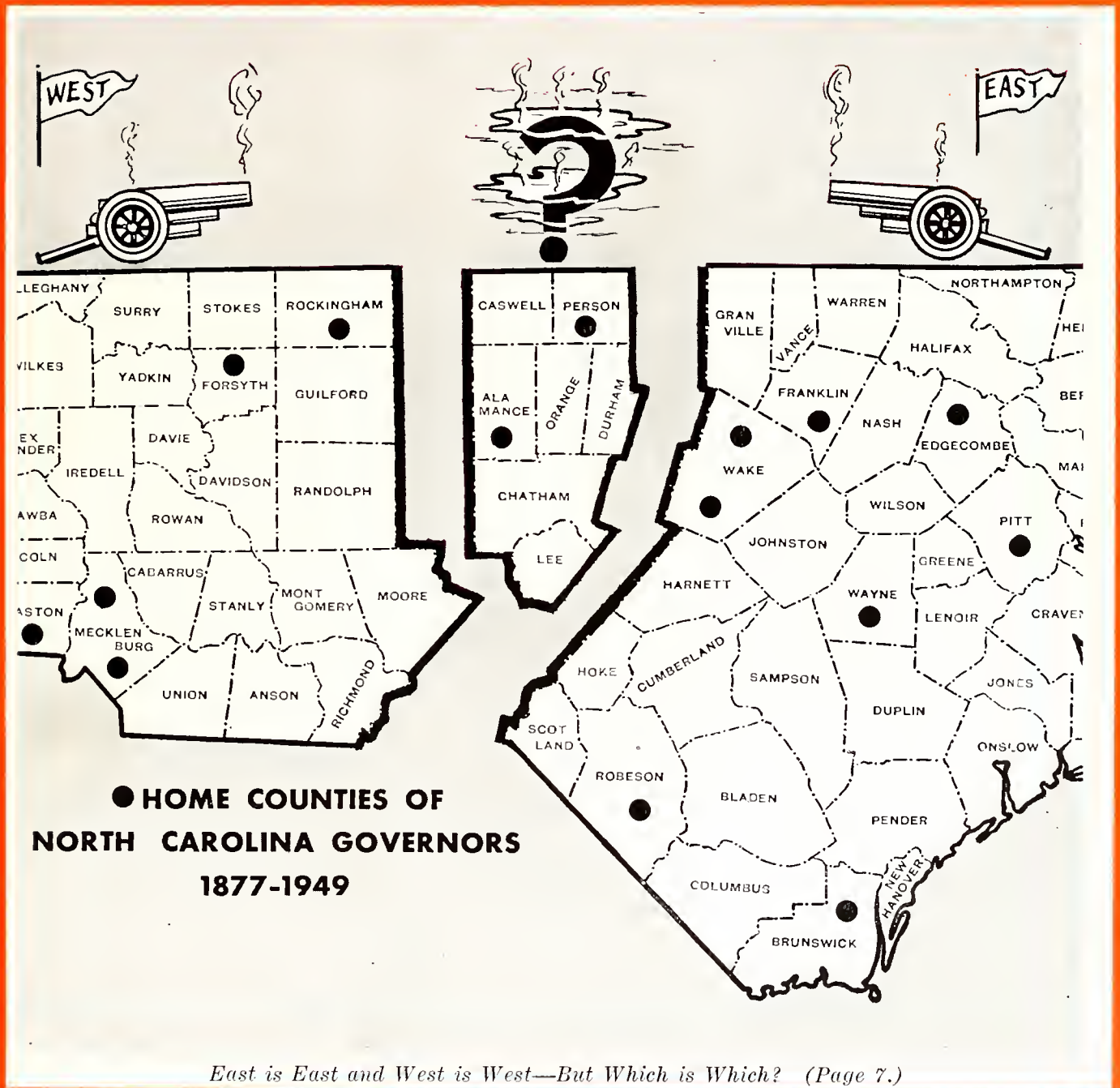


POPULAR GOVERNMENT



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Training Schools

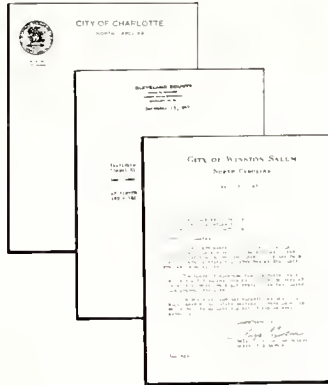
SERVICES INCLUDE:



