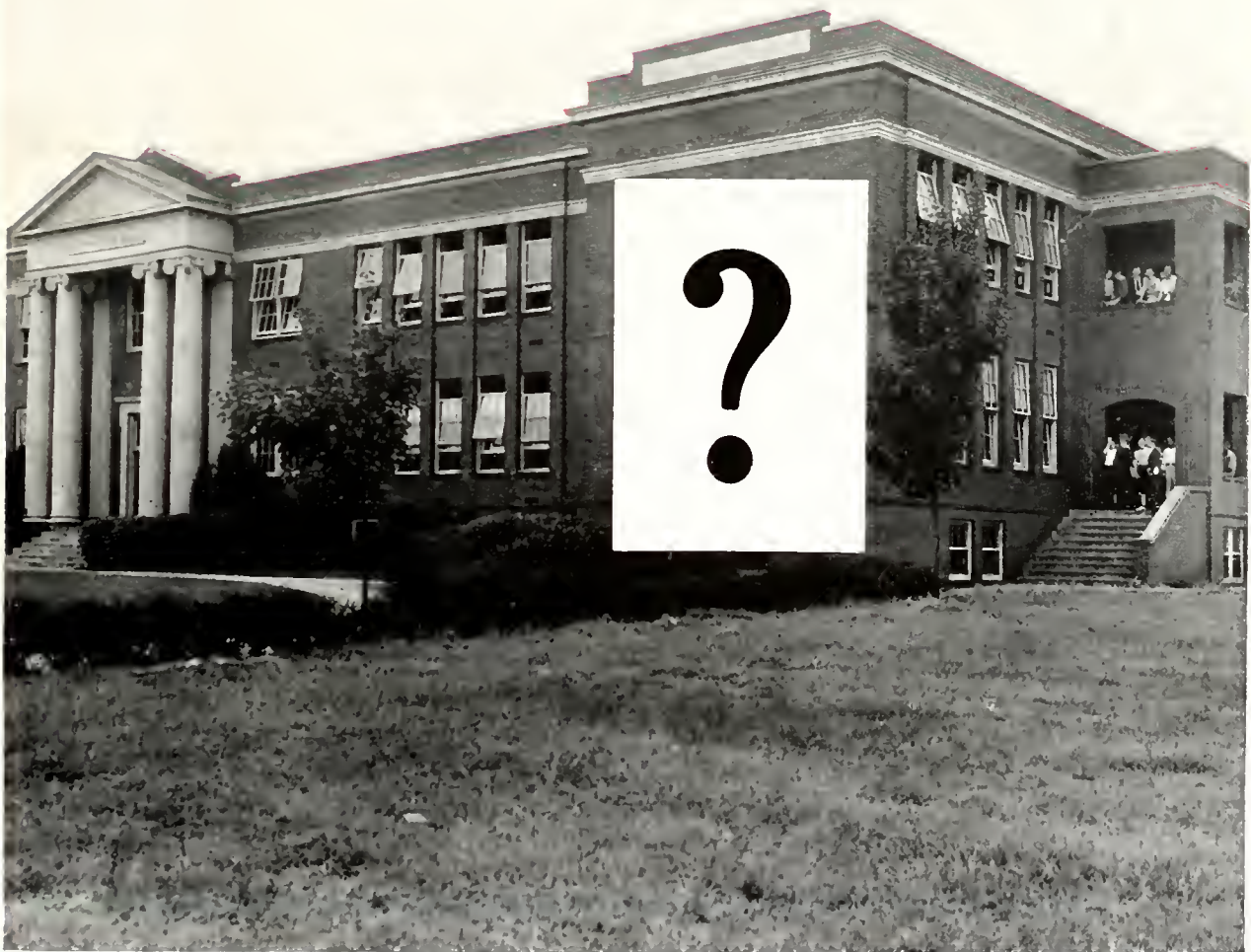


June, 1948

POPULAR GOVERNMENT



One of the State's biggest question marks—See page 1

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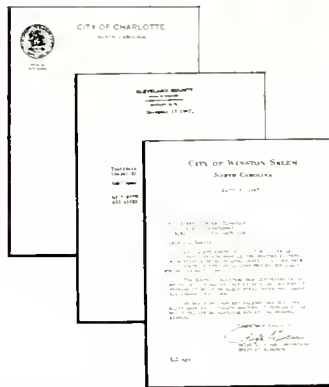
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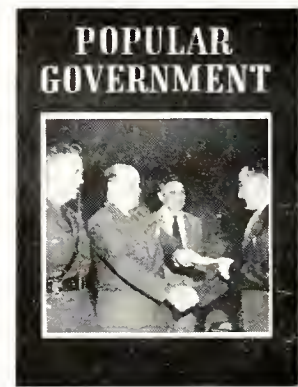
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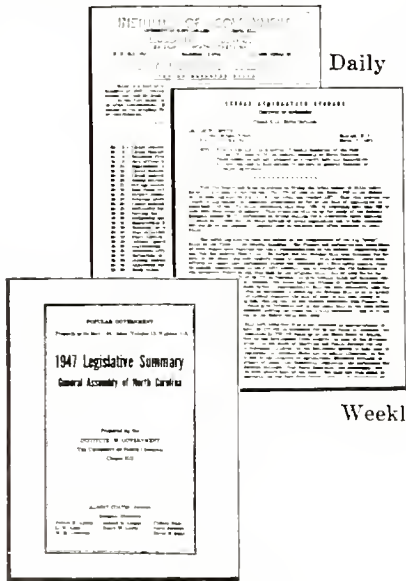


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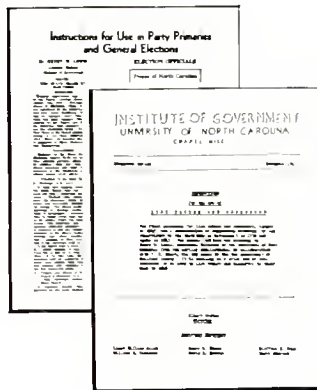


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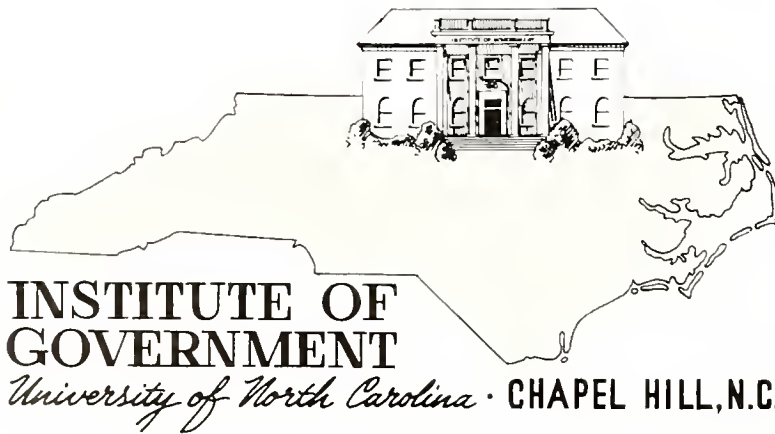
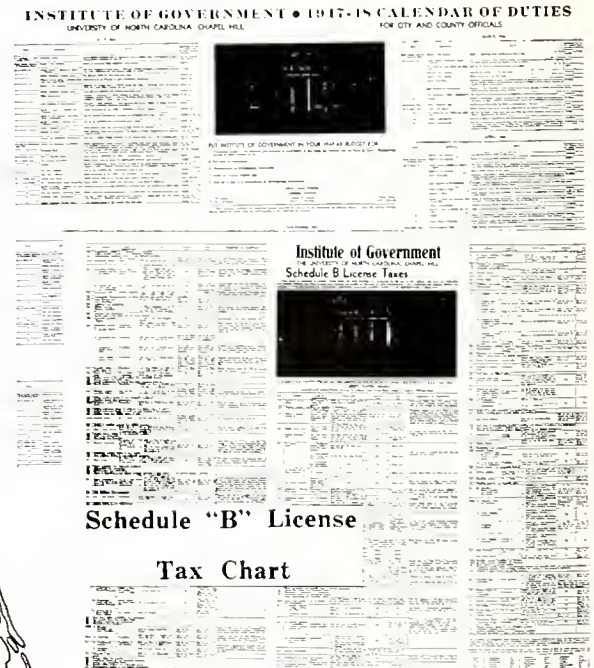
Weekly

Summary

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Calendar of Duties



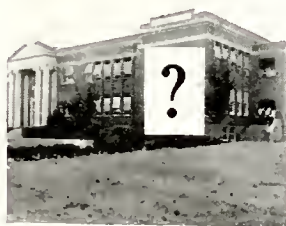
INSTITUTE OF GOVERNMENT
University of North Carolina · CHAPEL HILL, N.C.

Education Commission Ponders School Problems

The General Assembly of 1947 authorized the Governor to appoint a Commission of eighteen members—six to represent education and twelve to represent the agricultural, business, industrial and professional life of North Carolina, to study the program of public education. The bill creating the commission specified that it would make a comprehensive study of organization, administration, finance, teacher education, supervision, curriculum, standardization, consolidation, transportation, buildings, personnel, a merit rating system for teachers and vocational education. Then it stated that any and all other problems relating to the total public educational program of the State would be a responsibility of the Commission.

