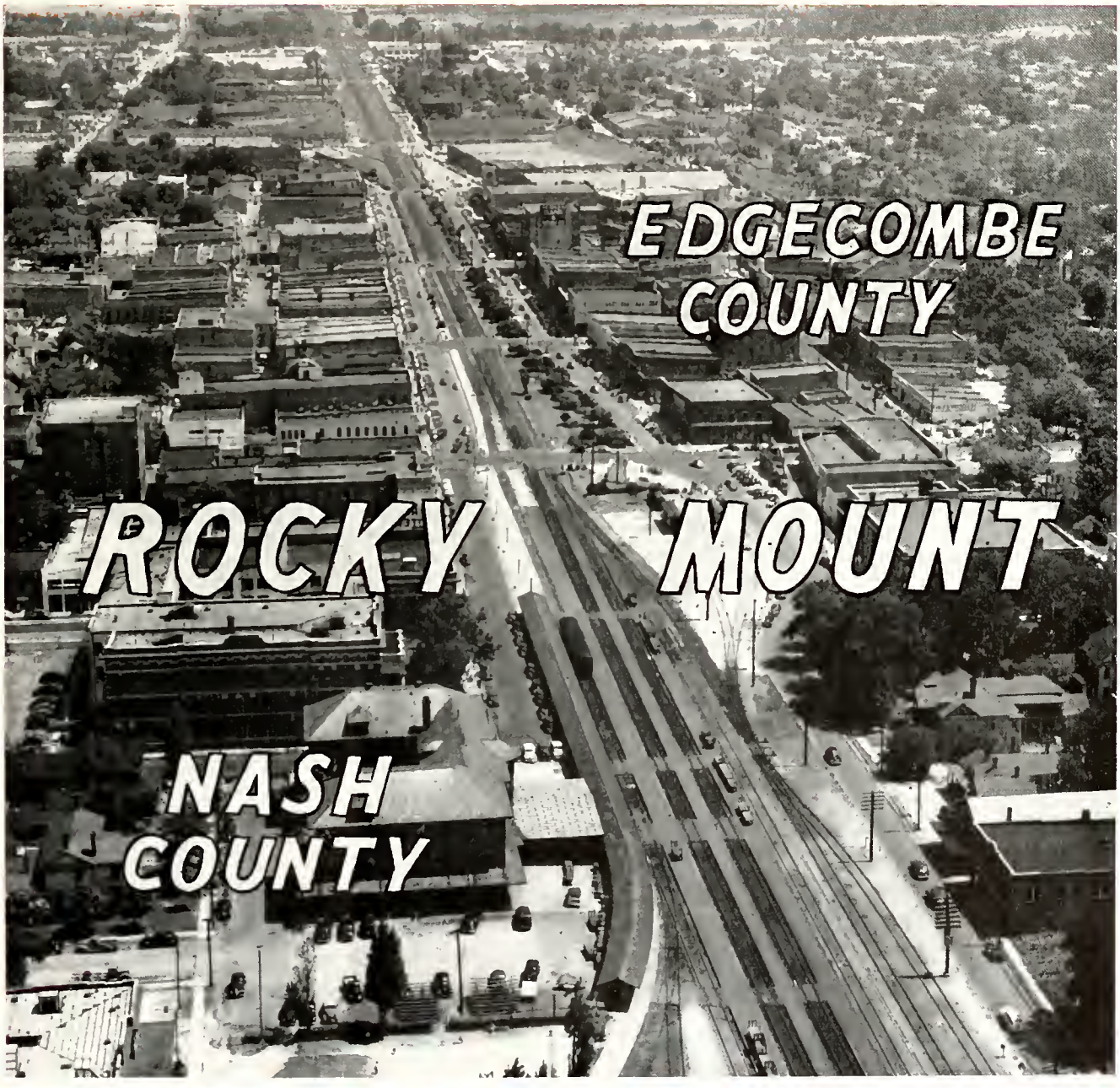
July, 1948

POPULAR GOVERNMENT



Split a city and you double its problems

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

Rocky Mount's Dilemma

Governor's Commission Reports and Recommends

Summarized by
ALBERT COATES
Director
Institute of Government

Rocky Mount wants a new high school building costing around a million dollars. It wants it now and the only way to get it is through a bond issue. Under the present law bonds for this high school building must come through the County Commissioners of the Counties which include the city. The Commissioners of these Counties are meeting school construction needs on the "pay as you go" plan and refuse to issue bonds.

Thereupon the Aldermen of Rocky Mount resolved: (1) "that the adoption by the State in 1933 of the act abolishing the Rocky Mount Charter District, in line with the new State policy, worked a cruel injustice on the City of Rocky Mount by reason of its unique situation, cut in two by a county line, (2) that efforts to preserve and develop Rocky Mount City Schools through joint action of two separate and distinct Boards of County Commissioners have failed, (3) that the impasse thus reached challenges the integrity and workability of the State system of public education when applied to the schools of a city lying astride a county line, and calls for investigation by State authorities, in the public interest," and invited the Boards of Commissioners of both Nash and Edgecombe Counties to join in a request to the Governor of North Carolina to "appoint a Commission of disinterested, qualified persons, experienced in government" to investigate and report upon "handicaps to good government and to community development inherent in the division of the City by a county line."

On July 3, 1947, the Governor of North Carolina appointed a Commission of three members: William T. Joyner of Raleigh, Chairman, D. D. Carroll of Chapel Hill, and A. S. Brower of Durham. Thereafter the Commission started its investigations with the full co-operation of Nash, Edgecombe and Rocky Mount authorities, and in January 1948 submitted the report summarized in this issue of *Popular Government*.

II

A City Astride a County Line

Edgecombe County was created in 1741. Nash County was carved out of Edgecombe in 1777. The first railroad in North Carolina—chartered in 1833, ran from Wilmington to Weldon by 1840. In 1867 the Legislature passed "An Act to incorporate the Town of Rocky Mount in the County of Edgecombe." In 1871 the Legislature passed "an act to change the line between the Counties of Edgecombe and Nash,' and provided "that all that portion of Edgecombe County (west of the Wilmington and Weldon Railroad) and between the Halifax and Wilson lines, be and the same is hereby annexed to and shall form a part of Nash county; Provided, Nash county shall be responsible for the sum of eight hundred dollars, the proportion of the Edgecombe county debt falling to Nash county in case of such annexation and which sum when paid shall discharge and

D. D. Carroll

W. T. Joyner, Chairman

A. S. Brower

The people of Nash, Edgecombe and Rocky Mount may or may not agree on all parts of this report of the Commission appointed at their request to resolve differences they had not resolved among themselves. But they must agree that they got the sort of Commission they asked for from the Governor: "a Commission of disinterested, qualified persons, experienced in government." They must agree that these persons went to the bottom of the perilous questions put before them, without shrinking from the dangers involved and without stinting their time or talents to the task.

William T. Joyner, A. S. Brower and D. D. Carroll would be the first to say they have not said the *last* word on all or any of the problems they have analyzed; but they have the satisfaction of knowing they have said the *first* word, and that this first word has been the unbiased and penetrating word, spoken in the spirit of humility that good neighbors have a right to expect from friends called in to help them settle their disputes.

The spotlight follows on this report from the hands of these who wrote it into the hands of those who receive it. "Some books are to be tasted, others to be swallowed, and some few to be chewed and digested," wrote Francis Bacon in the sixteenth century. These words, true then, are truer now. And here is a report to be "chewed and digested" by the governing boards of Rocky Mount, Nash, Edgecombe, and the people they represent—for the light it throws on the problems of all cities astride a county line, for the light it throws on the problems of all cities in all counties, for the spirit of fairness, courage and humility which must settle these problems in the days ahead.

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Cover by Charlie Killebrew, *Rocky Mount Telegram*

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

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

release from all further claims in this behalf." This railroad line splits the town of Rocky Mount today in two nearly equal parts, leaves it straddling the Nash-Edgecombe County line, and aggravates where it does not create the problems which the city of Rocky Mount brings before this Commission.

In 1870 Edgecombe included 322,295 acres of land and Nash 310,075; but the change of county line in 1871 put Nash ahead in size with an area of 552 square miles in 1940 to 511 square miles in Edgecombe.

The population of Edgecombe County was 24,000 in 1870; 47,000 in 1930; and 49,000 in 1940. The population of Nash County was 11,000 in 1870; 52,000 in 1930, and 55,000 in 1940. Thus Nash had overtaken and was outgrowing Edgecombe in population—with 100.7 persons per square mile in Nash to 92.2 persons per square miles in Edgecombe.

The town of Rocky Mount was incorporated in 1867. Its population was 357 in 1870; 12,000 in 1920; 21,000 in 1930; 25,000 in 1940—53% living on the Nash County side of the dividing line and 47% on the Edgecombe side. In 1947 Rocky Mount property listed for ad valorem taxation was valued at $29,451,420—$17,158,400, or 58.3% located on the Nash side, and $12,293,020 or 41.7% on the Edgecombe side. Rocky Mount property furnishes 41.1% of the total property valuation in Nash County and 38.5% of the total property valuation in Edgecombe. Rocky Mount is thus "the most important element in the economy of each county." It is "the greatest financial asset that either county has." Neither county could get along very well without it.

The City of Rocky Mount faces problems common to all cities in North Carolina.

The problems of all these cities are complicated by the fact that they are parts and parcels of larger geographical areas known as counties. "For example, in North Carolina," says the Commission, " the joint solution of each of the following important problems faces each city and each county which embraces a city; (a) What is the equitable distribution (or use) of county money available for school construction? (b) What is the equitable distribution of money raised by county-wide taxation for public health? (c) What is the equitable distribution of money coming from new sources of revenue, such as from tax on intangibles, tax on beer and wine sales, profits from a county operated liquor store? (d) What is the proper method of valuation for ad valorem taxation of city real estate as contrasted with farm lands? (e) What are the proper locations for the hospitals and the county homes?"

The problems of Rocky Mount are further complicated by the fact that it is part and parcel of two counties. To illustrate: Nash and Edgecombe have differing tax rates. The Nash County tax rate in 1947 was 85c on the $100 worth of property and the Edgecombe tax rate was $1.30. When Rocky Mount citizens living on the Nash side pay the 85c tax rate and Rocky Mount citizens on the Edgecombe side pay the $1.30 tax rate, the differential brings dissatisfaction—accentuated by the fact that Rocky Mount citizens on both sides of the line pay a uniform city tax rate.

These differing tax rates, says the Commission, have an "inevitable tendency to concentrate property on the Nash side. For example, if a large tobacco company (and there are many such in Rocky Mount) has a million dollars worth of tobacco in hogsheads on hand about tax listing day, the natural tendency will be to store it on the Nash side where it will be taxed 85c per hundred rather than on the Edgecombe side where it will be taxed $1.30 per hundred." The Commission points out that for the past six years the Rocky Mount building permit figures show that building permits for buildings on the Nash side of Rocky Mount have amounted to $2,397,515, whereas building permits on the Edgecombe side of Rocky Mount have amounted to $1,959,020. "This is due, we think, in some part to the difference in county tax rates."

Other "recognized points of difference" between the two counties are listed by the Commission: "(1) The percentage of negroes (high in both counties) is higher in Edgecombe than in Nash. (2) The percentage of tenant farmers is higher in Edgecombe than in Nash or, contrary wise, the percentage of home owing farmers is higher in Nash than in Edgecombe. (3) The growth of Nash has been more rapid." The Commission concludes "that Edgecombe is the more conservative of the two counties . . . . Edgecombe in most matters would be expected to be slower to make changes than Nash . . . . Rocky Mount must expect slower reaction from Edgecombe than from Nash."

The difficulty of arriving at a suitable adjustment of city-county differences, continues the Commission, is "more than doubled in Rocky Mount's case because Rocky Mount must give and take with Nash County and must give and take with Edgecombe County. This not only doubles the number of agreements which must be made but makes achieved agreements more shaky because of inevitable compari-

(Continued on page 8)

Supreme Court Rules

STREAM POLLUTION AND FRANCHISE TAXES

Water Pollution

On March 24, 1948, the Supreme Court of North Carolina handed down an opinion in which they declared unconstitutional G.S. 113-172, a statute forbidding the pollution of streams in this state by "deleterious or poisonous substances inimical to the fishes," *State v. Glidden Co.*, 228 N. C. 664 (1948).