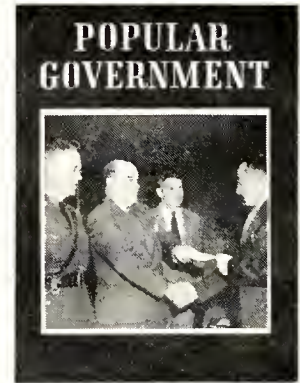
Clearinghouse of Information



Consultation



Inquiries

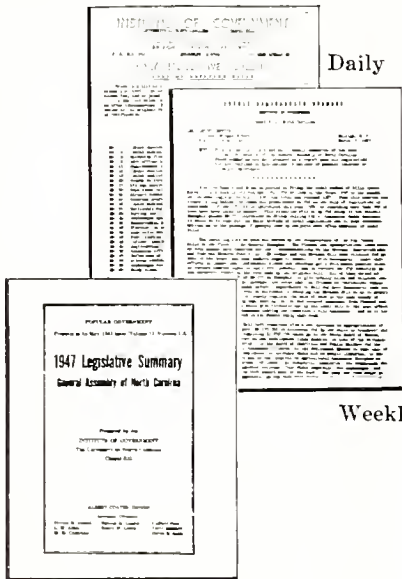


Monthly Magazine

Legislative Service

Guidebooks

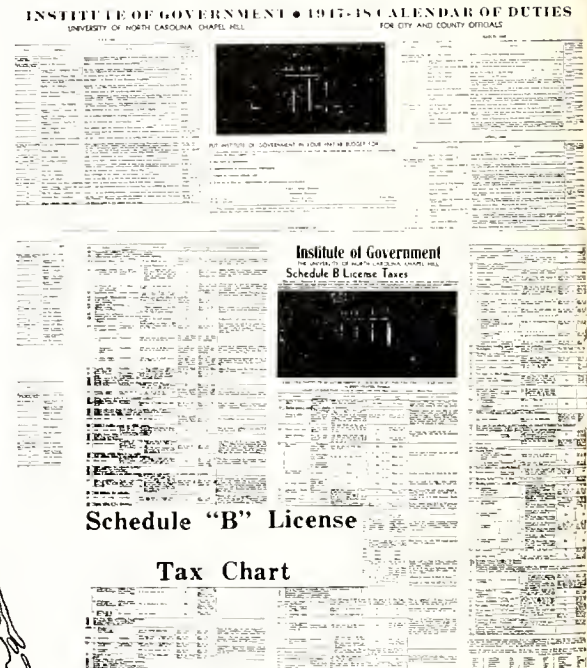
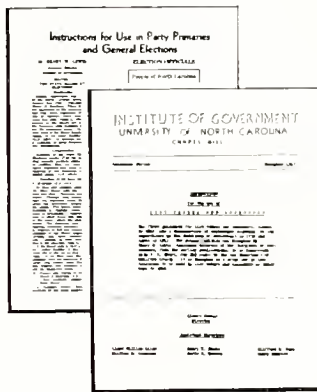
Calendar of Duties