The Governor appointed the Commission and called it together for its organization meeting on June 4, 1947. The members, their addresses, and the occupations and professions they represent are: R. Grady Rankin, Chairman of the Commission, Textile Leader, Gastonia; Mrs. R. S. Ferguson, Secretary of the Commission, Housewife, State Senator and Member of the State Board of Education, Taylorsville; W. Dudley Bagley, Farmer, Moyock; A. Edward Brown, Labor Leader, American Federation of Labor, Durham; C. S. Bunn, Farmer, Spring Hope; Carlyle Campbell, President, Meredith College, Raleigh; M. C. Campbell, Superintendent, Catawba County Schools, Newton; Charles F. Carroll, Superintendent, High Point City Schools, High Point; Bertha Cooper, Classroom Teacher, Elizabeth City; James J. Harris, Jr., Insurance Executive, Charlotte; Clarence Heer, College Professor and Economist, Chapel Hill; Brandon P. Hodges, Lawyer, Asheville; H. W. Kendall, Editor, *Greensboro Daily News*, Greensboro; Edwin Pate, Merchant, Farmer and Banker, Laurinburg; J. C. Scarborough, Undertaker, Durham; Richard G. Stockton, Banker, Winston-Salem; John W. Um-

By
W. H. PLEMMONS
Executive Secretary
State Education Commission



stead, Insurance Executive, Member of Legislature, Chapel Hill; and Jule B. Warren, Editor, *We The People*, Raleigh.

On July 31, 1947, W. H. Plemmons of Chapel Hill was selected as Executive Secretary.

One of the first major tasks of the Commission was to decide on policies and to determine procedures best suited to the situation in North Carolina. After much deliberation it chose to follow through on its "grass roots" approach to the problems. It reasoned that it, as a Commission, was representative of all the people of the State and that with the help of other people from throughout the State North Carolinians could study their own problems. In carrying out this idea the Commission decided upon fifteen different phases of education to be studied and appointed an average of about twenty persons to each of these committees—making a total of about three hundred people in North Carolina actively engaged in the study. These represent almost every county and city in the State and are representative of the white and Negro races.

The committees, known as Study and Advisory Committees, are charged by the Commission to collect and analyze the data and draw tentative conclusions and recommendations for

the following fields: Resources, Instructional Program, Elementary Education, Secondary Education, Vocational Education, Education of Exceptional Children, Pupil Personnel and Personnel Services, Adult Education, Instructional Materials, Teacher Education, Instructional Personnel, Organization and Administration, Transportation, School Buildings, and Finance.

Realizing that these committees would need the best possible guidance, the Commission selected recognized professional leaders from outside the State to work as consultants with the various committees. These include Edgar L. Morphet, Chief Consultant for the Florida State Department of Public Instruction; William S. Taylor, Dean of the College of Education, University of Kentucky; R. L. Johns, Professor of School Administration and Finance, the University of Florida; E. B. Norton, Deputy Commissioner, U. S. Office of Education, Washington, D. C.; T. G. Pullen, Jr., Maryland State Superintendent of Public Instruction; John E. Brewton, Director of Field Service and Research, George Peabody College for Teachers; Charles R. Spain, Professor, University of Kentucky; H. F. Alves, Specialist in Organization and Administration, U. S. Office of Education; W. D. McClarkin, Professor of School Finance, George Peabody College for Teachers; Ray L. Hamon, Head of the School Plant Division, U. S. Office of Education; E. Glenn Featherston, Head of the Division of School Transportation, U. S. Office of Education; Louis E. Armstrong, Professor of Secondary Education, George Peabody College for Teachers; Galen S. Jones, Head of the Division of Secondary Education, U. S. Office of Education; Orville W. Wake, Virginia State Department of Public Instruction; Bess Goodykoontz, Head, Division of Elementary Education, U. S. Office of Education; R. W. Gregory and James

R. Copen, Division of Vocational Education, U. S. Office of Education; L. D. Haskew, Dean of the College of Education, University of Texas; Elise H. Martens, Chief of Special Services, U. S. Office of Education; Franklin R. Zeran, Dean of the College of Education, Oregon State College; W. A. McCall, formerly of Columbia University; O. C. Aderhold, Dean of the College of Education, University of Georgia; Walter D. Cocking, Editor, School Executive; George B. Zehmer, Director, Division of Extension, University of Virginia; Dr. A. R. Meadows, Alabama State Superintendent of Public Instruction.

The Commission realized that it would not be possible to make a comprehensive study of every county and city administrative unit in the State. Consequently, it chose nine counties in which there are seven city administrative units for special and intensive investigations. These are Brunswick County, Wilson County, the City of Wilson, Elm City, Sampson County, the City of Clinton, Northampton County, Orange County, the town of Chapel Hill, Guilford County, the Cities of Greensboro and High Point, Rutherford County, Wilkes County and town of North Wilkesboro, and Swain County. These, the Commission thought, would represent each section of the State and give it sufficient information on which to base its decisions for the State as a whole. The committee members and consultants have visited all or practically all of the schools in each of these administrative units and, in addition, have secured some general and specific information from every city and county unit in the State.

To carry out its responsibilities, the Legislature appropriated for use of the Commission the sum of \$2500 for each year of the biennium. The Knapp Foundation of New York, which had already demonstrated its interest in North Carolina's educational progress by making appropriations to particular localities, demonstrated its interest in the educational problems of the State as a whole by doubling the sum appropriated by the Legislature.

While the work of the committees has not been completed, and the Commission has reached no conclusions, some of the findings up to this date are interesting.

Teaching Load

The teaching load of the average teacher is the heaviest to be found in

the country. This, as has been suggested, may partially explain some other undesirable conditions. For instance, during this school year one out of every seven white children and one out of every four Negro children are repeating the first grade. One out of every eleven white children and one out of every six Negro children fail to get promoted at the end of the school year. Only three of every ten white children and one of every ten Negro children who begin school in the first grade reach the senior class on time. Of every one hundred children who enter the ninth grade—the first year of high school—only fifty-two graduate four years later. This is much below the national average, which is about seventy-five graduates for every one hundred who enter high school. Not all of these difficulties, however, are due alone to the excessive teacher load. Such things as inadequate health programs and inadequate facilities play their part. At a recent meeting the State Board of Education took action which will result in a reduction of the teaching load by about two pupils per teacher during 1948-49. A further reduction is necessary if our teaching load is to approximate the average for the nation.

Teacher Shortage

At the beginning of each new school year, North Carolina needs approximately fifteen hundred new teachers for its white elementary schools. A recent survey reveals that only one hundred ninety-nine members of this year's graduating classes in the various colleges of the State are preparing to teach in this field. At the present time more than two thousand of our white teachers do not meet the minimum requirements for the standard class-A certificate. Unless replacements can be secured from outside the State, indications are that in 1948-49 three thousand elementary teachers in the State will hold non-standard certificates. Put another way, during the next school year it is likely that one hundred thousand children in North Carolina will be taught by teachers who have not met the minimum requirements for the standard certificate. There is no serious shortage of Negro teachers.

In an effort to find some of the reasons for this teacher shortage one of the committees conducted a poll of about forty percent of all the sopho-

mores enrolled in the colleges of the State. Approximately four out of five women and twenty-four out of twenty-five men said they would not consider entering the teacher profession at the present salary. The majority of them say that they would consider teaching if the beginning salary were \$2300.00 or more. In addition to the matter of salary, these sophomores stated that the community's attitude toward the teacher's social life, his status in the community, and the living conditions should be improved. In addition to better community attitude and more pay, these persons also listed as things that might cause them to consider teaching: more adequate equipment and facilities, a reduced teaching load, and a more comprehensive retirement plan. Many of the men said that they would not consider teaching under any circumstances because they prefer year-round employment and they can make more money in private business.

A survey among the teaching personnel of the State has been conducted and approximately 12,000 replies have been tabulated. More than 10,000 of these 12,000 replies indicate that the teachers feel they cannot maintain a satisfactory standard of living on their present pay. More than 3,000 of these said that a 30% increase is necessary. Another 2,000 set the raise at 40%. Still others thought the increase should be more. Only 191 would be satisfied with a 10% increase, while 698 said they felt their present salary was satisfactory.

As another part of its study the Commission distributed about 90,000 questionnaires to lay citizens of the State. The incomplete tabulations indicate that more than three out of four of the citizens answering the questionnaires think beginning teachers should receive more than the present salary of \$1620 per year. Sixty percent think that beginning teachers should receive from \$2000 to \$2400 a year and about ten percent think \$3000 a year should be paid beginning teachers. Approximately two of every three are of the opinion that the holders of graduate certificates who have taught for 15 years or more should receive between \$3000 and \$4000 per year. About 90% of these citizens feel that the teacher is entitled to six days or more per year for sick leave and 6 out of 7 are in favor of employing teachers for 9½ to 10 months so that the year's work



MEMBERS OF THE COMMISSION

Front row, Mrs. R. S. Ferguson, secretary, Clarence Heer, C. S. Bunn, and R. Grady Rankin, chairman; middle row, Dudley Bagley, Bertha Cooper, John W. Umstead, Jr., H. W. Kendall, and Jule B. Warren; back row, Edwin Pate, Richard G. Stockton, Charles F. Carroll, J. C. Scarborough, M. C. Campbell, and A. Edward Brown. (Absent: Carlyle Campbell, J. J. Harris, Jr. and Brandon P. Hodges.)

can be planned in advance and other details looked after.

Vocational Training

One committee has observed that the majority of our rural youth will have to find means of livelihood in occupations other than agriculture, but that many of the schools are offering no opportunities for training in the fields most likely to be entered by the young people. For instance, 150 high schools in the State offer no vocational subjects. More than two-thirds of these are for white children. Three hundred sixty-one rural high schools offer no vocational agriculture. About three-fourths of these are for white children. One hundred seventy-five of these rural schools offer no home economics. This committee has found further that each year some 50,000 to 60,000 of our boys and girls offer their services as beginning workers. Approximately forty percent of these have left high school before graduation and another forty percent are graduates of schools in which there is no program to prepare them for the work they will do. In other words, something like 40,000 of our young people attempt to find employment each year without having learned the educational or technical skills needed to cope with the problems encountered in choosing, entering, and succeeding in an occupation. Committee members have inter-

viewed more than a thousand of the members of the present senior class—that is, those who are graduating this month or next. Only about one-half of these have any vocational plans. About one-third of the ones who have vocational plans are going to college. The majority of the others say that they are going to work at something. These facts indicate that the schools are failing to help the youth to develop salable skills. This failure is more pronounced among the small schools (those with an enrollment of 175 or below).