The stream pollution case went before the Supreme Court on an appeal by the State from Caldwell County, where the Glidden Company was ordered in a recorder's court to pay a $5,000 fine, suspended on condition that it "desist from discharging into the streams and waters of the State any substance created from its mining operations." The company appealed to the Superior Court in Caldwell County, and was upheld by Judge Allen H. Gwyn. The firm contended that the 1915 law was unconstitutional because it prohibited one class of persons from polluting streams while allowing another class of persons to do so at will. Corporations chartered before 1915 were exempted from the law, but all chartered since that time were subject to it. In affirming Judge Gwyn, Associate Justice A.A.F. Seawell wrote: "If the statute is upheld we shall have the spectacle of one corporation doing things denounced and punishable as a crime and another, side by side in the same stream, doing the same thing with impunity and approval of the law."

On April 9, 1948, a civil suit was filed in the Wake Superior Court by the town of Smithfield against the city of Raleigh to restrain the city from dumping sewage into the Neuse River without first treating it to prevent pollution of Smithfield's water supply. The *Glidden* ruling does not affect the suit against Raleigh, which is based upon G.S. 130-117, which in part reads: "No person, firm, corporation or municipality shall flow or discharge sewage above the intake into any drain, brook, creek, or river from which a public drinking-water supply is taken, unless the same shall have been passed through some well-known system of sewage purification approved by the state board of health; and the continued flow and discharge of such sewage may be enjoined upon application of any person." Smithfield has also notified the town of Selma and the city of Durham to take action to halt the dumping of sewage into the Neuse; both of these municipalities, which have sewage purification systems, have made plans to halt the pollution.

G.S. 130-117, which requires cities to maintain "some well-known system of sewage purification," does not go far enough to meet the serious conditions caused by overloaded sewage plants throughout the state. The Gentral Assembly, when it next meets, is expected to accept the invitation of the Supreme Court and enact a law which will take the place of the one declared unconstitutional in *State v. Glidden Co.* Commenting editorially on this decision *The Charlotte Observer* recently stated: "It is unfortunate that, as a result of the decision of the North Carolina Supreme Court, this state will have no law against pollution of streams until the General Assembly meets again, but it is well that a highly discriminatory law was declared unconstitutional."

In the meantime, communities throughout the state are faced with acute problems of pollution and adequate sewage. A special committee appointed by the Mayor of Chapel Hill found that the town's 25-year old sewage disposal plant is now overloaded to the extent of double its capacity; plans for a new sewage disposal plant are being studied. The Person County Health Department has publicly announced that there are a large number of sewage disposal systems installed in the county which do not meet the requirements of the Health Department. The Warren County Health Officer has also requested anyone in the county expecting to put in a septic tank and drain field to consult with the county sanitarian. And recently the Scotland County Board of Health passed an ordinance requiring all persons to obtain a permit from the Health Department before installing sewage plants.

City Franchise Taxes

Generally conceded to be the number-one problem of North Carolina cities and towns today is how to meet increasing demands for services with static or decreasing sources of revenue. Ad valorem taxes simply do not produce the revenues needed, and the municipalities of the State have continued to press diligently in successive legislatures their campaign for a share of the gasoline tax revenues and for the entire proceeds of the Schedule B license tax, which they now share with the State. We have seen parking meters spring up like the armed men which Jason had to fight, and the cities and towns are constantly casting about for other new ways to turn an honest dollar. Now it appears that a way may have been opened by the Supreme Court, in *Duke Power Company v. Hargrove Bowles, Treasurer of the City of Greensboro*, filed recently, for at least some cities to realize greater revenues from a source which, although not new, had been thought to be limited in the maximum amount which it could produce.

The charter of the City of Greensboro, Chapter 37 of the Private Laws of 1923, confers on the city the power to grant franchises to public-service companies, and provides that such franchises "shall be subject to a tax by said City in such amounts as the council may think to be just" and that such tax shall be "in addition to a license tax." The Duke Power Company was operating in Greensboro under such a franchise and paid a tax of $7,500 for the fiscal year 1947-48, as it had been doing for a number of years. In July, 1948, Greensboro passed an ordinance increasing the tax to $15,000 for the fiscal year 1947-48, and Duke paid the additional amount under protest and sued to recover, contending that the authority of the city to increase the tax beyond the original amount was divested by operation of G.S. 105-116(6), which imposes a State franchise tax on public-service companies and restricts the imposition of such a tax by cities and counties. It was first enacted in 1933 and continued as a part of Schedule C of the Permanent Revenue Act of North Carolina. The pertinent portion of this statute is as follows: " . . . no county

shall impose a franchise or privilege tax upon the business taxed under this section, and no city or town shall impose a greater privilege or license tax upon such companies than the aggregate privilege or license tax which is now imposed by any such city or town." The applicability of this statute as a limitation on the authority given Greensboro by its charter, either by modification or partial repeal of the charter, was the sole question which the Supreme Court had to consider when Greensboro appealed after an adverse decision in the trial court.

It is important to note the exact words of the Revenue Act provision, for the decision the Court reached is based largely on the language of this section. It should be noted particularly that the section is broken down into two limitations, the first running against counties and the second running against cities. The county limitation absolutely prohibits a county from imposing a "*franchise* or privilege tax" upon the businesses taxed by the section; the city limitation prohibits a city from imposing a greater "privilege or license tax" upon such companies than currently imposed at the time of the enactment of the statute. The county limitation uses the term "franchise;" the city limitation does not. The Court felt that the "contrast in the use of the more definitive term franchise in the one connection and its omission in the other is of substantial significance." The "substantial significance" was felt to be this: other sections of the franchise tax schedule preclude cities from imposing a franchise tax on particular kinds of business and, without exception, use the term "franchise" in effecting the preclusion. In all of those cases, the type of business is one which, while the counties and cities do offer some facilities with respect to carrying on the business described and taxed by the State, their part in it is comparatively small; whereas, "as to the business covered by the franchise in Section 105-116, completely localized and catering to business and traffic built up within the town, and using facilities provided by the municipality at the expense of the taxpayers in that community alone, the municipal contribution to the growth, prosperity and financial success of the franchised enterprise, and therefore, the value of the franchise, is vastly larger than that of the State." The Court thus makes the point that the city is entitled to greater taxes than the State and feels that the statute was fixed so that the city could impose greater taxes.

Other points which the Court made in arriving at its decision, were these: 1) There is a considerable difference between the nature of a franchise tax and the nature of a privilege or license tax in legal usage, the latter being much the simpler and incapable of including or standing for the former. A franchise of the sort involved here is of itself a property right and ordinarily is transferable. It runs for a definite period, usually with mutual obligations and appropriate sanctions. Its activities are on a major scale and basic privileges going with the grant involve the use of facilities furnished by the municipality through taxation of the inhabitants and often in derogation of their privileges. When all the normal services to the town and its inhabitants are merged in one franchise, as in the present case, it usually becomes in fact, if not in law, exclusive. Furthermore, the frequency with which "privilege or license tax" has been used to designate a mere license tax has given the term "privilege" a secondary meaning in derogation of its general significance, in which sense it was probably used in this statute, and a comprehension of this fact "was not beyond the intelligence of the legislative body, and could hardly have escaped attention if the limitation had been aimed at the franchise tax." 2) The State did not intend, by advancing the amount of taxes which it was imposing at the same time that it enacted the limitations on counties and cities, to limit the municipal franchise tax as a means of compensating or adjusting the taxpayer burden. Many city officials will be interested in the following language used by the Court: "We must assume that the State is not antagonistic to the growth and expansion of its municipalities, or without appreciation of their contribution to its cultural and economic life, or unaware of the increasing burden placed upon them and the necessity of preserving to them a due proportion of the tax revenues necessary to their support." 3) The general rule as to the effect of a subsequent general statute on a prior local statute where the general law has no applicable repealing clause is applicable here: a local statute enacted for the particular municipality is intended to be exceptional and for the benefit of such municipality and is not repealed by an enactment of a subsequent general law; certainly if the legislative intent is sufficiently clear the general statute would prevail without a repealing clause, but repeal by implication is not favored and "we do not find that the legislative intent justifies that construction."

Books Received

MUNICIPALITIES AND THE LAW IN ACTION. Edited by Charles S. Rhyne. Washington: National Institute of Municipal Law Officers. 1948. Pp. 325. $10.00.

The 1948 edition of MUNICIPALITIES AND THE LAW IN ACTION is the eleventh in a series of volumes designed to provide a continuing flow of the recorded experience of a representative cross-section of the city attorneys of the United States, and through this experience a panoramic view of the general field of municipal law and its administration with which they deal.

Its physical make-up consists of the committee reports and panel discussions held at the 1947 conference of the National Institute of Municipal Law Officers, edited into a highly readable form. Old users of the series will find little substantive change in this volume. The same general topics are covered: taxation and revenues, federal-city relations, city-state relations, zoning and planning, ordinances and charters, municipal contracts and municipal tort liability. There is a major organizational change by which all material pertaining to one subject is grouped together; the former practice being to group all panel discussions together regardless of subject matter. The resulting advantages from the standpoint of ready reference and general readability are obvious.

The beauty of this volume, and of the series, which recommends it so highly to the city attorney is the fact that it combines the practical value of a well worked up textbook

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THE CLEARINGHOUSE

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

Counties

Debt Liquidation

The county accountant was authorized by the board to liquidate *Bertie* County road and bridge bonds in the sum of $5,000 due June 1, 1954. Interest of one and one-half per cent for six years will be saved.

Law Enforcement

The *Scotland* county board voted to reject for the present a proposal of Laurinburg for sharing two-way radio in law enforcement. Sheriff J. C. Gibson and Chief T. W. Davis of the Laurinburg police appeared before the board and asked them to consider the installation, approximate cost of which would be $1500 for central office equipment and $485 for equipment installed in each car.

A motion to approve purchase of two-way radio equipment for the sheriff's department of *Rowan* County was passed by the board of county commissioners on June 7.

Rural Fire Protection

The city of Salisbury and *Rowan* county have made an agreement whereby the city will furnish fire protection to the school properties in the county and to three buildings at the county home. The county will pay twenty-five dollars a year for the protection of each building.

Petitions to the county commissioners of *Stanly* to purchase at least one piece of fire-fighting apparatus designed for use in rural areas have been circulated in all the communities of that county. At present rural fire calls are answered by the Albemarle Fire Department, using city equipment, which is not designed for rural fire-fighting, since the booster tank holds only 200 gallons. Albemarle Chief C. E. Morris is recommending to the county a truck with a 600-gallon tank and a 500-gallon-a-minute pumper which could be hooked to hydrants where available. Under the proposed plan the trained city firemen would use the new truck to answer rural calls, under an agreement to be formed by the governing bodies of the city and county.

Valuation of Real Property

The *Alamance* County Board of Commissioners has contracted with two firms to map four municipalities in the county and make new property valuations which will serve as a basis for equalizing valuations in parts of

the county not included in the contracts, these areas to be covered by county employees under the direction of County Manager Joseph W. Cole. The initial work will be completed this year, and it is expected that income from the property that will be placed on the tax books by this means will pay for the equalization and mapping work within two or three years.

The making of a tax map of the city of Greenville was to be considered at the June meeting of the *Pitt* County Board of Commissioners. The expense would be assumed by the city and county governments jointly.

A preliminary survey of property values in *Scotland* County is being made in preparation for revaluation in 1949. Forms designed to obtain a maximum amount of information about the property have been mailed to urban and rural property-owners for checking.

Welfare

In some counties, e.g., *Robeson*, which have few totally dependent persons to care for, county homes are being abandoned and the inmates placed in private homes or in appropriate state institutions. The overcrowding of state facilities poses a particular problem for *Randolph* County, where the county home is increasingly used for the mentally deficient. It is believed in Randolph that abandoning the home would be more expensive than keeping it up for the present number of thirty inmates. The need for a new county home in *Lenoir* County, on the other hand, has led to the suggestion for changing to the nursing home plan. The *Lincoln* County commissioners are reportedly considering selling the land at the county home and turning the building into a nursing home, which would make it eligible for federal aid of $45 per month per patient.

Cities and Towns

Beer and Wine Licenses

Every applicant for a beer and wine license whose name is the same or similar to any name appearing in the criminal records required to be checked by the police department under the beer and wine license tax ordinance adopted by the city council of *Raleigh* on April 20, 1948, shall (upon notification by the police department) submit to finger-printing by the city-county identification bureau so that his identity can be determined for the purpose of granting or denying a beer and/or wine license.