Daily

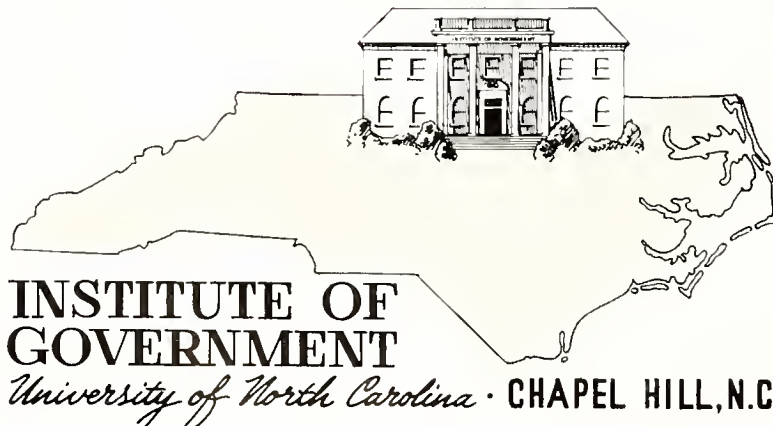
Weekly

Summary



Schedule "B" License

Tax Chart



The Ballot--Boon or Burden ?

1918 Voting Record in North Carolina

There are around 2,320,592 potential voters in North Carolina in 1948. 1,277,846 of these potential voters took the trouble to register for the Democratic and Republican primaries in 1948. 438,211 of these registered voters took the trouble to vote. In other words, 55 per cent of the potential voters took the trouble to register, and 34 per cent of those who took the trouble to register took the trouble to vote.

24 Year Voting Record in North Carolina

Look at this North Carolina voting record in 1948 against the background of North Carolina's voting record* from 1920 to 1944:

There were around 1,202,557 potential voters in 1920; 1,532,449 in 1930; 1,925,483 in 1940. Census figures

There were 538,326 actual voters in 1920; 480,068 in 1924; 651,424 in 1928; 710,218 in 1932; 812,982 in 1936; 804,146 in 1940; 759,993 in 1944. In other words 45 per cent of the potential voters took the trouble to register and vote in 1920; 46 per cent in 1932; 42 per cent in 1940.

24 Year Voting Record in the United States

Look at this North Carolina voting record from 1920 to 1944 against the background of the national voting record for the same years:

There were around 54,345,913 potential voters in the United States in 1920; 66,921,766 in 1930; 79,863,451 in 1940. There were 26,705,346 actual voters in 1920; 29,058,647 in 1924; 36,879,414 in 1928; 39,816,522 in 1932; 45,647,117 in 1936; 49,815,312 in 1940; 48,025,684 in 1944. In other words 49 per cent of the potential voters took the trouble to register and vote

* Census figures giving the potential voters (citizens twenty-one years of age and older) coincide with election returns giving actual votes in 1920 and 1940. Using the 1920 census figures as a basis for comparison with actual voters in 1924 and 1928 gives a better voting record than we have; and so for the election returns for 1932 and 1936 compared with the census potentials of 1930; and of 1944 compared with 1940. Consequently the comparative voting record for election years following the census years is pictured here as better than it is.

in 1920; 59 per cent in 1932; 62 per cent in 1940.