In connection with the size of the school the committee has found that

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the larger the school the higher percentage of the pupils graduate. The findings also indicate that the larger schools are doing a better job in meeting what are generally considered to be the imperative needs of the boys and girls.

The School Principal

An effort has been made to find out how the school principal spends his time. Questionnaires were sent to a cross section of the principals of the State. About 150 replies were received. These reveal that the principal has many varying duties to perform. His functions can generally be classified as administrative, supervisory, teaching, and clerical, with others relating to and particularly involving community relations. In effect, the principal reports that under existing conditions he finds it practically impossible to devote necessary time to supervise, or assist in the improvement of instruction. One hundred nine of the one hundred fifty reporting said they devoted some time to supervision, with the majority indicating that they spend from two to three hours a week on this phase of the work. One hundred two reported that they did some teaching with the range from one hour per week to thirty hours per week. When asked what clerical assistance they had, 35 out of 135 who answered this question reported that they had some clerical help. Sixteen have full-time secretaries; 19 part-time. The majority of the ones with full-time secretaries are principals of city schools, while the majority of the ones having part-time assistants are principals of county schools. Of the 35 reporting

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Racial Covenants Banned

U. S. Supreme Court Holds Restrictive Covenants Unenforceable

"But the property herein described is conveyed subject to the condition that it shall not be used or occupied by any person not a member of the Caucasian race for a period of fifty years from the date of the recording of this deed." There is a customary form of a covenant which has, over a period of many years, been finding its way into numerous deeds throughout the country. (Property owners in a block or area sometimes get together and covenant with each other in a separate instrument to the same effect and then record the instrument as a condition binding on all of them.) Its purpose is obvious: a covenant designed to run with the land and, by describing the only class of persons who may use the property, restrict the property to the exclusive use of the group described. If all the lots in a particular development or area are sold subject to this same restriction, the area is effectively reserved to the use of white residents; Negro residents are the excluded class in most sections of the country, Japanese and Chinese in the sections where they predominate.

Such covenants are not unlike the restrictions, also increasingly common during recent decades, requiring that any house constructed on the premises being purchased be of a certain minimum value, be a certain distance away from the street, or be of the single-family dwelling type. These and the race-type of covenant are private agreements based on the mutual assent of the parties. Not statutes, not ordinances, but in the nature of private contracts and, like other contracts, have to be enforced in the courts if violated. State courts have inclined to a favorable view of these agreements, so much so that they have enjoyed wide vogue in the more populous centers. Recent action of the United States Supreme Court, however, serves to reduce the effectiveness of the agreements, showing again that the best laid plans etc.

"The restrictions of these agreements [restrictive covenants based on race] . . . are directed toward a designated class of persons and seek to determine who may and who may not own or make use of . . . properties for residential purposes. The exclud-

ed class is defined wholly in terms of race or color; 'simply that and nothing more.'" Thus the Court, speaking through Chief Justice Vinson, described its view of restrictive covenants based on race or color in an opinion announced May 3, 1948, in the cases of *Shelley v. Kraemer* and *McGhee v. Sipes*, coming to the Court on certiorari to the Supreme Courts of Missouri and Michigan, respectively. Taking that view, the Court could do no less than hold such agreements to be unenforceable in state courts under the provisions of the 14th Amendment to the United States Constitution: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

The cases, treated as one, arose when property subject to the type of covenant described was sold to Negroes in violation of the agreement and neighboring white property-owners sought the help of the courts in preventing the purchasers from occupying their property. The state courts enforced the covenants, and the Negro purchasers appealed to the United States Supreme Court, invoking the equal-protection clause, and for the first time put the Court in a position to pass on the exact question involved: whether the equal protection clause inhibits judicial enforcement of restrictive covenants based on race or color.

The Court saw the right to acquire, own, enjoy and dispose of property as obviously one of the rights the 14th Amendment guarantees against discriminatory state action. First, we have a Federal statute, sec. 1978, Revised Statutes, which derives from sec. 1 of the Civil Rights Act of 1866, passed while the 14th Amendment was under consideration and providing as follows: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." Second, we have clear authority for the proposition that if a statute or ordinance seeks to accomplish the same effect as these restrictive covenants it will be declared void as violating the 14th Amendment. *Buchanan*

v. Warley, 245 U. S. 60 (1917), voided a municipal ordinance which denied Negroes the right to live in a block if the majority of houses in the block were occupied by Whites and similarly barred Whites from living in a block which was predominantly Negro. Such an ordinance is invalid from the standpoint of the property-owner wanting to sell or the prospective purchaser wanting to buy. North Carolina has a similar holding, based largely on the *Buchanan* case, in *Clinard v. Winston-Salem*, 217 N. C. 119 (1939), in which the Court invalidated a Winston-Salem ordinance of the type commonly referred to as a checker-board ordinance.

However, as already pointed out, the Court was faced not with statutes or ordinances but with private contracts between individuals. Pointing out that it has long been settled that the 14th Amendment is aimed only at action of states—what might be termed governmental action—and is not effective against private conduct, the Court said: "So long as the purposes of [such] agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated."

Thus, granting that restrictive covenants are not bad in themselves, what is it that brings them under the prohibitions of the 14th Amendment? It is when the help of the courts is sought to enforce them that they fall: the Court reviewed the cases which have held from the beginning that court actions are included in the state actions contemplated by the 14th Amendment, that the Amendment applies to actions of the judicial branch just as it does to the legislative branch of government. The Court felt it was obvious that, but for the active intervention of the state courts in these cases, the Negro purchasers would have been permitted to occupy the property bought. They were cases of willing sellers to willing buyers, and the ". . . judicial action in each case bears the clear and unmistakable imprimatur of the State."

The Court concluded with an emphatic denouncement of the content-

(Continued on page 10)

THE CLEARINGHOUSE

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

Cities and Towns

Cemeteries

The Town Council of *Ahoskie* has considered purchasing four acres of land for extending the cemetery limits.

The following price schedule will apply to lots in the new sections of the *Lexington* city cemetery: In Sink Addition Number Two, single graves, \$25, four-grave plots, \$100; in Lexington Colored Cemetery, single graves, \$12.50, four-grave plots, \$50.

City Buildings

When the lowest bid for renovation of *Greensboro's* old Record Building appeared to be \$116,008, various persons suggested that the record building be sold, that the city hall be also sold, and that a new one be built to house all city government activities. The idea was termed impractical by top city officials, in view of high building costs. Meanwhile, the town of *Spring Hope* is proceeding with plans for a new building to house the town jail and fire house, and *Durham* will at budget time consider plans for building a new dog pound near the city incinerator. Work began in March on the new fire station in *Clin-ton*. It will adjoin the colonial-style City Hall which is to be built soon. Firemen and citizens of *Enfield* are building their own fire station.

The city manager advised the *Durham* city council that the City Hall is being used at night by groups such as the Theatre Guild, a chess club, and Boy and Girl Scouts. Because of the danger of fire, he asked the council to go on record as either approving or disapproving such use. The question was referred to the Safety Committee for study and report.

City Reservoir for Fishing

The Board of Aldermen of *Winston-Salem* on April 20 established a Salem Lake Fishing Commission and outlined a complicated set of regulations for fishing in the city reservoir. A fleet of 31 boats, called "Admiral

Denny's fleet" for Alderman Fred C. Denny of Salem Ward, who advanced the plan, will be rented to anglers.

City Workers' Unions

Firemen in *Greensboro* and *Wilmington* have voted to affiliate with the International Fire Fighters Association, a no-strike division of the American Federation of Labor. Objectives of the association include in-service training in fire-fighting methods and fire prevention, increased efficiency, and sickness and death benefit funds.

Members of the United Public Workers of America Local 779 (C. I. O.) in *Durham* have requested the city council for pay raises, sick leave provisions, and deduction of union dues from union members' pay. The check-off system was, in effect, disapproved by a seven-to-three vote of the council to discontinue all deductions from the payrolls of city employees, with the exception of those required by law and certain other types.

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.

Dunn City Commissioner George Franklin Blalock proposed that the town set up a pension and retirement plan. Such a system has been proposed also in *Kinston*. *Elizabeth City* public utilities employees will join the State retirement plan. City employees in *Winston-Salem* have petitioned for an increase in the prior-service bene-

(Continued on page 6)

Counties

County Buildings

In *Beaufort* County the courthouse grounds are getting the attention (in this instance, landscaping) which in several other counties is centered on the county building itself. The historic *Chowan* Courthouse boasts a new heating system; *Hertford* is making minor repairs. An *Ashe* County grand jury recommended some plastering and painting in the county offices and purchase of additional equipment for the jail. In *Pitt* County three representatives of the Pitt County Bar Association have been asked to advise with the architect and commissioners about renovating the courthouse. *Currituck* is considering issuing bonds to pay for additions to its building; and in *Warren* County the Board of County Commissioners has accepted bids totalling \$84,261.16 for additions to the jail and courthouse. Five bids were received for courthouse and jail construction, two for heating and plumbing, and four for jail equipment. A year ago when the county advertised for bids for the addition to the courthouse, not a single bid was received.

Debt and Taxes

\$300 a day was spent by *Dare* County during the fiscal year 1947, and the daily expenditure for fiscal 1948 is expected to reach \$350. The commissioners of that county have approved a plan for refunding old debt in the amount of \$321,000 to give the county a "breathing spell" so that current debts may be paid off and the county's finances strengthened.