Health and Sanitation

The city council of *Greensboro* has passed an ordinance, to become effective July 1, "to protect the public health by controlling the spread of endemic typhus fever and other rat-borne diseases and infections associated with the insanitary conditions present wherever rats are found by requiring that certain structures shall be maintained in a rat-proof and rat free condition by providing for the storage of food and feed and the handling of garbage, by eliminating certain conditions favoring the harborage of rats, and to provide penalties for violation thereof."

Planning

Subdivision regulations have been adopted by the new planning board of *Winston-Salem* and Forsyth County, and consideration has been given to proposals for annexation of certain neighboring areas, an arterial street system, restriction of the height of buildings, and zoning. A subject of special study has been an ordinance to protect an "Old Salem area" and perhaps Old Town and Bethania, by preserving historical characteristics of the community. Zoning ordinances have been discussed in *Scotland Neek* and adopted in *Monroe* and *Smithfield*. A survey of *Henderson* is being made as a preliminary step to the zoning of the town. Establishment of a planning commission to plan for the area within a two and one-half mile radius of the Pasquotank County courthouse has been proposed by the *Elizabeth City* Chamber of Commerce. A flood of requests for spot-zoning led the Board of Aldermen of

(Continued on page 20)

The Attorney General Rules

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

Now that the primaries are over and done with, and before this issue of POPULAR GOVERNMENT reaches you, North Carolina will have nominated all its candidates for 1948 and local officials will have turned their interest from the problems involved in registration and voting to other matters. However, the November elections are not too far off, and queries on election procedure continue to pour in to the Attorney General's office.

As always, many inquiries are being submitted to the Attorney General involving city and county privilege license taxes. May a municipality tax the sale of sweet wines? May it put a tax on photographers? These were two of the queries answered by the Attorney General. The rising interest in problems of sewage, reflected in another article in this issue, was shown in the unusually large number of queries addressed to this problem. The Attorney General gave his opinion on the charges a municipality may make for installing sewer service, and on the city's remedy in case of non-payment.

School problems are again coming to the fore. Besides the usual questions about bond issues and special tax levies, school officials raised the problem of whether the minimum school year may be met by holding longer school days. The rights of emergency teachers was the subject of another query, reflecting the overcrowded school conditions throughout the state.

Of interest to towns is the Attorney General's opinion that towns may advance moneys for improvement and construction of sidewalks and streets out of surplus funds.

The 1947 Anti-Pyrotechnics Law (or "Fireworks Law") has aroused much interest. The legality of cap pistols was one problem which worried many persons. The Attorney General has ruled that, while cap pistols themselves are not illegal, the caps which are fired from them may not be sold or possessed in this state.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

14. Privilege license—beer and wine

To C. R. Morse.

Inquiry: May a municipality levy a tax upon dealers in "sweet" wines as defined in Section 528(g) of the Revenue Act (G.S. 18-99)?

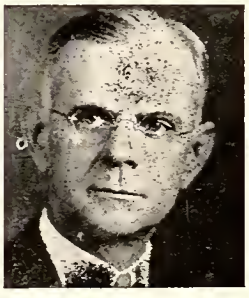
(A.G.) Section 510 of the Revenue Act levies on behalf of municipalities a tax upon retail dealers in unfortified wines as defined in Section 501(b), and Section 512 levies a tax upon such dealers on behalf of counties. The Act is silent with respect to municipal or county taxation of dealers in "sweet" wines as defined in Section 528(g) which, by that section, are permitted to be sold at certain places in counties in which the operation of ABC stores is authorized. Since there appears to be no prohibition against the levying by municipalities of a tax upon dealers in "sweet" wines, I am of the opinion that the general taxing power granted to municipalities by G.S. 160-56, would be sufficient authority for municipalities to levy a reasonable privilege license tax upon such dealers.

However, the situation is otherwise as to counties. Since counties do not have any general grant of taxing power such as is given to cities by G.S. 160-56, and since the Act contains no specific authorization for the levy of a tax upon "sweet" wine dealers by counties, I am of the opinion that counties may not levy a license tax upon such dealers.

53. License tax on photographers

To George W. Worley.

(A.G.) A county may not, under sec. 109 of the Revenue Act of 1939, impose a license tax upon a photographer for exercising his profession. However, in the case of a machine which takes and develops the pictures inside the machine and delivers them to the customer, a license tax may be imposed by the county upon the basis of operating a "merchandising" machine under sec. 130½ of the Revenue Act.



HARRY McMULLAN
Attorney General of North Carolina

C. Refusal of License

1. Wine and beer sales

To L. M. Abernethy.

Inquiry: A man has been convicted of violating the prohibition laws within the past two years, and his wife operates a beer garden. Should the county commissioners refuse to issue her a license to sell beer at retail?

(A.G.) If she is not in fact applying for the license for herself but is acting as the agent and representative of her husband and for all purpose in effect will be subservient to him in the operation of the business, and the issuance of a license to her is merely a ruse and subterfuge to enable her husband whose license has been revoked to continue to sell beer, then no license should be issued. There should be a hearing conducted, and findings of fact made based on the evidence there presented before her license is denied.

IV. PUBLIC SCHOOLS

D. Powers and Duties of Present School Districts and Agencies

4. Contractual powers

To Clyde A. Erwin.

(A.G.) School authorities have the power to pay the expenses of laying the sidewalks adjoining a school, on authority of *Raleigh v. Public School System*, 223 N.C. 317, assuming the use of the proper budgetary funds.

15. Recreational facilities

To Elbert S. Peel.

Inquiry: May a county board of education acquire by condemnation property for the purpose of establishing "an athletic field and school grandstand"?

(A.G.) G.S. 115-85 authorizes county boards of education to accept by gift or by purchase suitable sites "school houses or other school buildings." *Board v. Forest*, 190 N.C., at pg. 756, holds that this language is broad enough to cover land taken for a playground in conjunction with the school. However, I do not think that the term "playground" is broad enough to include "an athletic field and school grandstand." I think that a playground as contemplated is one which would be used in connection with a particular school and for the enjoyment and recreation of all of the children of the school, while an athletic field and grandstand is generally a project for the more or less exclusive use of athletic teams and spectators to the athletic contests. It will be noted that in *Board v. Forest*, reference is made to the acquisition by condemnation of additional and adjoining lands for playgrounds.

20. Right to issue bonds—for school buildings

To Isaac London.

Inquiry: What is the procedure in the event that a school district wishes to vote on a bond issue for school buildings?

(A.G.) There are several counties in the state that are under the "Cleveland County Act" which authorizes a local district to vote on school building bonds. In the absence of this Act, the vote for the bond issue would have to be on a county-wide basis, under the terms of the County Finance Act. The authority for conducting the election is provided by this Act, as is the procedure. G.S. 153-87 limits the amount of bonds which may be issued for school building purposes. By applying this section to the financial statement of your county you can ascertain the limit of the amount of such bonds. There is also the constitutional limitation that no bonds can be issued by a county in excess of two-thirds of the bonds retired in the preceding fiscal year unless authorized by a vote of the people.

31. Elections to supplement State funds

To J. A. Batson.

(A.G.) G.S. 115-362 authorizes the holding of supplemental school tax elections in a school district having a school population of one thousand or more. If a school district does not have a school population of one thousand, I know of no authority for holding a supplemental school tax election.

42. Liability for injuries to pupils

To Theodore F. Cummings.

Inquiry: In the event a student acting as a volunteer safety patrolman in aiding children in crossing the streets should be injured by a passing motorist, would there be any liability attached to the school board, as such, or to the individual members or to a teacher, principal or superintendent?

(A.G.) This office has previously rendered the opinion that there is no statute giving school committees the authority to assign pupils to traffic duty on the city streets. The general rule as to liability when an officer goes outside the scope of his duty, as stated in *Gurganious v. Simpson*, 213 N.C. 613, is that he is not entitled to the usual protection on account of his office but is liable for his acts like any private individual. If a pupil of reasonable maturity should voluntarily agree to direct traffic, his consent would probably preclude any recovery from school committeemen. However, if the school committeemen under color of their office should require a pupil to direct traffic or should exert strong pressure upon pupils to do so and an injury should result, it is possible that under the rule stated in the *Gurganious* case they might be held liable.

F. School Officials

41. School attendance

To Paul A. Reid.

Inquiry: In order to meet the minimum school term of 180 days, may a longer school day than the regular length fixed by law be provided for?

(A.G.) The School Machinery Act makes no provision for permitting anything less than the designated number of days of teaching. The days required by statute to be taught must be calendar days or the hours within calendar days during which the school is conducted. Therefore, the State Board of Education would not have the authority to approve the issuance of salary vouchers on the basis of extra days claimed by reason of teaching over hours on the days the schools are required to be conducted.

50. Principals and teachers—election and contracts

To A. B. Hurt.

(A.G.) Emergency teachers, or teachers who do not hold certificates, can be employed only as temporary substitutes under such rules and regulations as are adopted by the State Board of Education. It is my opinion that contracts made with emergency teachers are on a temporary basis and do not continue from year to year, even though notice is not given as required by G.S. 115-359.

JAMES E. TUCKER

Assistant Attorney General

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

A. Refinancing

7. Loan contracts with State

To Sam B. Underwood, Jr.

Inquiry: Can a district created under the "Cleveland County Act" type of local law borrow money from the State Literary Fund rather than issue bonds under the County Finance Act, it being the desire of the district to avoid the expense of a formal bond issue?

(A.G.) It seems to me that the terms of the applicable local act would prohibit the issuance of securities which could be used for the purpose of obtaining loans from the State Literary Fund. Your act, and so far as I know all acts of this type, provide that if the district is created and the bonds authorized by a vote of the people, the board of county commissioners may provide for the issuance of bonds which shall be issued in the name of the county but shall be made payable exclusively out of taxes to be levied in such district or unit, except that the board of county commissioners may pay from county funds any part of the principal and interest of such bonds. Under the statute authorizing loans by the State Board of Education, the loans can be made only to the county board of education, and G.S. 115-222 provides that the board of education shall annually set apart out of school funds an amount sufficient to pay the installments and interest to be due, and the amount loaned is made a lien upon the total school funds of the county. Under these statutes, the obligation is quite different from the obligation for bonds issued under the "Cleveland County Act." It is, therefore, my thought that you would have to proceed to sell the bonds issued under the Cleveland County Act as other

(Continued on page 14)

Books Received

(Continued from page four)

with a broad background of insight into the historical and human aspects of the frequently mundane subject matter. For instance, prefatory to one committee chairman's report on city-federal relations he takes a thought-provoking excursion into the whys and wherefores of the quite general distrust of cities revealed in the legislative bodies where rural representatives preponderate. Such delvings into background lend a color to this volume not usually found in the dry textual report. The result of this approach should be that the user of this series will be better equipped to counsel on matters of policy by virtue of this background acquired as well as better equipped to advise on isolated legal points. Indeed, the greatest virtue of this work would appear to be that it must needs give its city attorney reader a better understanding of the possible scope of his job and of the opportunities for service to his community which his position entails. He is bound to find in it facets of his realms of activity which he had never thought of, approaches to routine problems which had escaped him and possibilities of legal pitfalls of which theretofore he had been blissfully ignorant. It thus offers more to the city attorney than technical answers to legal questions; it opens vistas.

The volume is in form a series of grapplings with municipal law problems on the practical day-to-day basis and on the level of policy. Committee reports define the problem and discuss significant developments over the past year including important court decisions, the approaches

(Continued on page 12)

Rocky Mount

(Continued from page 2)

sons. Any tentative or achieved solution with one county must be compared with a tentative or achieved solution with the other county. If the solution with County No. 1 is more favorable to Rocky Mount, there is inevitable resentment in Rocky Mount against County No. 2. On the other hand, it is almost inevitable that in each county there be some suspicion that Rocky Mount is attempting to play one county against the other."

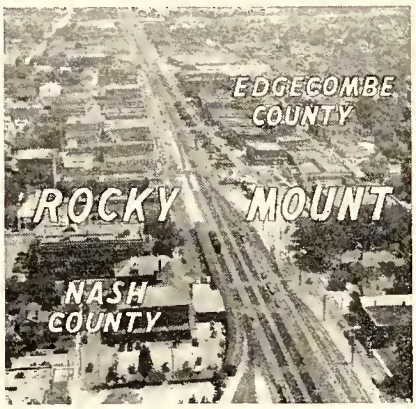
This difficulty in obtaining balanced treatment from the two counties is further heightened by the facts that: Rocky Mount has more people in Nash than in Edgecombe; more property in Nash than in Edgecombe; draws more trade from Nash than from Edgecombe; receives less competition from Nash towns than from Edgecombe towns. Finally, adds the Commission: "The citizens of Rocky Mount are, we think, more potent and influential economically and politically in Nash County than they are in Edgecombe County. Rocky Mount citizens think that they receive better treatment from Nash County than they do from Edgecombe County. The facts, in the opinion of this Commission, bear out and support that thought. So, conditions have promoted the growth of antagonism and misunderstandings."