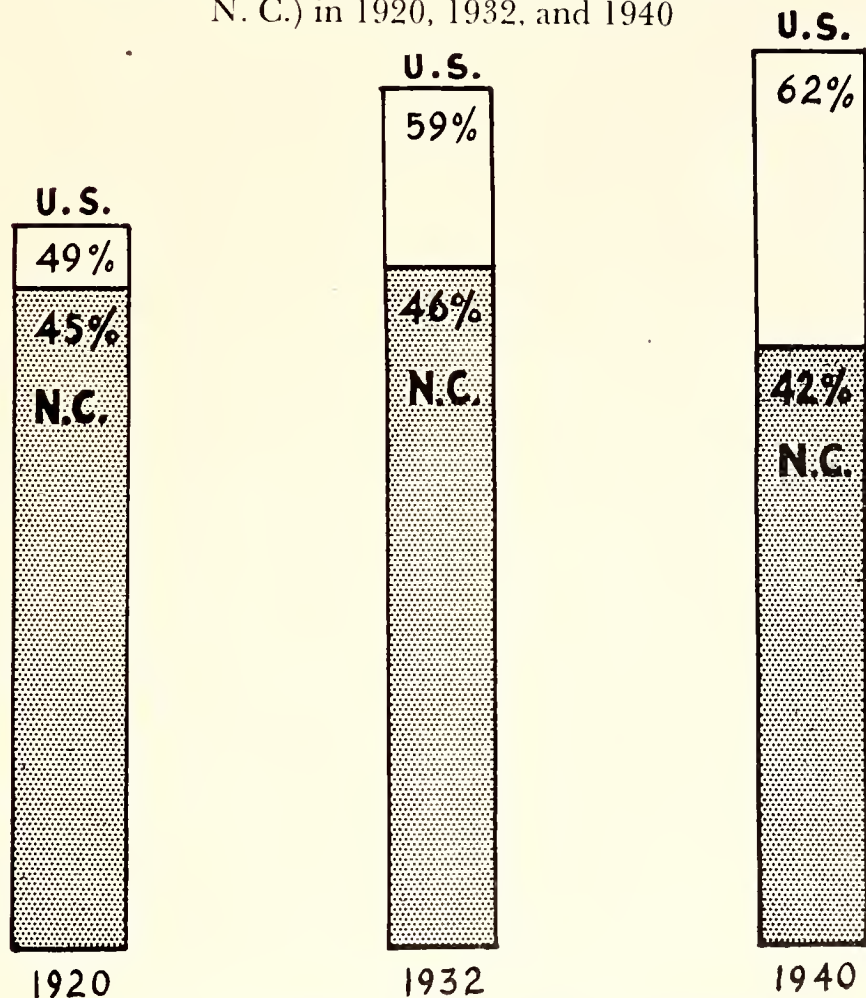
Prophecy and Fulfillment

Look at this voting record of "the people" against the background of prophecies throughout our history; On July 2, 1835, Delegate Wilson of Perquimans County stood up on the floor of the Constitutional Convention and proposed that the Governor of North Carolina be elected by the people. For sixty years the Governor had been selected by the General Assembly, and for over one hundred years before that he had been appointed by the Lords Proprietors or the Crown.

Many members opposed this "dangerous innovation" . . . "The people had not signified their wish for a change" . . . "Would it not be best to let *well enough* alone?" . . . "What mighty boon is it to the people of North Carolina, to impose upon them the duty of selecting the gentleman who is to bear the honorable appellation of Governor? . . . Instead of conceding to them a valuable boon, you impose upon them an onerous duty . . ." But despite this opposition the proposal was carried by a vote of 74 to 44, and the people — some of them, all of them who have cared to exercise the privilege, have been electing their Governor since 1836.

(Continued on page 3)

Percentages* of potential electors who voted in presidential elections (listed as U. S.) and in gubernatorial elections of North Carolina (listed as N. C.) in 1920, 1932, and 1940



* Numbers of potential and actual voters taken from publications of the Bureau of the Census and the 1913 North Carolina Manual.

The Fourth Highway Patrol School



On July 19th, the seventy-five young men pictured above began a course in Traffic Law Enforcement conducted at the Institute of Government with only one goal in mind—to qualify for the Highway Patrol. At the end of the course, which will last for six weeks and include 288 hours of instruction, the leading members of the class will be offered positions with the Patrol. Other members will be placed on the reserve list, from which future vacancies will be filled.

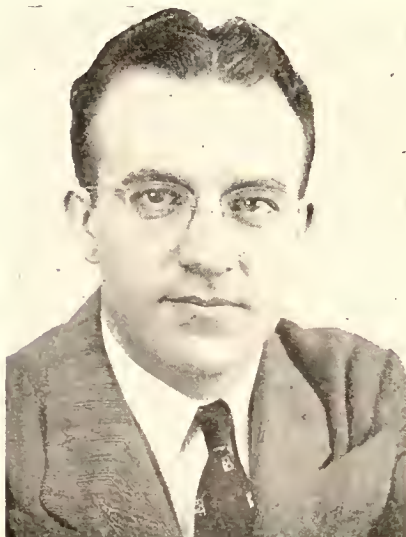
This school is the fourth to be conducted at the Institute of Government. It is under the command of Captain

David T. Lambert of Troop C, Greensboro. Associated with Captain Lambert in directing the training program is David G. Monroe, Assistant Director of the Institute of Government.