The *Harnett* County commissioners, sitting as a Board of Equalization and Review, have reportedly had a dull time—although thousands of property owners have been notified that the values of their property have been raised, few have complained. The appraisers, Herman Holloway and Charlie Thornton, stated earlier that they believed few protests would be regis-

(Continued on page 6)

Cities and Towns

(Continued from page 5)

fit which is now set at 1%, multiplied by the number of years of continuous service prior to May 1, 1945, and prior to age 65, excluding service before twenty, the age of eligibility. Forsyth County allots 1½%, which is the figure desired by the city workers.

Electricity

Electric power volume in *Kinston* will be raised, and need for enlarged capacity is recognized in *Albemarle*. The generator which was damaged in *Washington* has been repaired and the town enjoys normal service again.

Fire

Annual clean-up campaigns will result in fire hazard removal in *Ahoskie*, *Elizabeth City*, *Wilmington*, *Newton*, *Siler City*, and *Wadesboro*. Reaping the benefits of their new water system, citizens of *Matthews* at a mass meeting on April 15 voted to establish a volunteer fire department. Extension of city limits last spring has brought *Albemarle* the obligation to add to its equipment and fire personnel. *Greensboro's* campaign to enforce the anti-smoking law on buses has met with great success. In *Durham* a fire prevention bureau may be set up in the fire department to work with city building inspector John T. Still and the electrical inspector, C. S. Whitaker.

Rural Fire Protection

Should city fire departments answer suburban and rural calls? After June 30, *Warrenton's* fire truck will not go beyond the reach of the farthest hydrant. Twelve of the eighty calls answered by the *Laurinburg* fire department during 1947 were outside the town limits; the cost of answering those alarms has been put at \$158. In March the *High Point* city council amended the existing ordinance to permit use of city fire-fighting equipment at schools, churches, hospitals, and state and federal properties beyond the city limits. The amendment also authorizes the fire chief to render assistance to persons trapped in buildings of any kind in the vicinity of High Point. *Asheboro* council members agreed to give fire protection to a new excelsior plant just outside the city, the plant owner to pay an annual

sum based on the value of his plant. *Kernersville* and *Kenly* have also recognized the problem, and a volunteer Kenly-Beulah Fire Department has been organized to provide rural fire protection within a five-to-seven mile radius of Kenly.

Garbage Disposal

Raleigh has turned to the land-fill method of disposing of garbage. It has been estimated that at the city farm enough land is available to take care of the city's problem for the next 50 years. *Smithfield* is considering the same idea. The request for garbage cans in the business section of *Sanford* is being investigated.

Grateful Citizens

The first week of April was Be-Kind-to-Aldermen week in *Elizabeth City* and *Winston-Salem*. Citizens of Old Lexington Road sent the Twin City a letter of thanks for installing a street light; and the Progressive Association of Elizabeth City returned a \$500 donation because the city has been subjected to so many unusual expenses, e.g., \$2000 for snow removal, during the past few months.

Counties

(Continued from page 5)

tered because of their practice, under the direction of Tax Supervisor Berles Johnson, of explaining to the property owners the purpose of the equalization program.

Intoxicating Beverages

The State ABC board is now sending to sheriffs and ABC enforcement officers the lists of North Carolinians to whom liquor shipments are made from Maryland dealers. Until recently the names of "bootleg" dealers had been turned over to local authorities only on request. An eastern North Carolina newspaper asks, "What will the sheriffs do with the lists? The answer to that one could reveal much about the status of law enforcement in North Carolina."

Cleveland County is legally dry—

but over 1700 persons were charged with drunkenness there in 1947. The record is one arrest for every 21 adults.

Liquor dealers have reportedly had difficulties with enforcement officials in *Iredell* and *Yadkin* counties. Officers raided stills in *Haywood*, *Beaufort*, *Person*, and *Warren* counties during one busy week in March, and since then big stills in *Richmond* and *Johnston* counties, among others, have been broken up. The eight stills (four of which were of 1,000-gallon capacity) captured near Benson in Johnston County in April were situated in an area which voted overwhelmingly dry in the last liquor election.

Rockingham County Board of Commissioners voted to ban the sale of wine in the unincorporated areas of the county after May 30.

Dry leagues have been formed in *Franklin*, *Moore*, *Pender*, and *Union* counties. In *Wayne County* the Goldsboro Junior Chamber of Commerce announced its interest in the establishment of A.B.C. stores, and a group of citizens in Dunn are reported to be seeking an A.B.C. election, in the first attempt to break *Harnett County's* dry record since a group failed to gain enough signatures to a petition for a countywide election fifteen years ago. Meanwhile, Dunn police officials are making a strenuous effort to rid the town of bootleggers. *Swain*, *Graham*, and *Bladen* counties voted for discontinuance of beer and wine sales and *Granville* countians elected to retain prohibition. Petitions have been found defective in *Macon* and *Madison* counties. Declaration of results of the four-to-one vote against permitting sales of wine and beer in *Robeson County* was held up from February 14 to April 16 by an injunction secured by the beer dealers. The sixty-day period of grace for beer and wine sellers allowed after an election in which dry forces are successful had already expired when the election results were declared, but beer and wine were still being sold on the night of April 16 in *Robeson County*.

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Recent Supreme Court Decisions

Of Interest to City, County, and State Officials

The Supreme Court of North Carolina has recently:

Had a vexatious time trying to reconcile two apparently inconsistent conclusions reached by the United States Supreme Court on the same set of facts.

The chain of events which culminated in the Court's quandary started in 1946 when Winston-Salem police officers made a series of arrests in some strike disturbances in that city. The offenses were of the sort usually associated with strikes—obstructing a police officer in the discharge of his duty, malicious injury to property, assault, etc.—and the defendants were first tried in Municipal Court in Winston-Salem. They were convicted and appealed to the Superior Court. Because they constitute a rather unusual set of judicial happenings, the events which followed are presented below chronologically as they occurred.

October, 1946—Joint trial *de novo* at the October term of Forsyth County Superior Court of four defendants, three of whom were Negroes, on warrants charging them with obstructing a Winston-Salem police officer in the discharge of his duty. Defendants interposed a motion to discharge the panel of petit jurors because of discrimination against the Negro race in making up the jury list, offering evidence that the number of Negroes selected for jury service out of the total number of eligible Negroes in the county was disproportionately small to the number of whites selected in the same manner (23,450 possible white jurors and 10,367 white names in the box; 4,900 possible Negro jurors and 225 Negro names in the box), and that this was discriminatory against both races. The State offered evidence tending to show that there had been no studied or deliberate discrimination against either race by the jury commissioners. The court found substantially with the State. The defendants were allowed a total of twenty-four peremptory challenges and used twenty-three of them. The jury finally selected was composed of seven whites and five Negroes, six of whom came from those regularly summoned for that term, the other six coming from a special venire of twenty-five talesmen, at least ten of whom came, under court order, from the Negro race. Conviction. Appeal excepting to the court's finding. *State v. Koritz, et al.*

November, 1946—Trials *de novo* at the November term of the Forsyth County Superior Court on warrants charging the defendants (all Negroes) with malicious injury to property, assaults, disorderly conduct and disturbing the peace, all growing out of the same series of transactions as the offenses in *State v. Koritz, et al.* The regular jury panel at this term was selected by the same administrative machinery, in the same manner and from the same box as that at the October term. Same motion and findings with respect to jury defect and bias as in *State v. Koritz, et al.* Conviction and appeal, assigning same errors. *State v. Brunson, State v. King, State v. Jones, State v. James, et al., and State v. Watkins, et al.*

June 5, 1947—Opinion filed by N. C. Supreme Court in *State v. Koritz, et al.*, the only one of these cases argued before the Court, affirming the trial court and holding:

that a mere irregularity on the part of jury commissioners in making up the jury list does not vitiate the list or furnish a basis for a challenge to the array unless the irregularity was obviously, designedly or intentionally discriminatory; that an objection that a Negro defendant is being denied a trial by his peers by virtue of the exclusion of Negroes from the petit jury must be presented by a challenge to the array and not by challenge to a particular juror; that, furthermore, upon an objection that a Negro defendant is denied a trial by his peers through the exclusion of Negroes from the jury list, the findings of fact by the trial judge when supported by sufficient evidence are conclusive on appeal in the absence of gross abuse. (227 N.C. 552; discussed at p. 9 of the August, 1947, issue of *Popular Government*) Per Curiam opinions filed by the N. C. Supreme Court in the *Brunson* cases affirming the trial court and ruling that these cases were all controlled by *State v. Koritz, et al.*

July 31, 1947—Application for writ of *certiorari* made to the United States Supreme Court in the *Koritz* case.

August 23, 1947—Application for writ of *certiorari* made to the United States Supreme Court in the *Brunson* cases.

October 13, 1947—Application for writ of *certiorari* in the *Koritz* case DENIED.

December 15, 1947—Application for writ of *certiorari* in the *Brunson* cases GRANTED.

March 15, 1948—Following memorandum filed by the United States Supreme Court in the *Brunson* cases: "Per Curiam: Reversed. *Strauder v. West Virginia*, 100 U.S. 203; *Ex parte Virginia*, 100 U.S. 339; *Neal v. Delaware*, 103 U.S. 370; *Carter v. Texas*, 177 U.S. 442; *Rogers v. Alabama*, 192 U.S. 226; *Norris v. Alabama*, 294 U.S. 587; *Hollins v. Oklahoma*, 294 U.S. 394; *Hale v. Kentucky*, 303 U.S. 613; *Pierre v. Louisiana*, 306 U.S. 354; *Smith v. Texas*, 311 U.S. 128; *Hill v. Texas*, 316 U.S. 400; *Patton v. Mississippi*, 332 U.S. 463." This was the extent of the opinion reversing the North Carolina Court in the *Brunson* cases.

April 16, 1948—Mandates from the U. S. Supreme Court in the *Brunson* cases received by the N. C. Supreme Court.

April 28, 1948—Second opinion in the *Brunson* cases filed by the N. C. Supreme Court, Chief Justice Stacy writing the opinion. The following points which the Court made will indicate something of the quandary in which it was left. They are presented in excerpt form because it is thought that parts of the language will be found particularly interesting.