After reviewing these conditions the Commission records "its outstanding firm conclusion that the Rocky Mount situation is not one which is intolerable now or which casts a shadow of becoming intolerable . . . . This Commission concludes its work with the very strong feeling that there is every reason to believe that Rocky Mount can continue to get along with Nash County and with Edgecombe County and with itself."

Solutions Proposed and Rejected

Several ways of solving this problem were suggested to the Commission: (1) forming a new county, (2) changing the county line, (3) combining the two counties. The Commission considered and rejected each of these solutions for the present emergency in the following words:

Forming a New County. "Rocky Mount's problem of two-county dealings could be completely eliminated by the formation of a new county which would consist of the city of Rocky Mount only. We definitely and strongly recommend against any consideration of that solution. In the first place it is completely impossible of achievement, in our opinion. We do not think that the Legislature of North Carolina would ever take such action. In the next place, we would recommend very strongly against the Legislature giving favorable consideration to such a separation. It is a part of the very fabric of the economy of our state that our numerous cities and towns constitute a part of the economy of a larger rural area. That is the way our state has grown. That is the way our cities were formed and have grown. We believe that that is sound. We believe that the city should not segregate itself or shun the economic problems of the rural communities. We think that Rocky Mount should remain a part of the fundamental economy of Nash and Edgecombe Counties. These counties are the parents of the City of Rocky Mount. They have fostered its growth. Rocky Mount has always been a part of them. It should continue to be a part of them."



Changing the County Line. "Rocky Mount's two-county problem could be eliminated if the county line between Edgecombe and Nash should be changed and Rocky Mount should be put wholly in Edgecombe County or wholly in Nash County. Again we do not recommend that solution. We recommend against it. First we think that there is no practical possibility of its achievement. Next we think that such a radical change would severely disrupt the economy of one of those important counties. Neither Nash nor Edgecombe can afford to lose its part of Rocky Mount. Of course, the situation might become so impossible, so desperate as to make a change of county line necessary. If it should become impossible for Rocky Mount to work out its problems with Nash County it might become necessary to annex it with Edgecombe. If it should become impossible for Rocky Mount to work out its problems with Edgecombe County it might become necessary to annex it to Nash. Certainly that situation is not now presented. It is the opinion of this Commission that such a desperate situation will not be presented in the future. We do not believe that either county will be guilty of such deliberate discrimination, unfairness and injustice as to justify the divorcing of Rocky Mount."

Combining the two Counties. "Rocky Mount's two-county problem would be eliminated if Nash and Edgecombe Counties should be combined. This would be true no matter where the county seat of the combined counties should be placed. That, we think, is the only way in which Rocky Mount's two-county problem will ever be eliminated. On this we do not make a recommendation, because our observation of the sentiment in the counties and our knowledge of the temper of North Carolina Legislatures convinces us that it is impractical and cannot be done now. We think that when possible of achievement this result would be desirable. But to work now for such an end would only produce friction and quarrels, would upset the citizenship of the three municipal entities and would accomplish no good result. We point out that in 1930 there was a very careful study by a skilled organization (the Brookings Institution) of desired changes in the organization of the state. Its report recommended eleven specific consolidations of counties. Not one has been achieved. So far as we know not one has been seriously attempted.

"Nearly fifteen years ago, on March 29, 1933, the Legislature of North Carolina enacted a law, Public Laws 1933, Chap. 193, permitting the consolidation of adjoining counties upon proper County Board resolutions and a vote of the people. In the past fifteen years there has not been one consolidation under that statute. So far as we have been advised there has not been an effort to consolidate under that statute. Consolidation of counties is unpopular and will be, we think, unpopular for some time.

"Therefore, because consolidation between Nash and Edgecombe cannot be achieved at this time and because agitation of that subject would result in harm to each of the political entities, we do not make any recommendation of consolidation.

"However, we cannot pass this subject without expressing the opinion that the trend of the times points to the advisability of county consoli-

dations. Paved roads, improved methods of communication, the elimination of many of the county government functions and duties point toward the feasibility of consolidation. The efficiency and economy which would result from consolidation point toward the desirability of consolidation. Therefore, although we do not now make *recommendation* of consolidation of Nash and Edgecombe Counties, it may well turn out to be wise in the next 20 to 50 years.

"It is our conclusion that the Rocky Mount split-city problem will not be solved at any time in the foreseeable future by the elimination of the problem; namely, eliminating the split between the two counties. So, the problem of Rocky Mount and the problem of Nash County and the problem of Edgecombe County is how to live together best. They cannot be separated. They should not be separated. They cannot be consolidated. So, they must live together.

"We think it entirely possible and feasible for those three entities to solve their problems harmoniously, cooperatively and constructively. There is no real reason why the citizens of Edgecombe and the citizens of Nash and the citizens of Rocky Mount cannot get along together.

"There must be a diligent attempt on the part of each of the three entities to understand the problems of the other two. Then all of those problems must be faced with tolerance and with good will, and must be handled with careful courtesy and diplomacy."

The Commission observes that the affairs of Nash and Edgecombe Counties are conducted by boards of five County Commissioners elected by county-wide vote. There is no Rocky Mount man on the Nash or Edgecombe County boards. Nash and Edgecombe County leaders with whom the Commission has discussed this matter conceded that a Rocky Mount man should be on the respective Boards of County Commissioners and say that they would like to have one and would help to get one. The Rocky Mount people admit that their failure to have Rocky Mount men on these boards is the fault of the Rocky Mount people and admit they could have had one had they so desired and admit that they can have one in the future. The members of the Commission think it highly important, in the solution of the mutual problems, that a resident of Rocky Mount from the Nash and Edgecombe sides be elected as members of the

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REPRESENTATIVES OF DEPARTMENT OF MOTOR VEHICLES HOLD THREE-DAY SAFETY SEMINAR

Sixteen field representatives of the Department of Motor Vehicles who are engaged in the training and certification of school bus drivers in North Carolina met in Chapel Hill June 10 for a two and one-half day safety education seminar conducted by the Institute of Government for the Department of Motor Vehicles.

Members of the seminar were: Jack Barnes, Lucama; John H. Burroughs, Bat Cave; Virginia Campbell, Raleigh; David S. Canady, Tar Heel; David S. Copeland, Jackson; Alice E. Futrell, Hertford; George G. Grier, Elkin; Ollis D. Griffin, Southern Pines; David G. Hatcher, Mount Airy; John P. Hollis, Shelby; C. Kuykendall, Madison; Elton R. Peele, Raleigh; Russell T. Rogerson, Wilmington; Thomas G. Taylor. Albemarle; Richard T. Weldon, Graham; and Clarence I. Yelton, Bakersville.

The present status of field training of school bus drivers was pictured by Major Samuel Gaynor, Director of the Driver License Division. David G. Monroe, Assistant Director of the Institute of Government, then turned attention to the importance and objectives of driver education and to the value of safety education in preventing accidents. C. C. Brown, chief of the Transportation Section of the Department of Education, pointed out the problems in providing safe transportation for school children and the contribution that training of bus drivers can make to the solution of that problem. A resumé of the traffic laws enacted by the 1947 session of the General Assembly was given by Clifford Pace, Assistant Director of the Institute of Government. The first day ended with the showing of three films on traffic safety and a description by Elton R. Peele of the Department of Motor Vehicles of the library of visual aids being built up in that Department.

Ways of developing a safety program on the community and county level were brought out in a discussion early the second morning. Robert Burch, traffic engineer with the North Carolina Highway and Public Works Commission, presented an analysis of the 1947 rural accident record in the state, with particular reference to causes assigned to the accidents. Mr. Monroe then led a discussion on preparing safety speeches.

The afternoon of the second day was spent in the University Communications Center in Swain Hall, where director Earl Wynn had arranged for recording a safety speech made by each of those participating in the seminar. Each talk was played back immediately after its recording and Mr. Wynn offered suggestions to each speech-maker on his delivery and the presentation of his theme.

The seminar concluded on the next day with a discussion of the purpose of attention to public relations in developing and maintaining public support of safety programs. Major Gaynor outlined the future work of the seminar members; and after a short address by Albert Coates, Director of the Institute of Government, certificates of attendance were awarded those present.

REGISTRATION AT INSTITUTE OF GOVERNMENT

BOYS' STATE COMMISSION

AMERICA
EIGHTH
TAR HEEL

DEAN WALKER ON STUDENT GOVERNMENT

DR. ELLEN WINSTON, DEPARTMENT OF PUBLIC WELFARE

DR. GRAHAM FOR WORLD GOVERNMENT

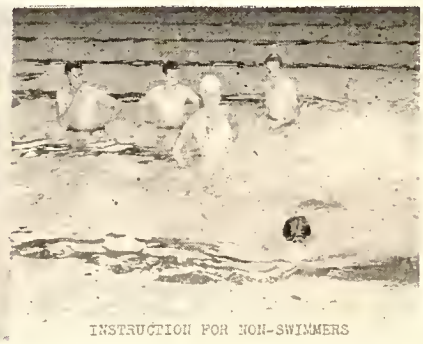
On Sunday, June 13, 1948, two hundred eighty-nine boys, representing eighty-eight towns and cities in North Carolina, gathered at the Institute of Government in Chapel Hill to begin the eighth annual Boys' State. These boys, leaders in their high schools, had been carefully selected by ninety-five American Legion Posts throughout the state.

The program of the Boys' State was designed to give the youth of North Carolina the opportunity to learn of the workings of their government from the local to the world level and the teachers selected were chosen from among city, county, state and federal officials, university faculty members, and citizens who are prominent in governmental affairs. Following the North Carolina election laws, the citizens of Boys' State held city, county and state elections, and the elected officials, putting into practice what they had learned during the week, convened as city councils, county boards of commissioners, and the general assembly. They attempted to solve problems like those faced by the local and state officials of North Carolina. The interest and enthusiasm displayed by the boys attending this year and their expressed desires to teach others what they had learned is evidence of the worth of the program and demonstrates again that knowledge of government at its various levels helps to kindle that sense of civic responsibility which is necessary for intelligent participation in the affairs of a democracy.

Among those who addressed the group were: Dr. Frank P. Graham, President of the University, Dr. Clyde Erwin, Superintendent of Public Instruction, and Highway Commissioner A. H. Graham. Dr. Graham warned the youths that atomic power will smash the earth if a forceful world government is not created soon. Dr. Erwin pleaded

DIRECTOR WALTER ANDERSON

PERFECT ATTENDANCE

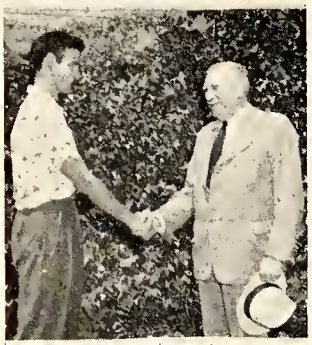


INSTRUCTION FOR NON-SWIMMERS

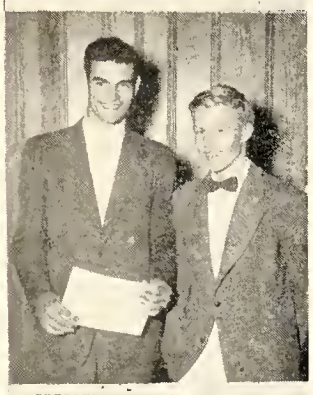
LEGION'S ANNUAL OYS' STATE

COUNSELORS, ALL LAW STUDENTS

WINNING ORATOR PERFORMS



GOVERNOR MEETS GOVERNOR



BRIDGES AND HANNER TO ATTEND NATIONAL YOUTH FORUM

CAMPAIGNING IN CITY ELECTIONS

for improved education in North Carolina. He stressed the need for higher teacher pay, housing for teachers, a teacher load cut from 34 to 30 pupils, and a $25,000,000 school building program. Highway Commissioner A. H. Graham pointed out that it will be many years before North Carolina will be financially able to pave all of the State's rural roads. He said that surplus highway funds will be exhausted by June 30, 1949.