Patrol candidates will receive instruction and practical work in all phases of traffic law enforcement work. Included on the training schedule are the following subjects: Motor Vehicle Laws; Motor Vehicle Registration; Accident Investigations; Enforcement of Traffic Laws; Traffic Control; Automobile Operation; Abandoned and Stolen Automobiles; Vehicle Inspection; Elements of Crimes;

Criminal Investigation; Fingerprints; Crime Scene Search; Scientific Aids; Laws of Evidence, Arrest, Search and Seizure; Criminal Procedure; Liquor Laws; Court Systems; Firearms; Self Defense; Close Order Drill; North Carolina History and Geography; Public Relations; and Records and Report Writing.

These subjects will be taught by members of the Highway Patrol, the State Bureau of Investigation, the Federal Bureau of Investigation, the Institute of Government and representatives of other North Carolina law enforcement agencies.



Foster M. Kunz, F.B.I. Agent, who will teach Traffic Control and Accident Investigation.



Captain David T. Lambert of the Highway Patrol and David G. Monroe of the Institute of Government prepare the training schedule.

The Ballot

(Continued from page 1)

The voting base has been broadened with the years. From 1663 to 1835 no citizen could vote for his Governor. In 1835 the right to vote for Governor was extended to white men twenty-one years of age, residents of the state for twelve months, who had "paid public taxes;" in 1868 to persons without regard to "race, color or

previous condition of servitude;" in 1920 to persons without regard to sex, and without regard to payment of taxes.

The popular vote has been increasing: 63,943 votes were cast in the first election of a Governor by the people in 1836. 80,387 votes were cast in 1840; 112,586 in 1860; 237,421 in 1880; 313,313 in 1900; 538,326 in 1920; 804,146 in 1940. These figures answer in a fashion the

question put at the beginning of this statement: The Ballot—Boon or Burden?

The counties and the state of North Carolina will spend over \$150,000 on the operation of election machinery for the purpose of giving the people the opportunity to vote their will. This is a lot of money. The people should be reminded that there is many a dictator who would gladly save them this expense.