"To permit our opinion to stand in the principal case (i.e., the *Koritz* case) and reverse it here on similar exceptions would seem to leave the two rulings somewhat in conflict; and as precedents they will be difficult to follow. . . . For all practical purposes . . . the several challenges to the array present but a single question for decision. . . . No suggestion is given as to just what facts should be regarded as controlling here which were not operative in the principal case. The trial court made

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Education Commission

(Continued from page 3)

clerical assistance only 18 stated that State or local funds or a combination of these two were provided. Fifteen reported that school funds were used and three reported no funds were available to pay for such service.

This same committee has made an analysis of the size of high schools in an effort to determine the adequacy of the school program for the children of the State. The findings indicate that there are 374 high schools in the State in which fewer than 100 pupils are enrolled. There are 389 in which more than 100 but fewer than 200 pupils are enrolled. In terms of actual enrollments as reported by county and city administrative units to the Office of the State Superintendent, 270 county and 80 city high schools for whites and 76 county and 14 city high schools for Negroes report an average enrollment of from 75 to 80 pupils and 278 county and 19 city high schools for whites and 65 county and 26 city high schools for Negroes report an average enrollment of from 140 to 150. Some national findings indicate that a high school of fewer than 350 to 400 pupils cannot offer an adequate program of education at a reasonable cost.

School Buildings

The committee dealing with the school plant has found some excellent school buildings which are well maintained and in good operating condition. On the other hand, it has found many school plants which are poorly planned, cheaply constructed, obsolete, lacking in essential features necessary for modern education and community needs; in a poor state of repair, dark, dirty, and unsafe, with little or no recreational space either in the buildings or on the grounds. It is not uncommon, the committee reports, to find schools in North Carolina in which one janitor is expected to provide all the custodial services for a school plant in which twenty or twenty-five teachers work.

Many of the schools of the State are equipped with essential sanitary facilities but there are many others in which the toilet facilities are obsolete and insanitary. In many schools there are no provisions for washing hands. In these connections the committee has observed that it is rather meaningless to teach health and at the same time make no provisions for

practicing the fundamental health habits.

Some of the counties are fortunate in having good school plants, but a large proportion of the school plants in the State are sub-standard. Regardless of conditions, the school plants are woefully inadequate. Even with the use of obsolete and insecure buildings, there is not sufficient space to accommodate the present enrollment. In many cases classes are being held in such improvised places as auditoriums, balconies, gymnasiums, libraries, dark basement rooms, storage rooms, temporary shacks, and old rented residences. All of the counties, even in the upper economic brackets, are greatly in need of additional facilities to accommodate present enrollments. According to some national surveys, it is expected that the enrollments will continue to increase for several years due to high birth rates during the 1940's and the increased holding power of the schools resulting from improved educational opportunities.

Transportation of Pupils

North Carolina owns more than 5,000 school buses which transport daily approximately 350,000 pupils to and from school. This necessitates a daily mileage of about 185,000 miles. The findings reveal that the program of transportation in North Carolina has been carried on more economically than in any other state in the union. The chief difficulty in transportation, according to the preliminary study by the committee, is in the quality of the service rendered. This is evidenced by the fact that many children leave home too early in the morning. They ride too far. The buses are overcrowded. The children arrive at school too early in order that the bus may make a second or third trip, and they remain at school too late in the afternoon.

Exceptional Children

The State has established nine residential schools where 1,857 severely handicapped children are receiving training. Many local school systems have recognized the needs of these handicapped children and have established special classes for them. It is estimated that between 6,000 and 9,000 children are receiving some measure of special instruction while, on the basis of the national estimates,

there are perhaps from 80,000 to 85,000 children in North Carolina who need special consideration before they can receive adequate education. These include the crippled, the hard-of-hearing, the ones with poor vision, those with speech defects, and others with different types of physical handicaps.

Adult Education

Forty-five State organizations or agencies in North Carolina provide some form of education for adults. When thinking of adult education many people envisage it as teaching illiterates how to read and write. The committee reports its awareness of this need but indicates that its conception of adult education is the *continuing* education for *all* the people, regardless of their former education or their social and economic status. It is helping people to solve the problems which they face—personal, vocational and civic. It gives free people facts on which they make important decisions. It gives them channels for expressing their ideas and raising their spiritual and intellectual sights. It is, in short, an essential ingredient of a democratic form of government.

Financial Support

According to the records North Carolina citizens paid in State and local taxes a smaller proportion of their income in 1945-46 than they did in either 1939-40 or 1928-29. In other words, incomes grew faster than taxes between 1929 and 1946. Per capita taxes in 1946 amounted to \$56.30. If the 1940 percentage of income had been paid in 1946, the amount would have been \$87.35 instead of \$56.30.

North Carolina has less per capita income than the national average. Based on 1944 and 1946 data, the per capita income in North Carolina was 68% of the national average. The State might reasonably be expected to reach 68% of the national average in per capita school expenditures, yet it spent only 55.7% as much as the average of the states. It might be stated that the State has more children to be educated than the average state on less than an average income, yet this fact is evidence that more than an average effort will have to be exerted to support schools on the basis of the national average.

It has been observed that the main-

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Current Garbage Collection Practices

34 Communities Report

With increased cost of services to their citizens and dwindling sources of revenue, a number of cities and towns are casting about for ways to effect greater economy in standard operations.

In response to several requests for information relative to garbage collection practices, the Institute recently surveyed thirty-four North Carolina communities. Twenty-three, or 68% of the thirty-four participating cities and towns, reported that they provide backdoor collection service; the remaining eleven cities and towns, or 32%, require residents to place containers on the street to permit curb pick-up service. Greenville, along with two other towns, uses a combination of these two plans; if alleys or driveways are negotiable, backdoor service is provided; if not, containers are picked up at the curb.

Economic considerations were largely responsible for the introduction of curb collection in the eleven cities following this practice. Several cities were able to save 10% to 30% in labor and 5% to 25% in vehicular operation and depreciation. In Asheboro, where curb collection has been in existence almost as long as the town, officials believe the cost of back-

door service would almost double current expense for curb collection. Other cities and towns have adopted curb collection for safety reasons: heavy trucks, especially new enclosed-type garbage packers, can easily damage driveways and walls; and more important, there's the constant danger of not seeing a child in a driveway until it is too late.

The greatest criticism leveled at curb collection by those governments using the plan, as well as by those using the backdoor method, relates to the unsightly appearance of city streets lined with garbage and trash containers. City Manager W. H. Carper of Burlington points out: "Our present system of collection at curb is working very well—no complaints—however, we do not like unsightliness of streets with cans and boxes out . . ." Some cities have checked this condition to some extent through ordinances which state when containers must be placed and removed from the street. Greensboro requires placement of containers on the street by 7:00 a.m. and removal "within a reasonable time after the contents thereof are emptied and collected. . . ." Section 3 of Asheboro's ordinance requires removal "not later than some hour" of the collection day.

Whiteville employed the curb col-

lection method at one time but discontinued it in favor of backdoor service when dogs became too adept at knocking over full containers.

Prior to the war, Asheville provided backdoor service which functioned quite satisfactorily until wartime shortages of manpower and equipment made it only practical to change to curb collection. With additional collection equipment and a more adequate sanitary department force, Asheville plans to resume backdoor collection around June 1st. In changing over, Asheville will use the set out-set back method in which the truck follows one or two men who pick up containers in residents' yards and move them to the curb. One or two men follow the truck, replacing cans. This method was recently introduced in Charlotte by O. C. Fogus, sanitary department head, in connection with the city's acquisition of four enclosed garbage packers.

On the whole, most cities furnishing backdoor collection feel committed to continue present methods. When questioned why this method is employed, eight replied "it has always been done," six objected to the unsightliness of containers on the street, and three reported "provides more service to the taxpayer."

Garbage and Trash Collection Survey, 34 North Carolina Cities and Towns

1. In collecting garbage and trash
 - A. 11 cities and towns require resident to place container on street.
 - B. 23 cities and towns pick up container in resident's yard.
2. Why was method "A" introduced?
 - A. 2 cities said: "Too dangerous to allow trucks in yards"
 - B. 1 city has always collected in this manner
 - C. 6 cities gave economic reasons
 - D. 2 cities did not report reasons
 -
 - 11 Total
3. Did you encounter much citizen opposition to plan "A"?
 - No—9 Yes—2

4. Why is method "B" employed?
 - A. 8 cities reported "it has always been done"
 - B. 6 cities thought streets have better appearance
 - C. 3 cities said "additional service to taxpayer"
 - D. 1 city found method "A" unsatisfactory
 - E. 1 city reported driveways large enough to work in
 - F. 4 cities gave no reasons
 -
 - 23 Total
5. Is there any sentiment for changing to method "A"?

No	14
Yes	4
Some	1
No answer	4
—	—
Total	23

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Books Received

Administration of Natural Resources

RESOURCE MANAGEMENT IN NORTH CAROLINA. By Paul W. Wager and Donald B. Hayman. Chapel Hill, North Carolina: Institute for Research in Social Science. 1947. 192 pages. Free upon request to the publishers.

This study is one of a series resulting from a cooperative survey which has been engaged in by the Universities of Alabama, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. A companion volume is being published for each of the cooperating states and a final volume summarizing resource management in the South is under preparation by the Government Research Staff of the Tennessee Valley Authority.