Other speakers of the week were: Albert Coates, Director, Institute of Government; Mayor Henry Powell of Henderson; Professor E. J. Woodhouse of the University Political Science Department; Henry Lewis, Assistant Director of the Institute of Government; Henry Colton, graduate law student at the University of North Carolina; L. Y. Ballentine, Lieutenant Governor of North Carolina; Dr. Ellen Winston, Commissioner of the Department of Public Welfare; Robert Deyton, Director of the Budget; Archibald Henderson, Professor of Mathematics, Author and Historian; W. M. Cochrane, Assistant Director of the Institute of Government; John W. Umstead, Jr., Member of the General Assembly; Fred Weaver, Dean of Men, University of North Carolina; Col. H. J. Hatcher, Commander of the State Highway Patrol; Chancellor R. B. House of the University of North Carolina; Walter Anderson, Director of the State Bureau of Investigation; Peyton B. Abbott, Assistant Attorney General; Major General Byers, Commander of the 81st Airborne Division; Dr. Frank Hanft, Professor of Law; and Forrest H. Shuford, Commissioner of Labor.

A recreational program which utilized the athletic plant of the University was carried on daily and included softball, tennis, basketball and swimming. The evenings were reserved for political activity and entertainment.

—Donald W. McCoy

SOFTBALL A DAILY SPORT

KING COLIN MAKES MAGIC

VOTING IN STATE ELECTIONS

Rocky Mount

(Continued from page 9)

Nash and Edgecombe Boards of Commissioners.

III

The School Building Problem

In 1947 Rocky Mount decided to build a senior high school, selected a tentative site on the Nash County side of the dividing line valued at $75,000, for a building to cost $700,- to $1,000,000, and requested the two counties to co-operate in the Rocky Mount plan along the following lines:

"That Nash County contribute $45,-000 to the purchase of the site; that Edgecombe County contribute $30,-000 to the purchase of this site; that Rocky Mount under appropriate proposed legislation become a special school district; that it present to the people in that special school district a vote on the issuance of bonds for a new high school; that to aid in the retirement of those bonds Nash County and Edgecombe County agree to turn over to Rocky Mount for the retirement of those bonds and for other school improvements an agreed proportion of the county money devoted by the county to capital school construction. The agreed proportion, to be determined each year, was the mean figure between Rocky Mount's proportion of the property listed in the county for ad valorem taxes and Rocky Mount's proportion of the county school enrollment."

The problem of the building site was solved when the Attorney General ruled "that Edgecombe County could contribute funds to the construction of a high school on the Nash County side if it was to serve the Rocky Mount high school children living on the Edgecombe side as well as the Rocky Mount high school children living on the Nash side, and when Nash County Commissioners in the beginning, and Edgecombe County Commissioners in the end, agreed to contribute $45,000 and $30,000 respectively to the purchase of the property involved."

Issue was joined on the formula for allocating county school building funds for the Rocky Mount school building. These funds might conceivably be allotted according to the ratio of Rocky Mount property valuation in Nash and Edgecombe to the total valuations in Nash and Edgecombe—this would bring the largest possible slice of county school building funds to Rocky Mount. They might be allotted according to the ratio of the Rocky Mount school population in Nash and Edgecombe to the school population in Nash and Edgecombe—this would bring the smallest slice of county school building funds to Rocky Mount. Rocky Mount proposed the mean ratio between these two extremes.

Both counties rejected this Rocky Mount proposal. The Edgecombe Commissioners were "clear and resolute . . . that if a formula was to be used . . . it should be the ratio of Rocky Mount's school children residing in Edgecombe County to all school children residing in Edgecombe County." The Nash County Commissioners made the "definite, positive and emphatic statement" that it "in-

Books Received

(Continued from page 7)

taken by various municipalities, and recommendations by the committee itself. Panel discussions add the zest of informal question and answer through which Los Angeles gives helpful hints to Muskogee, Oklahoma; while Youngstown, Ohio, and Birmingham, Alabama, discuss a mutual problem. Many city attorneys will doubtless find solace in the fact that their problems are quite general and need solution as badly in Chicago or New York as in their own less affluent cities or towns.

Generally the problems discussed are old, well-recognized and continuing ones which are never actually solved but may be aggravated by current conditions, or temporarily coped with by continuing effort and experimentation. In this category are the problems of sources of revenue, redevelopment of slum areas, modes of contracting, bond issues and employee relations. An interesting thing revealed by this volume, however, is that the city attorneys who wrote it do not consider their jobs as being confined to coping with these problems of the everyday, garden variety. There is revealed an awareness of a wider responsibility on their part when they discuss the problem of civil liberties enforcement, maintenance of low gas and electric rates [to the extent of organized lobbying] and the possible implications of the Tidelands Oil decision on every municipality in the country. If some would see in these a figurative tilting at windmills or an unneces-

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sisted on a formula not greater than the ratio of Rocky Mount school children residing in Nash County to all school children residing in Nash County."

School authorities indicated that Rocky Mount school children were about equally divided between Nash and Edgecombe. Records indicated that Rocky Mount has 23% of the Edgecombe school population and the rest of the county 77%; that Rocky Mount has received 28% of the Edgecombe capital outlay appropriations for schools and the rest of the county 72%; that Rocky Mount has received 36% of the Edgecombe bond issue assumption benefits and the rest of the county 64%. The Commission concludes: "As between Rocky Mount and the remaining county schools of Edgecombe County including Tarboro, Rocky Mount has received more than its school enrollment ratio of current capital outlay appropriations and bond issue assumptions. If the school enrollment ratio is the correct criterion for division of funds Rocky Mount has been well favored in the past." Records indicate that Rocky Mount has 20% of the Nash County school population and the rest of the county 80%; that Rocky Mount has received 28% of the Nash capital outlay appropriations for schools and the rest of the county 72%. The Commission concludes: "If the school enrollment ratio is the proper criterion for the division of capital funds Rocky Mount has no complaint against Nash County for past treatment."

The Commission rejects the Rocky Mount formula for the allocation of county school building funds and accepts the Nash-Edgecombe formula—saying:

"Assuming equal needs between city schools and county schools, there will always be presented in North Carolina the situation that the ratio of property valuations in a city to property valuations in a county exceeds the ratio of city school enrollment to county school enrollment. Any formula which included property valuation as an element will result in the allocation for city school children of a greater proportion of county funds than for rural school children.

"This Commission believes that North Carolina is firmly and definitely committed to a policy of equal educational opportunity to all of the children of the state wherever they may reside. Taxable wealth is largely concentrated in the cities. We believe that it is a sound principle and a principle to which North Carolina is generally committed that the wealthy cities should contribute to the educational opportunities afforded by the poorer rural communities. If a theoretical formula is to be established for the division of overall county funds raised by taxation of city property and rural property, the most equitable formula is one based upon number of children in the county. Therefore, this Commission does not recommend the Rocky Mount proposed formula introducing property valuation as an element, but recommends the formula proposed by the Boards of County Commissioners of Edgecombe and Nash Counties, namely a division of county school construction funds according to school enrollment."

The Commission recognizes that "any theoretical formula is subject to variation because of time to time needs," and faces the "problem of comparative county and city needs." It finds that there is "little need for white school construction in rural Edgecombe County but that the need for Negro school construction is clear and pressing", and that while white schools in Nash are somewhat crowded, there is "an urgent and pressing need" for Negro school construction.

The Commission therefore concludes that: "There are present school needs in the City of Rocky Mount and that there are present school needs in the rural areas of Nash and Edgecombe Counties and that those needs are immediate and are pressing and are of equal importance . . . ."

"It is, therefore, our recommendation that the Board of Education and Boards of County Commissioners in both counties should proceed with both programs.

"As we have heretofore indicated, it is our recommendation that the money available now and in the foreseeable future in Edgecombe County for capital school construction purposes should be divided generally according to the formula of ratio of school enrollment. It is our recommendation that a similar course be followed in Nash County.

"Practically, this would mean, if our recommendation should be followed, that, if Rocky Mount desires to construct its high school now, the next Legislature should enact a statute which would enable Rocky Mount to become a special tax school district in accordance with the so called Cleveland County plan or the so called Buncombe County plan. Rocky Mount would submit the question of issuance of bonds to its voters. If carried, the bonds would be issued and would become the fiscal obligation of the people of Rocky Mount and a charge upon the property in Rocky Mount. Rocky Mount would concurrently receive a commitment from the Edgecombe authorities that Edgecombe County money available for school construction purposes would be allocated on the school enrollment ratio and that this course would be followed certainly as long as the bonds for the Rocky Mount high school are outstanding and unsatisfied. Rocky Mount would receive a similar commitment from Nash County."

IV

The Problem of Health and Hospitals

The City of Rocky Mount represented "that there are expended in both Nash and Edgecombe Counties very substantial sums for public health; that the county health work of neither county extends into the City of Rocky Mount; that Rocky Mount should receive an equitable distribution of the county health funds."

The Commission found that both Nash and Edgecombe operate tuberculosis hospitals and that citizens of Rocky Mount receive treatment in these hospitals without any suggestion of discrimination; that Nash

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Attorney General

(Continued from page 7)

bonds are sold under the local government laws of the State and in accordance with the provisions of the local statute.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

G. Support of the Poor

To Ellen Winston.

(A.G.) The 1945 amendment of G.S. 153-152 provides that the several counties of the State may levy taxes not to exceed five cents on the one hundred dollars valuation for support of the poor. I agree with you that the exception of certain counties found in the second paragraph of G.S. 153-152 applies only to the right to contract for hospital services, as provided in the second paragraph of that section, and that all of the counties of the State are included in the amendment of 1945 and thus authorized to make the additional levy.

U. Purposes For Which Appropriations May Be Made

2. Expenses ot local officials incurred in defending law suits

To Camille Aldridge.

Inquiry: Does the board of commissioners of a county have the legal authority to pay the attorney's fees incurred in defending a deputy sheriff from the criminal charge of second degree murder of which he was found not guilty?

(A.G.) In the event that the homicide grew out of the performance of his duties as deputy sheriff and in the event the board of county commissioners should find that he was in all respects free from blame in connection with it, it is possible that the General Assembly might pass an act authorizing the payment of reasonable attorney's fees incurred in his behalf. There is, however, no general statute which would authorize this payment.

X. Grants and Contributions by Counties

To Joe Hull.

(A.G.) This office has previously rendered the opinion that a county is under no obligation to the Farm Security Administration to rent quarters or office space for this federal agency. I am unable to find any statute which makes this a county responsibility and I do not think a county has the right to spend county funds for such purpose, although I think a county would be justified and authorized to permit the use of its property as offices for this agency if, after supplying the county's needs for space, additional space could be provided in county property. The Farm Security Administration is undoubtedly performing a function which is of great value to the agricultural interests of the counties.

26. Memorials to servicemen

To Henry C. Strickland.

(A.G.) It is the opinion of this office that under G.S. 100-10 that a county may make an appropriation for a memorial to be erected in memory of soldiers and sailors of the wars in this manner: An association might be formed from the membership of the various veterans' organizations in the county or by any number of interested citizens, and a member of the Board of County Commissioners might, under the above statute and under a proper resolution of the Board, associate himself with the organization; this would, in my opinion, be a sufficient compliance.

HUGHES J. RHODES

Assistant Attorney General

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

F. Contractual Powers

7. Sale of city property

To W. R. Battley.

Inquiry: A city owns certain electrical power lines serving areas located outside of the corporate limits of the city. Can the city, by vote of its board of aldermen, sell the lines located outside of the limits or will a vote be necessary?

(A.G.) In view of the broad provisions of G.S. 160-2(6), which makes no distinction in terms between a utility located inside of the town and serving the people of the town and one which is extended beyond the municipal limits for the purpose of serving others, I am inclined to the opinion that you would have to comply with the section, and have the sale approved by a majority vote of the qualified voters of a city in order to make the sale valid. If you could wait until after the Legislature convenes, you could doubtless secure an act which would authorize the sale.

To W. B. Hopkins.

(A.G.) Property intended to be sold by a municipality must be sold at public auction as provided by G.S. 160-59. It would be permissible to offer the property for sale upon the condition that the deed would not be executed unless the purchaser should agree that the deed contain a clause requiring the building to be erected on the property, to be constructed at a cost in a specified amount, and that the building should be constructed within a period of one year or the property would revert to the town—provided this is clearly understood by those persons bidding upon the property, the notice of sale states these conditions, and the conditions are clearly recited in the deed itself.