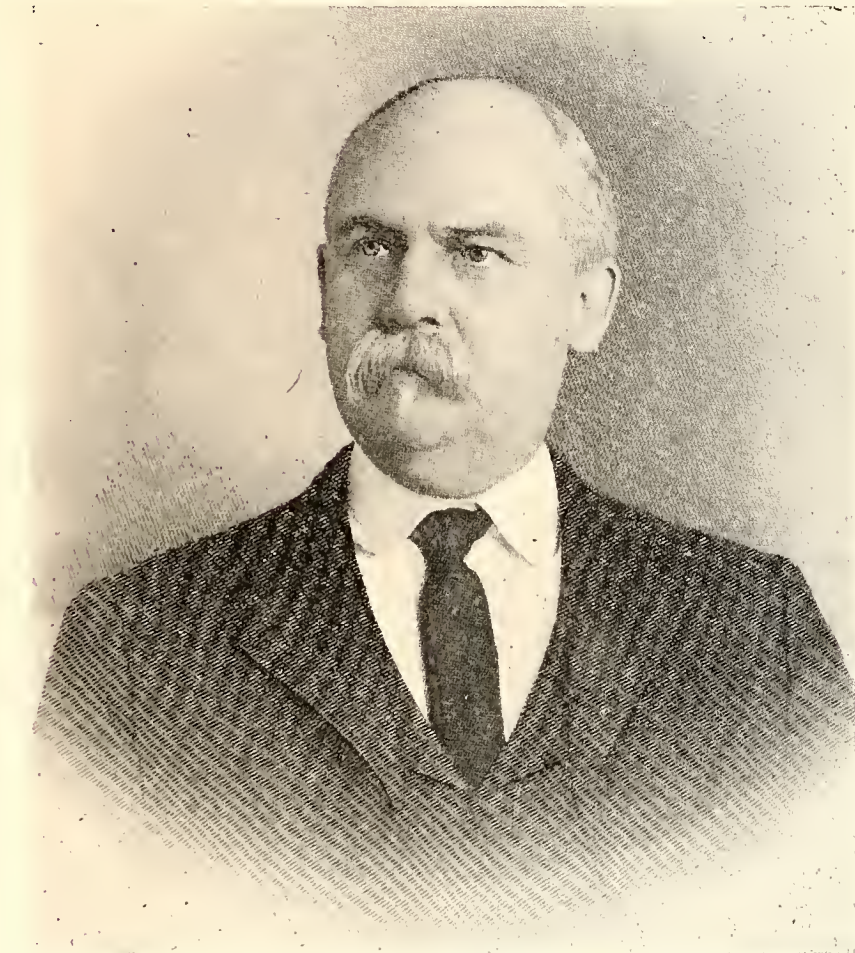
Walter Clark--The First Fifty Years

The Papers of Walter Clark Vol. I, 1857-1901. ed. by Aubrey Lee Brooks and Hugh Talmage Lefler. Chapel Hill: University of North Carolina Press. p. 607. \$6.00.

"The great evil of this day is the worship of wealth, and it makes no matter to its worshippers that we know that every vast estate is necessarily accumulated by robbery of the people—for there is a modest limit in the nature of things to the accumulations which can be made by diligence, and thrift and economy and honest industry. The freedom for honest accumulations is the glory of our institutions, but these vast estates are not made in that way. They are made by processes which should consign their holders rather to your penitentiaries. Their very size proves they are not honest accumulations Search all history, and you will find no age when the robbery of the just earnings of the masses was more systematic, more shameless and less resisted than today. There was never a time when the worship of great riches, however badly acquired, was more open than now"

The year was 1897, the speaker Walter Clark, Associate Justice of the Supreme Court of North Carolina, age fifty-one. These are fighting words, and remembering the time, the place and the speaker's position, they are startling words.—startling until we realize that it was Walter Clark speaking to a Methodist Sunday School Conference.

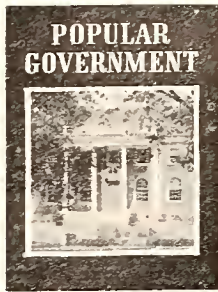
A decision to publish letters and papers of a public figure carries with it responsibility hardly less complete than authorship. Regardless of interest in the person who wrote and received the letters, those letters must stand on their own bottom. The reader will know something of the central character in such a collection, and inevitably he asks himself whether



they furnish a clue to that character. Inquiries into judges and courts have enjoyed an unprecedented vogue since the early days of the Roosevelt administration, and it is not strange that North Carolina should search its past for a proper subject. If the hero in this mass of books about the judiciary has been the judge who was willing to admit the influence of the times upon his conclusions, Walter Clark is the archetype. These letters and papers furnish the clue to the man, and in that Mr. Brooks and Mr.

Lefler have discharged their responsibility.

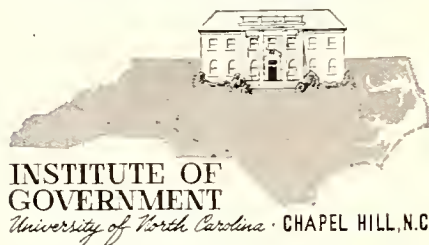
North Carolina readers of *The Papers of Walter Clark* can be presumed to know at least that Clark's position in the courts of this state is unique, even if they have failed to treat themselves to Mr. Brooks' competent biography of the "Fighting Judge," Judge Winston's review of that book in the *North Carolina Law Review*, and Mr. Brooks' reply to that review. It seems clear, however, that most of us would profit from a dip into the



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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. Copyright, 1948, by the Institute of Government. All rights reserved.



earlier volume before tackling the *Papers*. In fact there are times when the letters and papers bog down in their largely unfootnoted originality unless we have an intimate familiarity with the business and political scene. Despite the *précises* opening each division of the book, there are references and, occasionally, whole letters for which amplification is required for even the best historian. Without meaning to subject Mr. Brooks' earlier book to another review, it is still pertinent to say that the work he and Mr. Lefler have now produced will deepen the colors in which he painted the "Fighting Judge," and Mr. Brooks himself may now wish he had used these papers more extensively in the biography.