Mr. Wager and Mr. Hayman have sketched the development and have highlighted the problems of resource administration in North Carolina with candor and frankness that make this study a valuable tool for the legislator and the resource administrator. It is, too, a useful source of information for the civic study group and the average citizen who is interested in, and ultimately responsible for, the policies and practices formulated by his government in the administration of the state's natural wealth. After tracing the early development of resource administration, the authors present a survey of the current programs being administered by the federal, state, and local governments. The programs which are treated involve land, water, mineral, forest, scenic, and wildlife resources. The reader will be impressed with the breadth of cooperation which has been developed in this field between the

levels of government. He is probably familiar with the cooperation which exists in the development of sound agricultural practices, but the fact that eight state and federal agencies cooperate in the field of water resources may come to him as new information. He will note with interest that the state's parks and recreational facilities are the joint responsibility of four levels of government—federal, state, county, and municipal.

The needs in the field of resource administration are considered to be: (1) a well organized and continuing program of research; (2) an educational program stressing the unity and the undeveloped potentialities of natural resources; (3) methods of integrating the separate resource programs; (4) a body of efficient and qualified civil servants recruited and promoted on the basis of merit, free from the cloud of political clearance; and (5) effective legislative and administrative solutions for problems of public resource policy, administrative organization, fiscal policy and procedure, and managerial and reporting techniques.

The fifth recommendation, it would seem, embodies a sea of troubles—the abatement of stream pollution, the development of adequate provisions for county zoning, the increase of forest production and the emphasizing of proper forest management, the husbanding of mineral resources, the provision of adequate recreational facilities for all our citizens, the subordination of special interests to the general will, to mention only a few. The authors feel that the majority of the state's resource administrators are aware of numerous ways in which

their programs could be more effective, even within the present legal framework, but that their efforts are hampered by special legislation, lobbies, and inertia.

We are reminded, for example, that while problems of stream pollution may legally be considered by the State Stream Sanitation and Conservation Committee, their activities are rather effectively limited by the fact that they receive no appropriation and that industries who wish may legally contaminate streams. We are reminded, too, of the successful efforts of a vested-interest group in killing a bill which would have permitted county zoning (no county opposed the bill). One recalls only a single brief program for education in wildlife conservation.

The authors point out that effective programs can exist; much has been done since the first resource statute was enacted in 1723; much has been accomplished in retracing wrongful paths that may have been followed in the past. They believe that progress will be gradual and dependent upon a thoroughgoing educational program which will give direction to the work and encourage citizens who "are aware of the bountifulness of Nature's gifts, recognize their obligation to husband them, and have gone far in meeting that trust."

GEORGE DEMING.

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Restrictive Covenants

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tion that the willingness of the states to enforce restrictive covenants in favor of Negroes against Whites cures the defects found in covenants running against Negroes. The rights guaranteed by the 14th Amendment run to individual and are personal, and the fact that courts might be induced to deprive a White of his rights does not offer any protection to the Negro. "Equal protection of the

Recent Supreme Court Decisions

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similar findings in all the cases. It will not do to say the infirmity in the original panel was cured by the special venire in the *Koritz* case, on the principle that 'a little leaven leaveneth the whole,' for the challenge to the original array necessarily came before it was known, or could be known, that a special venire would be needed. The mere presence on the jury of members of different groups or races is no assurance that they were selected as the law commands. Such was the holding in *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 90 L.Ed. 1181. . . . As a

matter of logic, the Negro defendants in the principal case stand on a parity with the defendants here. For us to have reached different conclusions in the cases would have been to decide two ways on practically identical exceptions . . .

"It is true that 'whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case.' *Patton v. Mississippi*, *supra*. It is also true that in appellate courts where precedents are established similar fact situations usually

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laws is not achieved through indiscriminate imposition of inequalities."

Possible Effects of Decision

It is difficult to project with any certainty what the entire effect of the Supreme Court's decision will be. It is certain that it can have serious effects on property values and that it will, therefore, result in considerable scurrying about to seek new ways to accomplish the effect of restrictive covenants without running afoul of the law. Some of the methods now in use to create restricted areas, which are, according to press comments on the decision, being studied with renewed interest, are these: self-enforcement of covenants by requiring a purchaser to file a cash bond, to be forfeited if he sells or rents to the prohibited class; requiring membership in a club (golf club, country club, etc.) as a condition precedent to purchase of land; reserving the right in the seller to have first option to buy

if the property is offered for sale; requiring approval of the prospective purchaser by a majority of the nearest neighbors; and requiring houses of certain value or limiting the number of regular occupants per room. All of these systems of restricting an area to a particular class are open to at least some question, legally speaking, and all lend themselves better to restricting a new development than one already existing. In the latter case, if the usual pressures—snubbing of the minority-group purchaser by neighbors, refusal of financial assistance by lending institutions, threats of damage suits against rebellious covenant-signers, etc., are not effectual, this decision can conceivably result in constant shifting of racial groups within a community (i.e., one unwanted family moves into a block and the other families feel compelled to move away) and property values can become extremely unstable.

Education Commission

(Continued from page 8)

tenance of small, weak high schools encourages waste and inefficiency while the promotion of larger high schools provides for economy and efficiency. For example, a county in which there are 290 high school pupils can maintain two high schools of 85 pupils each and one of 120 pupils and can qualify for 19 teachers including two vocational teachers for each school. If these schools were relocated at one center where a building more economical to operate could be provided and a more adequate instructional program could be offered, the county would qualify for only 12 teachers including 2 vocational teachers.

Someone has observed that a more adequate educational program will cost more money, to which another re-

Forty-First Annual Convention of County Commissioners and Accountants

June 15, 16, 17 — Morehead City — Ocean King Hotel

Program

Tuesday, June 15

Registration at Ocean King Hotel beginning at 2 p. m.

Convention called to order by President J. Caldwell McDonald, 7:30 p. m.

Invocation: The Reverend W. D. Caveness

Welcome: Mayor George W. Dill, Jr., of Morehead City

Response: Commissioner G. Mark Goforth of Caldwell County

Financial Report: Secretary-Treasurer John L. Skinner of Warren County

Presidential Report: President McDonald

Report on Regional Meetings: Commissioner J. Henry Vaughan of Nash County

Appointment of Committees

Nominating of Officers

Legislative Program

Resolutions

Wednesday, June 16 (Morning)

Address: Dr. Ellen Winston, Commissioner of Public Welfare

Address: Grady Rankin, Chairman of the State Education Commission

Address: A. H. Graham, Chairman of the State

Highway Commission

Round Table Discussion on Needed Legislation: Led by Commissioner Clarence Parks of Rutherford County

Wednesday, June 16 (Afternoon)

Address: Gordon Maynard, Secretary of the Portland Cement Association

Address: Albert Coates, Director of the Institute of Government

Motion Picture: Presented by J. D. Ball, Public Relations Officer, Standard Oil Company

Wednesday, June 16 (Evening)

Banquet: At 7:30 p. m.

After Dinner Speaker: Dr. W. D. Daniel, Dean Emeritus, School of Arts and Sciences, Clemson College

Dance with Orchestra

Thursday, June 17 (Morning)

Reports of Committees

Election of Officers

Adjournment

MEETING OF COUNTY ACCOUNTANTS AND TAX SUPERVISORS: Wednesday afternoon at 3 o'clock

LADIES NIGHT: Tuesday evening (Bridge)

Reservations should be sent to Ocean King Hotel, Morehead City

plied that it would at the same time save money.

Resources of the State

One fact which is clearly demonstrated is that North Carolina is a State of highly varied resources and that in geologic and geographic areas and soil types, North Carolina can hardly be surpassed. Not all of the minerals nor all of the soils have great commercial value but some of these are of especially high quality. For instance, the largest telescope in the world is made from North Carolina quartz; the most expensive buildings in America are built of Mount Airy granite; more than half of the mica mined in America is from North Carolina; and there is enough ceramic clay in North Carolina to supply the raw material for brick, tile, and a considerable part of the pottery needs of America if we were called upon to furnish this supply. Reliable authorities have stated that we have potential mineral resources which, if developed, would result in an income several times the present income from the minerals of the State.

It is possible that few people in our State realize that North Carolina ranks among the first 7 states in the production of lumber and during recent years has ranked fifth, being surpassed only by Pacific Coast States and one other Southern State. In spite of these facts, the volume of timber cut and the value of output of industry based on North Carolina forest products could be vastly increased. Nearly six-tenths of the state is still in forest and the present yield on the vast majority of this land is largely a matter of chance. Only a small fraction of our forest land is yielding its potential. It is estimated that our eighteen million acres of forest land has a potential yield of nine billion board feet a year. Even with 50% potential, our yield would be between four and five billion board feet. We are now cutting at the rate of a little over a billion feet per year.

No other state has oyster resource potentials surpassing those of North Carolina. At one time the oyster yield of the state was more than two million bushels a year without much ef-

fort of conservation. The present yield is only a few hundred thousand bushels, nearly all of which comes from depleted public beds. It is claimed that we have a million acres suitable for oyster culture. At the present time only twelve thousand acres, largely depleted, are in oyster production. The decline in the importance of the oyster is largely paralleled by the decline in the yield of clams, escallops, crabs, shrimp, as well as many varieties of fish.

There is ample justification for suggesting that of all resources of the State, *human resources, people themselves*, are the most vital. A major concern with regard to our human resources is the conservation of these resources through adequate health and welfare programs. The health and welfare of children cannot be separated from the total health and welfare picture.

All of the committees are still at work. Many of the facts are still not known or are yet to be analyzed. Some of the things, however, that have been
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Recent Supreme Court Decisions

(Continued from page 10)

produce like results. Indeed it has been thought that the equal protection of the laws required as much . . . But what of the consideration given the Negro defendants in the principal case?

"Further adding to the difficulty of reconciliation here, is the 5-to-4 decision of the court of last resort on 29 March, 1948, upholding the selection of a 'blue ribbon' jury in New York from a panel of one hundred and fifty which contained the names of no Negroes. There, as here, was testimony to the effect that no 'intentional or systematic exclusion' was practiced or intended. *Moore v. New York*, 333 U.S. —, decided March 29, 1948. The decision accords with the result in the *Koritz* case albeit the opinion makes reference to the instant case.