I. Cemeteries

2. Sale of lots

To John B. Lewis.

Inquiry: May a town legally sell cemetery lots to residents of the town at a lower rate than to non-residents, maintenance charges for the cemetery being paid from tax levies?

(A.G.) It seems to me that the only valid objection which could be made to charging a higher price to nonresidents than the price charged residents would be discrimination, and, since the resident property owners are required to pay taxes to maintain the cemetery, and the nonresidents do not own property and pay no taxes, this objection seems to be removed. It is the opinion of this office that a person who purchases a lot in a cemetery with a guarantee of perpetual maintenance without any expense to the purchaser should be required to pay a higher price than a person who not only must pay the

To W. P. Kelly.

Inquiry: What charges may be made against a property owner for making taps to furnish city water to his property or to have a sewer tap made, including tapping the water main and running a line to the property line where the water meter is located, charging the cost of labor and materials, including meter and box and all connections?

(A.G.) There does not seem to be any statute which specifically fixes any method of making a charge for performing these services and furnishing these materials. You might look at the basic charter of your city. The General Statutes give municipalities broad powers in regard to charges made for water and sewerage services. An example is G.S. 160-249, 160-256, and 160-255. I think that so far as legal authority is concerned you may either place the matter entirely upon a basis of the cost of labor and materials or you can charge a flat fee for all the materials and services necessary to run the water to the property line. The same would be likewise true in making sewer taps and running lines to the property owner's line. I think that any system you adopt must be uniform; that is, if you adopt a flat-fee system, it must operate on everyone the same way; or if you adopt a cost system, then all people must be subject to the cost system.

To Nash LeGrand.

(A.G.) Under the provisions of G.S. 160-253, a city has the right to enter upon the premises of a person failing to pay his sewerage charges and disconnect the sewer line of such person from the public sewer line. This would be true regardless of whether a city ordinance enacting a sewerage charge was passed subsequent to the time such property owner connected with the city sewer line.

purchase price but is required to make future payments toward the maintenance of the cemetery in the form of tax levies.

K. Grants by Cities and Towns
2. Public schools

To W. M. Hicks.

Inquiry: May a town make a contribution toward the purchase of pipe to be laid in the open part of a ditch running on each side of school property for the purpose of enlarging the playground facilities of the school?

(A.G.) A municipality has no responsibility for the operation of the public schools of this state, and therefore could not appropriate funds for the improvement of school property. However, the appropriation might be made on the theory that it would provide recreational facilities. This depends upon whether the recreational facilities are for the use and benefit of the public at large and not solely for the use of the pupils at a particular school. If they are, I think such an appropriation could be made, but no tax funds could be used unless authorized by a vote of the people. Also, if the governing body should determine that the closing of the ditch is necessary for the preservation of the health of the community or that it should be laid to provide necessary drainage, I think that appropriation could be made for that purpose.

V. Miscellaneous Power
4. Public hospitals

To J. A. McDowell.

(A.G.) If the governing body of any municipality determines that the public interest and the interest of the municipality will be served by assisting any other municipality or municipalities in exercising the hospital powers granted under S.L. 1947, Ch. 933, then such municipality may furnish assistance either in the form of a gift of real or personal property or a loan or a gift of money. Of course, the municipality may not use any ad valorem tax money for such purpose or levy any special tax without a vote of the people as provided in the Hospital Act of 1947 above referred to.

Y. STREETS AND SIDEWALKS
2. Duty to repair
20. Payment and Collection

To Emmett H. Bellamy.

Inquiry: If a town proceeds to make certain improvements to sidewalks and streets under the provisions of G.S. 160-9, may it advance out of surplus funds the necessary monies for such improvements in lieu of issuing bonds?

(A.G.) I am of the opinion that the costs of the improvement and construction of sidewalks and streets may be advanced by the city out of its surplus funds. There is nothing in the statute which requires the city to issue bonds for the purpose of raising sufficient funds to pay the costs of street improvements. The statutes simply permit and do not direct that the money provided by the town come from bond issue.

To A. A. Webb.

Inquiry: May a city require filling station operators and garages to repair at their own expense sidewalks injured by heavy traffic passing over them?

(A.G.) It is the duty of a municipality to keep in repair its streets and sidewalks and I doubt if a city could maintain an action against the offending persons for damaging the sidewalks in front of their property under the circumstances outlined. However, a city does have general supervision of its streets and sidewalks, and in particular their use, and it seems to me that a city might by proper ordinances prohibit heavy traffic passing over the sidewalks that enter into these places of business unless the operators agree to repair such damage as might occur to the sidewalks from such use.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS
B. Clerks of the Superior Court
76. Guardian's fees

To W. S. Babcock.

Inquiry: Where a bank has qualified as guardian for a minor, and among the assets taken over by the bank is capital stock of the guardian bank, may the clerk of court require the bank to convert the stock into securities authorized by the statute?

(A.G.) While I know of no specific statute which would authorize this action, it seems to me that the clerk's general supervision over the administration of estates of minors, lunatics, etc., would authorize him to make such a requirement. See generally G.S. 33-1, 33-9, 33-13, 33-28, 33-36 and 33-41, and *Avent v. Womack*, 72 N.C. 397, *Armfield v. Brown*, 73 N.C. 81, *Coving v. Leak*, 65 N.C. 594, and *Head v. Turner*, 200 N.C. 773.

80. Decedents' estates—executor's and attorney's fee

To W. E. Church.

(A.G.) I am of the opinion that the clerk of court has the right to allow commissions fixed by a last will and testament, although the amount provided is in excess of that named in G.S. 28-170. This statute was intended to be a guide for fixing the compensation to be paid to an executor in

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those cases in which no provision is made in the will. In support of this, see *Ellington v. Durfey*, 156 N.C. 254; *Lightner v. Boone*, 221 N.C. 78; 34 C.J.S., paragraph 764, page 1043, under the subheading "Compensation Fixed by Agreement."

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

To N. M. Farr.

(A.G.) It is legal to possess a gallon or less of tax-paid liquor in the home; this does not raise any presumption of law and is not prima facie evidence that the whiskey is possessed for the purpose of sale. In order to make out a case against such a person, it would be necessary to show that bottles, dram glasses, siphons, funnels, and other equipment that is usually used by bootleggers were found in his home. His previous character as a bootlegger could not be shown in evidence unless he takes the witness stand and in some manner puts his character in issue.

56. Police—special and emergency

To Gov. R. Gregg Cherry

(A.G.) This office is of the opinion that the Governor of North Carolina does not have the authority to commission and appoint a special policeman or group of such policemen to operate as a special "merchants' patrol" to provide extra protection to merchants subscribing to their service or to special areas desiring their services. Such a system does not fall within the provisions of G.S. 60-83 authorizing the Governor to commission special police. If the matter is handled at all, it seems to us that it would have to be handled by having the county to appoint these men as deputy sheriffs or by having the city or town concerned, if such city or town has the necessary authority, to appoint these men special policemen.

(Continued on page 18)

To Roy J. Atkinson.

Inquiry: What is the right of an officer to search a motor vehicle without a search warrant if such motor vehicle is suspected of being used to transport whiskey, either tax-paid or non-tax-paid?

(A.G.) The Turlington Act, interpreted in *State v. Godette*, 188 N.C. 497, provides that an officer may search a car without a warrant when (1) he sees the liquor, (2) he has absolute personal knowledge acquired through the senses of seeing, hearing, smelling, tasting or touching. Of course, the Turlington Act has in some instances been modified so as to make the transportation of liquor lawful under certain circumstances, and makes it more important that an officer be very careful in regard to searching motor vehicles and other conveyances without a proper search warrant. I am therefore of the opinion that a search warrant should be secured before a motor vehicle is searched that is suspected of being used in the transportation of intoxicating liquor, except in those cases covered by the decision in *State v. Godette*.

Rocky Mount

(Continued from page 13)

and Edgecombe County Health departments stop at the Rocky Mount city lines; that the City of Rocky Mount operates its own health department, to which Nash and Edgecombe contribute $1800 each per year in lieu of county health works in the city. The "Commission thinks such a contribution is inadequate. The Nash [and Edgecombe] County commissioners have indicated their agreement with this view. It is the recommendation of this Commission that the Nash [and Edgecombe] County health funds, funds budgeted for county-wide health work, should be divided on a population basis, and that, in lieu of operating in the City of Rocky Mount, Nash County should allocate and pay to Rocky Mount that part of the Nash County health funds (after the elimination of funds spent for tuberculosis hospital, which results from an allocation on the ratio of Rocky Mount's population resident in Nash [and Edgecombe] to the total Nash [and Edgecombe] population[s]. "The Nash [and Edgecombe] County Commissioners . . . have indicated that they are agreeable to the allocation of funds in accordance with such a formula."

In reply to the city's request to "comment on hospitals and the construction of hospitals under the new state and federal health legislation,' the Commission said: "The operation of the health program has just begun. We do not believe that the situation is so settled as to permit any intelligent conclusion as to how the unfortunate situation in which Rocky Mount finds itself may be remedied, it being unable to get the full support of both or, perhaps, of either of the counties for the location of a joint hospital in Rocky Mount. We are not prepared to say that the county attitude with reference to such a solution of the hospital problem is unreasonable."

V

The Problem of Welfare Funds

The Commission made the following observation on the problem:

"From investigation made by and under the supervision of this Commission it appeared that expenditures of welfare funds in Nash County and expenditures of welfare funds in Edgecombe County are made for the benefit generally of all of the residents of each county irrespective of their places of residence. There was no intimation or complaint of discrimination by either county in favor of residents of the county outside of Rocky Mount.

"It is true that there are large additional expenditures for public welfare in Rocky Mount as the result of private charitable contributions to the Rocky Mount Community Chest.

"There is nothing in that situation which requires adjustment. This Commission thinks that the handling of county welfare funds is uniform and equitable and it makes no recommendation for change.

VI

The Problem of Valuation for Taxation and Duplication of Governmental Agencies

" . . . Excluding property valued by the State Board of Assessment," the Commission found that real estate in Rocky Mount on the Edgecombe side was valued for 1947 at $7,750,891 and real estate in Rocky Mount on the Nash side was valued at $10,001,425. Using Edgecombe as a base, the Nash valuation was 29% in excess of the Edgecombe valuation. "Personal property in Rocky Mount on the Edgecombe side was valued at $4,045,333. Personal property in Rocky Mount on the Nash side was valued at $6,-348.575. Again, using Edgecombe as a base, the Nash valuation was 57% in excess of the Edgecombe valuation."

The Commission further found that "the population of Rocky Mount on the Nash side in 1940 was 13.46% greater than the population in Rocky Mount on the Edgecombe side. Although population is not a very good criterion for tax values, nevertheless, a difference of 13.46% in population and 29% in real estate valuations would seem to require explanation."

"About half the informed persons" with whom the Commission talked believed "that the property in Rocky Mount on each side of the railroad was valued in a fairly comparable manner. They saw no discrimination or injustice. About half thought that property in Rocky Mount on the Edgecombe side was valued at a higher ratio to true value than was property in Rocky Mount on the Nash side. Not a single person with whom we talked was of the opinion that property in Rocky Mount on the Edgecombe side was valued at a lower ratio to true value than property in Rocky Mount on the Nash side.

"The Commission found no evidence whatever "of intentional, arbitrary or unjust discrimination in the valuation of property in Rocky Mount," . . . and felt that if Rocky Mount property on the Edgecombe side "is now on the tax books at a higher ratio to true value than is Rocky Mount property on the Nash side," it is a result "in large part from the age of the valuation, 1941, and from the fact that since 1941 the trend of trade and traffic and the trend of growth has enhanced the value of property on the Nash side more rapidly than it has enhanced the value of property on the Edgecombe side."

The Commission further found "the methods of valuation in Nash and Edgecombe were very similar" and "that the information forms on which valuation was based . . . seemed to be modern and complete," and thought the differential in rural land valuations—$34 per acre in Nash to $30 in Edgecombe, might be founded in the "higher percentage of small farms owned by the operators who lived on the farms" resulting in a greater value to "farm buildings" and tending to "increase the average value of the rural acreage"; in the fact that Nash County ranked fifteenth in the state in the number of consumers served by rural electric distribution lines and Edgecombe thirty-second; that Nash ranked fourth in the state in the value of all money crops and Edgecombe tenth, with the money value of crops in Nash "16.7% greater than the money value of crops in Edgecombe on a comparable acreage." In the words of the Commission, "Certainly this leads to the conclusion that consideration of the excess value in farm buildings in Nash and consideration of excess money productivity of the land in Nash would indicate that a 13% lower valuation of farm land in Edgecombe is not inequitable or discriminatory . . . . Such inequities as have resulted from the passage of time and the change of conditions since 1941 can best be corrected at the time of the next general revaluation."