"Nevertheless, the question now is how to proceed in these cases from here on. . . . While the cases are 'Reversed' by the court of last resort, it is not to be assumed the warrants are to be quashed. None of the cases cited deals with this question . . . nor is it to be assumed that the North Carolina statutes on the subject of Jurors are to be regarded as invalid, though this was argued by the defendants. The cases cited are primarily concerned with 'the administrative practices of state jury selection officials' The ambiguity or uncertainty left by the bare reversal appears to call for a word of direction from us to the trial court. Otherwise, arguments will ensue there as to whether the defendants are to be discharged or tried again. The judgments heretofore entered in these five cases will be set aside, and the causes remanded for new jury trials in accordance with the mandates of the Supreme Court of the United States."

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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

24. Board of equalization and review To L. I. Moore.

Inquiry: My county is engaged in a reassessment program to be effective as of January 1, 1948. The Board of Equalization and Review was unable to meet and begin disposing of appeals on March 15 as provided in the Machinery Act of 1939. May the Board convene after the date fixed by the statute and will its failure to convene on March 15 have the effect of invalidating reassessments for the year 1948?

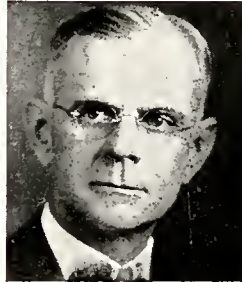
(A.G.) I am of the opinion that Sec. 1715(j) of the Machinery Act reduces the effect of Sec. 1105 relative to the time within which the Board of Equalization and Review must meet and perform its duties from the status of mandatory provisions to directory provisions. I am, therefore, of the opinion that the Board might legally meet at a later date and that its failure to meet within the time set by Sec. 1105 would not invalidate tax assessments or render the work of the Board a nullity. Out of an abundance of caution I would suggest that if the Board is to meet at a later date that newspaper publication be made at least three times at least ten days prior to the meeting of the Board, and also that personal notice by mail be sent to each taxpayer whose assessed valuation has been increased.

30. Situs of personal property

To W. N. Rose.

Inquiry: Should a person who owns and operates taxicabs within the city limits, but whose residence is outside of the city limits and who has no principal office or headquarters of any kind within the corporate limits list the taxicab with the town for ad valorem taxes?

(A.G.) If the person in question does not maintain any office or headquarters of any kind within the corporate limits, I am of the opinion that G.S. 105-302(4) would not apply and that the taxicabs should be listed in accordance with the general rule at the residence of the owner. However, if the operator of the taxicabs maintains a telephone or call-box for the purpose of receiving taxicab calls, I am of the opinion that such would be sufficient to justify the listing of the taxicabs for municipal taxes under the provisions of Subsection 4. I call your attention to



**HARRY
McMULLAN**

**Attorney
General
of
North
Carolina**

G.S. 20-97(a) which authorizes both cities and towns to levy a tax not to exceed \$15.00 per year upon each vehicle operated in such city and town as a taxicab.

51. Listing and assessment of property

To U. V. Hawkins.

(A.G.) As a practical matter and for the sake of promoting uniformity in tax listing and assessing, I believe that it would be preferable and, in my opinion, legally proper to regard such household equipment as electric refrigerators, gas and electric hot water heaters, and cooking stoves, which may be disconnected and moved by the tenant from one house to another, as personal property. I do not believe that the fact that such equipment has generally, in recent months, been included in the price of new dwellings financed through the FHA or GI loans should cause this rule to be varied.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

64. License tax on out-of-town businesses

To Mrs. Myrtle W. Smith.

Inquiry: Where a plant manufacturing mattresses in a nearby town sends truckloads of mattresses into a town and peddles them from door to door, does the town have authority to collect a privilege tax for such activity?

(A.G.) I am of the opinion that the town may collect a tax upon such business not in excess of that provided by Sec. 121(g) of the Revenue Act, provided the town has in force a taxing ordinance which covers and taxes such activity.

IV. PUBLIC SCHOOLS

A. Mechanics of Handling School Funds

9. Capital outlay funds

To H. J. MacDonald.

(A.G.) I am of the opinion that a surplus existing in a school capital outlay account may, upon application to the board of trustees, and upon approval by the board of county commissioners, be transferred to the current school budget has been approved by the State Board of Education, any amendment to the budget should be approved by the Board.

16. Letting contracts

To Charles McCrary.

(A.G.) Having complied with the provisions of G.S. 143-129, in having advertised for bids for the construction of a school building, it is not thought that your Board would be required to readvertise for bids even though it appears that the bids submitted for this construction exceed the availability of funds therefor. No legal objection is seen to now letting the contract without readvertisement upon a cost-plus-fixed-fee basis provided the cost thereof does not exceed the availability of funds which you have on hand for this purpose. It is suggested that your Board should require a guarantee from the contractor, supported by a proper bond, that the cost of the construction would not exceed the avail-

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ability of funds which you have on hand for this purpose.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

- 1. Issue of Bonds
- 9. Investment of proceeds

To C. V. Jones.

Inquiry: May a city invest the proceeds from a sale of bonds in United States Government certificates, due twelve months from date, where the improvements for which the bonds were issued cannot be constructed immediately and, in the meantime, a substantial earning from this investment could be realized?

(A.G.) I know of no statute which would permit this to be done. Ch. 14, Session Laws of 1943, authorized local units to invest unused funds derived from the sale of bonds "heretofore issued" in Federal securities, etc., subject to the approval of the Local Government Commission. This act would, however, be inapplicable to the present situation, as the bonds here involved were not issued prior to the enactment of that law. Under the Municipal Finance Act, proceeds from the sale of bonds can be used only for the purposes for which the bonds were issued and for the payment of principal and interest of temporary loans made in anticipation of the sale of the bonds.

K. Unanticipated Revenue and Surplus

To C. V. Jones.

Inquiry: Would a city council have the right, by resolution, to provide for the expenditure of funds derived from profits from the operation of ABC stores in excess of the estimated revenues from this source at the time the budget was set up, assuming that the funds would be spent for a public purpose, or would it be required to carry this surplus forward into the next year?

(A.G.) This office has heretofore expressed the opinion that when this situation develops, and the full amount of the anticipated revenue has been received from all sources from which it was expected, this would constitute a surplus and the municipality would have the right, by proper resolution, to set up a supplemental appropriation providing for the expenditure of such funds for any public purpose. This assumes, however, that there would be no deficit in funds which might be anticipated from other sources of revenue. I realize that it would be difficult to determine whether or not deficits might occur; but I do not think that the determination of a surplus could be made until the amounts collected from all sources had actually equaled the full amount of the appropriations.

HOSPITALS AS NECESSARY EXPENSE

To Dr. John A. Farrell.

Inquiry: May counties devote tax money to hospital construction, maintenance, etc., without the vote of the people or an election?

(A.G.) The past decisions of the Supreme Court of North Carolina are not in entire agreement on the point, and there are many attorneys, as well as other persons, who feel that if the question were again presented to the Supreme Court of North Carolina it is altogether possible that the Court would now hold that tax funds and funds derived from the sale of bonds could be used for such purposes without a vote of the people since it is thought that such requirements now fall within the category of necessary expenses. It is thought by these persons that a good case can now be made in view of the public interest in medical care and public health, in view of the poor record of North Carolina as shown by the rejections of men from North Carolina under the Selective Service Act in the last war, and possibly many other factors.



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VII. MISCELLANEOUS MATTERS AFFECTING CITIES

C. Police and Fire Protection

1. Powers and duties of firemen

To William P. Hodges.

(A.G.) It is the opinion of this office that, under the provisions of G.S. 130-39 and 160-117, a volunteer fire department established in a sanitary district is clothed with all the powers of municipalities in this State with respect to fire protection; and in view of the fact that the chief of the fire department of a municipality, under G.S. 160-117, is charged with the duty of fighting fires, it is thought that in the exercise of this duty he would have the implied authority to direct traffic in the vicinity of a fire and to order sight-seers out of a burning building.

10. Fires outside city limits

To R. W. Johnson, Jr.

(A.G.) Our law provides that the governing bodies of municipalities are authorized to agree to furnish protection against fire for property within an area not more than twelve miles from the city limits, upon such terms as the governing body may determine. G.S. 160-238 further provides that any fire department employee shall have the same rights with respect to workmen's compensation, disability funds, etc., as if such duties were performed within the corporate limits, and that in answering such calls the municipality shall be considered as functioning in a governmental capacity.

K. Grants by Cities and Towns

4. Recreation facilities

To A. B. Carter.

(A.G.) In the absence of any statutory authority or an election, I know of no legal grounds for a municipality to contribute toward the construction of a swimming pool located outside the municipality on property belonging to a Veterans Park Commission, which is sponsoring the project, or to purchase the filtering equipment and lease the equipment to the Commission.

W. City Purchases

15. State and Federal taxes—liability for

To John D. Shaw.

(A.G.) I am of the opinion that the city is not under a duty to pay the inspection tax or fee to the State of North Carolina on kerosene purchased outside of the State of North Carolina by the city to be used by residents of the city to heat their homes and to prepare food. See *O'Berry v. Mecklenburg County*, 198 N.C. 357.

Y. Streets and Sidewalks

2. Duty to repair

To John B. Lewis.

Inquiry: Is a railroad liable for the expense of repairing a paved street where the railroad crosses the street?

(A.G.) G.S. 60-43 authorizes municipalities to give notice to a railroad requiring it to place a street crossing in good condition and, if the railroad fails to do this within 30

days, it would be guilty of a misdemeanor. In *Raper v. R. R.*, 126 N.C. 563, it was held that railroad companies are required to maintain safe and convenient crossings over public streets in municipalities. A town could, proceeding according to the statute, subject the railroad to indictment and could by civil action require it to maintain street crossings in safe repair and condition. If the railroad company failed and refused to repair a street crossing after notice, I believe the town could proceed to have this work done and the railroad would be liable for the reasonable cost of the work.