VII

The Problem of a Rocky Mount Court

Rocky Mount spokesmen suggested the establishment in Rocky Mount of "a court of jurisdiction similar to the Superior Court. The proponents of such a movement relied upon the inconvenience to litigants, witnesses, jurors and attorneys involved in at-

tending court at Nashville and at Tarboro."

The Commission did not think "the degree of such inconvenience" indicates the desirability of establishing a new court. "Nash County and Edgecombe County are in the same judicial district, the second district. The Resident Judge of that district resides at Nashville, ten miles from the city of Rocky Mount. There are, each year, thirteen weeks of Superior Court at Nashville and ten weeks of Superior Court at Tarboro. Those courts do not conflict as to time. It is our information that in both counties the courts are well up with their calendars and that long delays are not experienced either in the civil or criminal courts. In fact no argument was advanced to this Commission that congestion of either court was existant or was a reason for the establishment of a new court. The only argument made was the argument of distance, the convenience of the Rocky Mount people who had to attend either court.

"Nashville is just ten miles from Rocky Mount and is connected with it by a good hard-surface road. Tarboro is just 16 miles from Rocky Mount and is connected with it by a good hard-surface road. Either county seat can be reached in less than 30 minutes. From the standpoint of time the citizens of Rocky Mount are probably as close to a county seat as are the majority of residents of North Carolina. Twenty-five years ago it is doubtful whether one-fourth of the citizens of North Carolina could reach a county seat in less than 30 minutes. We do not think that it is a very great burden for a Rocky Mount citizen to take from fifteen minutes to a half an hour to reach his county seat."

VIII

The Problem of ABC Store Profits

"This is a burning issue," says the Commission as it points out that Nash County makes profits of $225,000 per year from ABC stores in Rocky Mount, Battleboro, Nashville, Spring Hope, Bailey, Middlesex, and that Edgecombe County makes profits of $220,000 per year from liquor stores in Rocky Mount, Tarboro, Whitakers, Pinetop, Macclesfield; that Nash County allocates "to each Nash County town in which a Nash County liquor store is located 10% of annual net profits of that liquor store," while Edgecombe County "does not allocate any percentage of profits but makes a flat money allocation to Rocky Mount of $200.00 per month for law enforcement. In effect this would mean an allocation to Rocky Mount of approximately 1.2% of the profits of the Rocky Mount store. Naturally this causes great discontent and dissatisfaction. The comparison with the more generous treatment by Nash is and will be a constant source of irritation, argument and strife.

"At the outset of the study of the problem it is perfectly apparent that it is highly desirable to eliminate the difference between the Nash County treatment and the Edgecombe County treatment if possible."

The Commission points out conflicting city-county claims:

"The counties have said that they got to this source of revenue first, that they need the money, that in the county treasury the benefit of the profits will extend equally to all of the payers of county taxes, and that this includes residents of a city as well as residents of rural areas.

"The cities have said that most of the liquor store patronage comes from the cities, that the burden of law enforcement occasioned by liquor consumption falls on the city law officers, that in recent years county service demands have lessened (for example because of state assumption of burden of school operation and road maintenance), that city service demands have increased, that city sources of revenue have not kept pace with city service demands, that the cities need the money more than the counties need it.

"As those arguments have raged, no pattern of solution has developed," and the Commission looks to the trends of legislation for suggested clues.

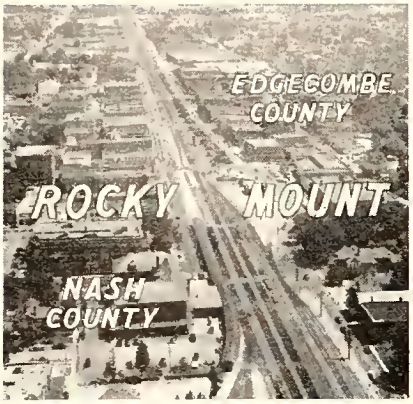
Chapter 418 of the Public Laws of 1935 authorized ABC stores in New Hanover County upon approval by a vote of the people. Chapter 493 of the Public Laws of the same year added the following counties: Pasquotank, Carteret, Craven, Onslow, Pitt, Martin, Beaufort, Halifax, Franklin, Wilson, Edgecombe, Warren, Vance, Lenoir, Rockingham, Nash and Greene. Pursuant to subsequent enabling legislation ten counties have been added to this list: Durham, Dare, Chowan, Cumberland, Wake, Mecklenburg, Washington, Bertie, Moore and Tyrrell. Pursuant to enabling legislation in 1947 city ABC stores have been established in Asheville, Louisburg and Franklin.

The Laws of 1935 provided that 75% of the profits of a store located in any city in New Hanover County should go to the city; that the profits of the Elizabeth City store in Pasquotank County "should be divided between the County and the City in the proportion of taxable values in Elizabeth City to taxable values in the remaining part of Pasquotank;" that "in all other Counties all of the profits were to be retained by the Counties." Subsequent enabling legislation for the ten counties added to the list left "all the profits in the County treasuries."

The percentage of profits allotted in 1935 to New Hanover cities having ABC stores has been cut from 75% to 66⅔%, and to Elizabeth City in Pasquotank from the ratio of taxable values to 50%. Since 1935, the Commission points out, "from session to session the right of the cities to share in the profits, and to share in increased proportion has been recognized." Today the percentage of profits authorized for cities by the enabling acts, according to the Commission's report, ranges from none in some ABC counties to 7½% in one, 10% in six, 15% in two, 20% in one, 25% in three, 35% in one, 50% in three, 66⅔% in one, 75% in one, and 100% in Louisburg and Franklinton in Franklin county where there are no county ABC stores. It finds "that of the current profits of all ABC stores in North Carolina at least 30% is going now to cities."

The Commission observes that: "If the existence of alcoholic beverage *control stores* tends to control the liquor evil in places where those stores exist, and it must be presumed that they do so tend or they would not have legal existence, then their continued existence and their continued control of the liquor evil may well be seriously threatened, first by a continuation of a squabble about division of profits and, second, by the increase of city ABC stores without the approval of the voters of the counties in which the cities are located."

The Commission continues: "We assume that no county went into the liquor business for the purpose of making money. No county should stay in the liquor business for the purpose of making money. Each county now in the liquor business can justify it only because of the purpose of curbing an evil thing. We do not here debate or express an opinion on the question whether the ABC store is the best known practical way of curbing the liquor evil.



Many men and many counties have different opinions on that. But we do say with definiteness and with certainty that each county in North Carolina which is now in the liquor business is in it for the one and only purpose of curbing the liquor evil. The large profit which results is an incident to the exercise of the police power. No county and no city has the shadow of a claim to liquor store profits based on the argument of original discovery of a source of revenue. No one was looking for a source of revenue. Liquor stores are police power agencies. The profit is a windfall.

"But the revenue is there. It is an incident of a police measure designed to curb the liquor evil in a given area, the county. The revenue is an incidental benefit to the people of that area. Then the most equitable disposition of the revenue is to let the people of the area share that incidental benefit on an equitable basis. The best known way of sharing money in the public treasury is to give to the taxpayers in the area relief from the burden of taxation.

"We think that it is a first conclusion with which everyone will agree that all of the profits from the operation of the county liquor stores should be devoted to lightening the tax load of the taxpayers who reside in the area of the liquor store, the county.

"The universal tax load is the ad valorem tax load. So, liquor store profits should be used to lighten the burden of ad valorem taxes and to lighten that burden equitably, equally and uniformly.

"But the county says that if the county keeps all of the money then each payer of county ad valorem taxes will receive a benefit and, as city people also pay county ad valorem taxes, the residents of a city will get equal benefit with the residents of rural areas.

"That argument overlooks the important fact that the resident of a city and the resident of a rural area do not pay equal or fairly comparable ad valorem taxes. The resident of a city pays two ad valorem taxes, his county ad valorem tax and his city ad valorem tax. The resident of a rural area pays only one ad valorem tax, his county ad valorem tax. Equitable distribution of a benefit requires the same proportionate tax relief to all payers of ad valorem taxes in a county. To give relative proportionate tax relief to all the payers of ad valorem taxes in a county it is necessary that a city taxpayer receive a reduction in both his county ad valorem tax burden and his city ad valorem tax burden.

"For example, suppose a rural resident gets a reduction of 10% in his county ad valorem tax bill. For a city resident to receive similar proportionate tax relief he must get a reduction of 10% on his county ad valorem tax bill and a reduction of 10% on his city ad valorem tax bill.

"We think that it is a sound conclusion that liquor store profits have not been applied to uniform ad valorem tax relief unless distribution is made of these profits in such a manner that both city and county ad valorem taxes can be reduced by the same percentage.

"That result can be achieved easily if all of the profits derived by a county from the operation of all of its liquor stores, wherever located, shall be divided between the county and all of the municipalities therein in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding such distribution."

The Commission recommends: "that in each county [Nash and Edgecombe] the profits from all county ABC stores be divided between the county and all of the cities in the county as proceeds of tax on intangibles available for distribution in the county are now divided; namely, in proportion to the total amounts of ad valorem taxes levied by the county and its cities during the fiscal year preceding such division."

IX

The Work of the Commission

The people of Nash, Edgecombe and Rocky Mount may or may not agree on all parts of this report of the Commission appointed at their request to resolve differences they had not resolved among themselves. But they must agree that they got the sort of Commission they asked for from the Governor: "a Commission of disinterested, qualified persons, experienced in government." They must agree that these persons went to the bottom of the perilous questions put before them, without shrinking from the dangers involved and without stinting their time or talents to the task.

William T. Joyner, A. S. Brower and D. D. Carroll would be the first to say they have not said the *last* word on all or any of the problems they have analyzed; but they have the satisfaction of knowing they have said the *first* word, and that this first word has been the unbiased and penetrating word, spoken in the spirit of humility that good neighbors have a right to expect from friends called in to help them settle their disputes.

The spotlight follows on this report from the hands of these who wrote it into the hands of those who receive it. "Some books are to be tasted, others to be swallowed, and some few to be chewed and digested," wrote Francis Bacon in the sixteenth century. These words, true then, are truer now. And here is a report to be "chewed and digested" by the governing boards of Rocky Mount, Nash, Edgecombe, and the people they represent—for the light it throws on the problems of a city astride a county line, for the light it throws on the problems of all cities in all counties, for the spirit of fairness, courage and humility which must settle these problems in the days ahead.

Attorney General

(Continued from page 15)

72. Pyrotechnics

To A. D. Bruce.

(A.G.) The Anti-Pyrotechnics Laws passed in 1947 does not prohibit the sale of cap pistols but caps designed to be fired in such pistols may not be legally sold or possessed in this state.

M. Health and Welfare Officers

29. State

To P. G. Cain.

Inquiry: Must the Merit System Law and rules in regard to salaries of employees be followed in health and welfare departments of the counties, and is each grant per month for old age assistance and aid to dependent children mandatory?

(A.G.) Under G.S. 126-14, county welfare and health departments are made subject to the Merit System Law and its rules and regulations. A county is, therefore, required to pay at least the minimum salaries re-

quired by the Merit System Council. As to the maximum and minimum benefits payable to each individual under the old age assistance program, and aid to dependent children program, I am advised that the law fixes the maximum benefit but does not fix the minimum. This, therefore, is a matter to be settled between the county and the State welfare department before the budget is made up.

P. Officials of Recorders' and County Courts

23. Right of appeal

To Marshall V. Yount.

(A.G.) It is our opinion that an accused convicted and sentenced in the recorder's court has ten days in which to appeal to the Superior Court. G.S. 7-177 and 7-179. In computing the time, I do not think that you would count the day upon which judgment was rendered; but you would start counting the ten days from the day following the day on which judgment was rendered.

32. Authority of clerk

To C. D. Taliaferro.

Inquiry: 1) May a special deputy to serve as clerk of county recorder's court be appointed in the event of a vacancy?

(A.G.) I think that the board of commissioners could at any time call for the appointment of a special deputy to fill the vacancy.

2) Who nominates the person so appointed?