SUPPLEMENTAL RULING RE STATUTE OF LIMITATIONS ON TAX LIENS

On page 10 of the May issue of POPULAR GOVERNMENT there appeared the following digest of the Attorney General's opinion to Mr. O. G. Anderson with respect to the statute of limitations on tax liens: "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."

The Attorney General's office feels that it should supplement this information by calling attention to the fact that Chapter 1065 of the Session Laws of 1947 does bar the collection of certain taxes unless suit is instituted within ten years from the time such taxes became due, but provided that tax foreclosure actions which, under existing laws, are not barred, will not be barred prior to December 1, 1948, and that foreclosure proceedings could be brought upon the same at any time prior to December 1, 1948. A number of counties are exempted from the provisions of this Act.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

B. Clerks of the Superior Court

79. Decedents' estates—distribution and administration

To A. H. James.

Inquiry: When an executrix is in possession of bonds or stocks that are in the names of the deceased and/or the executrix or last survivor, and there is also a bank account under a similar arrangement, is the executrix, in filing an inven-

tory with the court, required to show such stocks and bonds on said inventory?

PASSING ON THE RIGHT

To William B. Campbell.

Inquiry: May a municipality permit overtaking vehicles to pass other vehicles on the right-hand side on highways which are marked for four-lane traffic?

(A.G.) It is my opinion that unless the streets or highways are marked for four-lane traffic the municipality or local governing authority would have no power to pass an ordinance such as the one you mention. If the street or highway is marked for four-lane traffic, however, it is my opinion that the control of traffic thereby would fall within the exemption in G.S. 20-169 for highways where traffic is "heavy or continuous" and that lines on the highway indicating to the driver the portion of the highway on which they are to drive and lanes in which they are to remain would constitute "traffic . . . or other signaling devices" within the meaning of this statute. It may be further noted that passing on either side of a one-way street may be permitted. See G.S. 20-169 and 20-146.

(A.G.) If the bonds are U. S. Savings Bonds and are made payable to the deceased and/or the executrix, it is my opinion that such bonds would belong to the survivor and would not necessarily be included in the inventory of the executrix. This opinion is based on federal regulations governing U. S. Savings Bonds as found in Treasury Department Circular No. 430, Sec. 315, which were issued pursuant to authority contained in 31 USCA 757(c)A. The regulations apply to all U. S. Bonds of all series except as otherwise provided in Sec. 315.1. If the bonds are not U. S. Savings Bonds, then the interest of the estate in the proceeds from such bonds or certificates of stock or bank accounts in the name of the deceased and/or the executrix would depend on the facts in each particular case.

82. Decedents' estates—fiduciary's bond

To John E. Henson.

(A.G.) Under the provisions of G.S. 28-34, every administrator is required to give a bond before letters of administration may be issued to him. This is true regardless of the fact that all the heirs of an estate have requested that an administrator be appointed to serve without bond.

D. Registers of Deeds

9. Marriage—licenses and certificates

To Mrs. Margaret B. Moore.

Inquiry: Where a person who has

recently obtained a "quick" divorce in another state is planning to re-marry, what is the duty of the register of deeds in issuing a marriage license?

(A.G.) Even though such divorce may not be recognized in this State, I do not think that it would be the duty of a register of deeds to refuse to issue a marriage license. The duty of determining whether or not a divorce is a legal one is a matter for the courts.

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

To John Anderson.

Inquiry: Is it legal for dues-paying members, membership restricted, to bring tax-paid liquor into a country club for private consumption in a so-called dry county?

(A.G.) I think it is plain that in a dry county it is unlawful to possess tax-paid whiskey or any other kind of whiskey outside of the home, and it is therefor unlawful to possess tax-paid whiskey in a country club or other private club for private consumption in such county.

30. Slot machines

To R. Aubrey Darr.

(A.G.) Under the provisions of G.S. 14-306 all slot machines are illegal in this state except those slot machines which vend merchandise of equal value each time they are operated, or slot music, weighing or stencil-making machines.

31. Lotteries and punchboards

To W. H. Oakey, Jr.

Inquiry: Would the practice of certain soft-drink bottlers of printing numbers in the caps attached to each bottle, and upon the customer's purchasing a bottle upon which the cap has a certain lucky number, giving the customer another bottle of said drink free, violate the lottery laws of this State?

(A.G.) It is the opinion of this office that such practice would violate the lottery laws of this State regardless of the fact that a customer, in addition to opening the bottle with a lucky number, would be required to submit a written statement as to why he liked the product.

O. Juvenile Court Officials

I. Jurisdiction

To J. E. Mewborn.

Inquiry: Does the Juvenile Court have jurisdiction of the case of a boy under 16 years of age charged with operating a motor vehicle upon the highways without a State driver's license?

(A.G.) If the boy is over 15 years of age, the regular courts would have jurisdiction. If he is under 15 the Juvenile Court would have jurisdiction, and cannot subject him to the regular criminal penalties such as the mandatory fine of \$25.00 as provided by Public Laws of 1947. I have very grave doubts as to the authority of a Juvenile Judge to tax costs in the Juvenile Courts. In fact, the last sentence of G.S. 110-43 specifically states that "all expenses incurred in complying with the pro-

visions of this Article shall be a public charge."

DOUBLE OFFICE HOLDING— PLANNING BOARD MEMBERS

To Staton P. Williams.

(A.G.) You inquire as to whether or not membership on a municipal board of commissioners and a municipal planning board constitutes double office holding within the contemplation of Article 14 Section 7 of the North Carolina Constitution. This office has heretofore expressed the opinion that membership on each of said boards constitutes an office so that the same person may not hold membership on said two boards at the same time without violating the pertinent provisions of the Constitution.

P. Officials of Recorders' and County Courts

20. Jurisdiction over subject matter

To W. L. Angel.

Inquiry: Does the recorder's court have jurisdiction over a defendant charged with non-support of an il-

legitimate child, but who is now under the age of sixteen?

(A.G.) We are of the opinion that the Juvenile Court would have jurisdiction of this matter. It is our opinion that the jurisdiction given the Juvenile Courts over children of certain ages as fixed by the juvenile statute is controlling over all other jurisdictions, and where the person is within the age limits giving the Juvenile Court jurisdiction, the power of the Juvenile Court must prevail. Of course, if the neglect and non-support of the illegitimate child was committed while the defendant was under sixteen years of age, and at the time of trial he was over sixteen years of age, we would say that your Court would have jurisdiction because this type of offense is a continuing offense.

Education Commission

(Continued from page 12)

pointed out indicate that there is room for improvement.

The committees have made two reports to the Commission up to this date and two more reporting periods are planned. According to schedule the Commission will meet near the end of August for a study of the final reports of the committees, after which it will draw the conclusions and frame the recommendations which will constitute the formal report to be presented to the Governor and General Assembly of 1949.

Books Received

(Continued from page 10)

Public Utilities

MUNICIPAL WATER SYSTEMS IN WASHINGTON STATE. By Donald C. Sampson. Seattle, Washington: Bureau of Governmental Research and Services. 1948. 37 pages.

Water rate schedules of public and private companies; comparative costs; policies with regard to perimeter areas; tourist camps and trailer courts; enforcement of delinquent bills; stand-by (fire protection) rates; typical forms; and typical ordinances in effect in municipalities.

PUBLIC REGULATION IN ACTION: THE EXPERIENCE OF A MICHIGAN GAS COMPANY. By Floyd A. Bond. Ann Arbor, Michigan: University of Michigan Press. 1948. Pages x, 206.

The processes of regulation of utilities in the public interest are exposed in this study of one particular utility—the Washtenaw Gas Company of Ann Arbor.

REGISTRATION ONLY BY REGISTRAR

To Thorp & Thorp.

(A.G.) Since G.S. 160-32 specifically provides for the appointment of only one registrar, this office entertains apprehensions that, in the absence of legislative authority, a serious question might arise as to the legality of registration made by others than the person authorized to register voters. This, however, does not mean that clerical assistance may not be provided to the registrar for handling the details under his direction and control, but the actual registration of the voters would have to be done by the registrar himself.

To Bernard H. Taylor.

Inquiry: May a young men's club assist in the registration of voters by taking the books from door to door for the purpose of registering persons who desire to register?

(A.G.) No person has the authority to register a person except a registrar. I do not, however, know of any objection to interested parties taking the registrar from house to house so as to provide easy access for registration.



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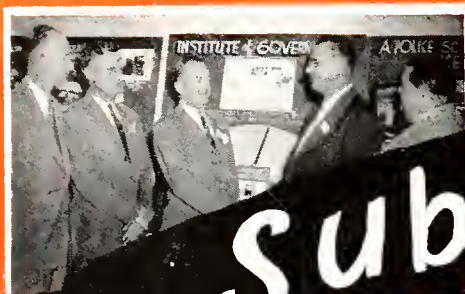
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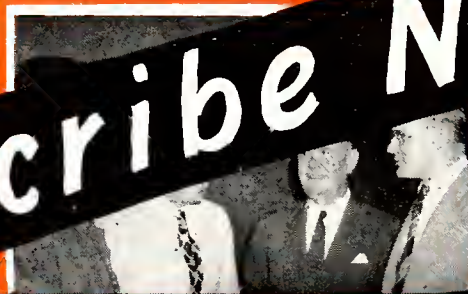
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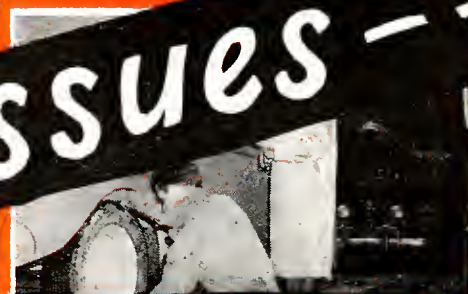
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