(A.G.) I think the intention of G.S. 7-232 is that the sole authority for such appointment vests with the clerk of the superior court. He may also be removed from office by the clerk of the superior court for cause.

3) Would the clerk of the superior court and the surety on his bond be responsible for the acts of this clerk?

(A.G.) I know of no court decision on this point, and I am frank to say that I do not have an opinion satisfactory to myself. I suggest that the board of county commissioners require an adequate bond to remove any probability of liability on the part of the clerk's bond.

Q. Municipal Officers

5. City clerks

To John B. Lewis.

(A.G.) The governing board of a town, in the absence of a public-local act to the contrary, may fix the salary of the town clerk in such amount as in their judgment is adequate compensation for services rendered. This is true whether he was elected by the governing body of the town under G.S. 160-273, or by vote of the people under an applicable public-local act. It is our opinion that such compensation could be increased during the term of office of an incumbent if in the judgment of the governing body such increase is justifiable.

Should a clerk resign, the governing body has authority to fill the vacancy and fix the salary of the appointee. The town clerk is a public officer and must be a resident of the town.

To J. W. Ellis.

(A.G.) Unless there is authority by local act of the legislature, I know of no *specific* authority for the naming of a city deputy tax collector. However, there are many sections of the statutes which strongly imply that deputies may be named and I do know that it is the common practice in most cities to have deputy collectors who perform, among other duties, those of levying on and collecting delinquent personal property taxes. I am of the opinion that a city may name a deputy tax collector who may perform all of the ministerial duties of the office of tax collector, but I doubt if he may perform the judicial acts of a collector. It is my thought that upon naming a deputy tax collector that execution should be issued by and in the name of the collector, but that the serving or levying of the execution, not being a judicial act, could be done by a deputy collector.

7. Mayor

To W. J. Sherrod.

(A.G.) In the case of a vacancy in the office of mayor, G.S. 160-10 provides that the commissioners may fill the same. The Board may select someone from its own membership or from some other qualified electors of the town.

T. Justices of the Peace

1. Fees

To M. M. Applewhite.

(A.G.) A justice of the peace is not authorized to retain a five per cent commission on the $2.00 additional cost levied by law for the benefit of the Law Enforcement Officers' Benefit and Retirement Fund. Neither is he authorized to deduct a five per cent commission on fines collected in his court and paid into the county school fund. See *Board v. High Point*, 213 N.C. 636.

2. Selection and qualifications

To William Dunn.

(A.G.) The appointment by the Governor of a magistrate would have nothing to do with the number of justices of the peace which are to be elected from each township, as required by G.S. 7-113. No deduction should be made from this number by reason of appointments by the Governor.

Z. Constables

3. Fees and salary

To F. J. Williams.

(A.G.) G.S. 151-4 provides that constables shall be allowed the same fees as sheriffs. No reason is seen why a constable who works on a fee basis would not be entitled to a witness fee in a case where such constable was sworn and examined at the trial of a defendant and the defendant had been convicted and adjudged to pay the cost. This rule would apply in courts of justices of the peace as well as in recorders' courts.

10. Jurisdiction and power

To Thomas W. Alexander.

(A.G.) A city or town constable has the authority to serve either a criminal or civil process outside of the city limits and in the county provided the process is especially directed to him. *Davis v. Sanderlin*, 119 N.C. 84, If the process is directed "to any constable or other lawful officer of said county," under the ruling of the Supreme Court he cannot serve this process; it must be directed to "The constable of ....., N. C." or, even better, to "..... constable of ..... N. C."

IX. DOUBLE OFFICE HOLDING

62. Public hospital board member

To Wiley F. Mitchell.

Inquiry: May the same person hold the office of school committeeman and member of the board of directors of a public hospital?

(A.G.) It depends upon whether the hospital was organized under Ch. 131 of the General Statutes or under Ch. 933, S.L. 1947. If the hospital was organized under G.S. 131-4 through 131-28 I think that membership on the board of trustees would constitute an office; but if the hospital was organized under the 1947 act I do not think that membership on the board of managers constitutes an office. This office has often ruled that membership on a district school committee constitutes an office within Art. 14, sec. 7.

XI. GENERAL AND SPECIAL ELECTIONS

P. Beer and Wine Elections

To Rev. R. H. Hauss.

Inquiry: Can an election on wine and beer under Ch. 1084, Session Laws of 1947, be held between the

date of the second primary and the general election?

(A.G.) Such a beer and wine election would have to be held not earlier than sixty days after June 26 and not later than sixty days prior to November 2, the date of the General Election. It therefore appears that from a mathematical standpoint, there would be a date upon which your election could be held without violating the sixty-day limitation. This sixty days must be calculated according to the provisions of G.S. 1-593; "The time within which an act is to be done, as provided by law, shall be computed by excluding the first and including the last day. If the last day is Sunday or a legal holiday, it must be excluded."

To J. Robert McNeely.

(A.G.) The statutes state that an election on the question of the sale of beer and/or wine in a county shall be called within thirty days after a petition is presented. However, where the petition is presented at a time when the registration books are in the hands of the registrars for the purpose of conducting primaries, so that it is impossible to check the registration books so as to determine whether or not there are sufficient signatures of qualified persons, I do not think that the failure to act within thirty days would invalidate an election called thereafter, or invalidate the petition. As you know, the beer election cannot be held within sixty days of either of the primary elections, anyway.

S. Sale of Intoxicating Beverages on Election Day

To Thomas C. Hoyle.

Inquiry: Does G.S. 163-202 prohibit the sale of beer and wine on election day, in view of its provision that the sale of "intoxicating liquors" shall be prohibited at such times?

(A.G.) I cannot be sure whether this section is applicable to the sale of beer and wine. It was enacted in 1909, while Article 4 of Chapter 18, which authorizes the sale of beer and wine, was not adopted until 1939. This chapter amended the Turlington Act so as to authorize the sale of beer and wine of the specified alcoholic content, and it contained a general repealing clause. It seems to authorize persons who receive proper license to sell beer and wine as therein defined without restriction except as otherwise provided in that Act. The definition of intoxicating liquors in the Turlington Act would include beer and wine, and it occurred to me that the Legislature intended to remove beer and wine from the classification of intoxicating liquors by its later action, for there is nothing in the beer and wine law which prohibits its sale on election day. The Legislature, in adopting the ABC Act of 1939, which authorizes the sale of hard liquors in ABC stores, evidently thought it necessary to specifically prohibit the sale of beverages as therein defined on election day, for it required in G.S. 18-47 that all ABC stores be closed on elections days.

Books Received

(Continued from page 12)

sary assumption of responsibilities not the city attorney's, they must yet recognize the healthy attitude which prompts these city officials to push beyond the more mundane duties of their offices. Whence the attitude? One senses that it emanates from their feeling of duty as counsel for those organisms of government closest to the people. Use of the book should engender a greater pride and sense of opportunity in his job for the city attorney besides equipping him to do it better.

J. D. PHILLIPS, JR.

Cities and Towns

(Continued from page five)

Fayetteville to re-establish the city zoning commission to pass on the requests. The commission members had resigned in protest against the provision of the ordinance which limits the commission to recommending, rather than to making, decisions.

In *Greensboro* the city planning department is making a study which will enable projection of long-range guides for the proposed five-year plan, which is to be continued by annually extending the plan one year further.

Water Bills

The section of the *Greensboro* city code which regulates the adjustment of overcharges on water bills caused by defective plumbing fixtures, broken pipes or underground leaks was amended on June 1 by the city council. The new section provides a schedule for calculating the amount of the charge and provides that no more than one adjustment of excessive water bill caused by the same condition shall be made within a three year period.

Water and Sewer Systems

Forest City residents voted ten-to-one for issuance of $500,000 in bonds for a new water plant; *Morganton* and *Statesville* are planning new water filter plants; *Clarkton* will have a municipal water system. *Lenoir's* new million-gallon water tank is being completed; major water tank repairs will necessitate a bond issue in *Hertford*. Water and sewer system bids have been let by *Mooresville*, water system contracts by *Jamestown*, and plans drawn for water main extensions to the new areas of *Albemarle*. Fairmont has bought a new water tank and is laying larger mains which will give the town a complete circular system. Water pressure will be increased throughout the town. *Scotland Neck* has extended its water mains to the new city limits and is having one new well drilled. Until the proceeds of the *Chapel Hill* bond issue can be used for permanent expansion of the water system, the shortage will be eased by a mobile filter, acquired from the War Assets Administration for transportation charges. Ten percent, or 140,000 gallons, has been added to the previous capacity.

The Forest Park section adjoining *Hickory* will be supplied with water by that city under the terms of an agreement which the mayor and city manager on May 25 were authorized to sign on behalf of the city of Hickory. The residents of the area are to furnish and install water mains, which shall remain their property for twenty years, unless purchased by the City of Hickory in the meantime, for a price equivalent to cost less five per cent depreciation per annum. When twenty years have elapsed, whether or not any part of the area has been incorporated into the city, all the mains, together with all necessary and appropriate rights of easement for the maintenance and repair of the lines, become the property of the city without any cash payment. Water will be supplied by the city to the residents of the area at one and one-half times the rate charged to city residents.

1948
Water Works School

Conducted by the

INSTITUTE OF GOVERNMENT

and the

SCHOOL OF PUBLIC HEALTH

of the University of North Carolina

for the

NORTH CAROLINA WATER WORKS OPERATORS ASSOCIATION

and the

NORTH CAROLINA SECTION, AMERICAN WATER WORKS ASSOCIATION

JUNE 7-11

Pictured below are the nearly 100 water works superintendents and operators from over 50 towns and several industrial plants of North Carolina and neighboring states who attended this year's session of the annual school for water plant personnel.

In addition to planning the customary instruction leading to the granting of the Association's C, B and A certificates under its voluntary certification plan, the Education Committee made a particular effort this year to provide a useful and interesting program for water works officials who already hold the A certificate, bringing to them new developments and expert instruction in the water works field. Instruction by professional teachers, expert operators and manufacturers' representatives in lecture room, laboratory and seminar is producing a more successful school each year for the water works operators.

At one of the preliminary meetings to plan the 1948 Water Works School are, l. to r. around the table: W. G. Brown, Durham, Chairman of the Education Committee; Paul Haney, of the School of Public Health; D. York Brannock, Rocky Mount; Max D. Saunders, Chapel Hill; Clifford Pace, of the Institute of Government; H. D. Fesperman, Albemarle; Joe C. Stowe, Hamlet; and Emil T. Chanlett, of the School of Public Health (back to camera).

Officers of the Association and representatives of the Institute of Government and School of Public Health are: front row l. to r., W. G. Brown, Durham, Chairman of the Education Committee, Max D. Saunders, Chapel Hill, 1947 Secretary and new President, and A. B. Uzzle, Canton, new Vice-President; back row, Clifford Pace, Assistant Director of the Institute of Government, Stanford Harris, Lenoir, new Secretary, Joe C. Stowe, Hamlet, 1947 President, and Emil T. Chanlett, of the School of Public Health.

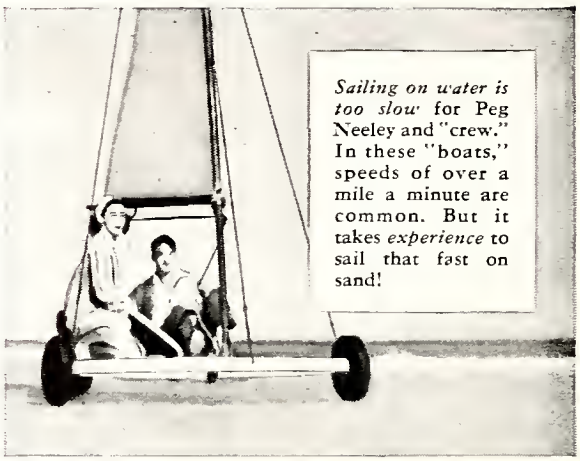
Mr. Edward L. Cannon, Secretary
Council N. C. State Bar
Raleigh, N. C.

IT TAKES EXPERIENCE TO GO

Sailing on the Sand

On Florida's Daytona Beach, Skipper Peg Neeley "heels over" in a stiff breeze.

Skipper **PEG NEELEY** agrees: "In sand sailing—and in cigarettes too—**EXPERIENCE IS THE BEST TEACHER!**"



Sailing on water is too slow for Peg Neeley and "crew." In these "boats," speeds of over a mile a minute are common. But it takes *experience* to sail that fast on sand!

R. J. Reynolds Tobacco Company, Winston-Salem, N. C.

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