The papers have been edited with intelligence and scholarship. Particular attention should be paid the work the editors have expended in preparing the sketches preceding each chronological division of the papers. These sketches alone are sufficient to make the letters interesting, and they give enough of the man and the times to make the volume an entity. It is hard to escape the feeling, however, that the letters suffer from the very completeness of these sketches, so often do they remove the white meat only to leave the reader, in his methodical passage through the ensuing chapter, the feeling that he is eating left-overs. Had the editors adopted instead the running comment technique Mr. Lefler used in his own book, *North Carolina History As Told by Contemporaries*, the letters would have lost none of their freshness, and the pace of the volume would have been more uniform. Aside from this almost necessary evil, the footnotes and the *précises* themselves, with a few minor exceptions, are models of accuracy and clarity. One footnote identifies George T. Winston as President of the University of North Carolina in 1899 when, of course, he was at A. & M. There are also references identifying Thomas Bragg and Matt W. Ransom as "natives" of Northampton County, a loose usage of the term not calculated to arouse criticism in patriotic citizens of Northampton but which might cause offense to the proud inhabitants of Warren.

The editors tell us that this is the first of two volumes in which they plan to publish "selected" letters and papers from the 10,000 items that have been saved. The present volume covers the first fifty-three years of Clark's life, and it is natural to expect these "selections" to furnish the raw materials or components of the man. Certainly the first fifty-three years should be a reliable index.

As for the man himself, Walton Hamilton has characterized Clark as: "A man after his own manner . . . a champion of the rights of children, women, minorities; an advocate of collective bargaining and farmers' cooperatives; a judge unable to discover Constitutional obstacles in the way of social legislation." Another modern critic has called him "one of the half-dozen greatest jurists and one of the most interesting figures of the last generation."

On the other hand, those who have

dealt with the judge less gently have taken another tack: Judge Robert Winston described him as "A boy Colonel in Lee's army, editor, scrapper, duelist, breaker of images, radical of the radicals, at-outs with the past, critical of the Constitution—a device to enable plutocrats such as Washington and Hamilton to hold their ill-gotten gains—advocating a national convention to tear the thing to pieces and put the Declaration of Independence in its place. Such was Walter Clark, Tar Heel paradox, living, according to his biographer [Brooks], at the crisis of the conflict between Oromasdes and Arimanes, and a champion of human rights."

Thus the issue is joined. Born in 1846 on a Roanoke River plantation, cradled in agrarian comfort, waited upon by slaves, educated in the tradition of the times, he joined the Confederates as a teen-age boy and rose to the rank of lieutenant colonel; after the war he farmed a river plantation without slave labor, practiced law, edited a Raleigh newspaper, was appointed to the Superior Court bench, to the Supreme Court, and finally became Chief Justice of the North Carolina Supreme Court. That is the career in outline. That he was a Methodist, a Mason and a family man shed but little more light. Why should he have stirred up so much controversy?

Two patterns fit most of the remembered Southerners of Clark's generation. Fostered by wealth and slavery, nurtured by a sense of failure and disillusionment in 1865, fed upon hate of Yankees, upon ignorance of the changing world, and upon intolerance of the Negro in his new status, some followed the pattern of weakness. For others, with minor variations in detail, the family background, the education, the war service, are duplicated, but from military and economic defeat, they rose ruthlessly to build their own pattern of power, to build lucrative positions in the new economic world in which they found themselves. Clark fitted neither pattern, and certainly he did not represent a compromise between the two. Where his contemporaries either fell back into pathetic oblivion and degradation, or skyrocketed to wealth and power, he chose a different path, a choice that from its very difference made him memorable.

Walter Clark was the apple of his mother's eye. From a woman of less

(Continued on page 10)

THE CLEARINGHOUSE

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

Cities and Towns

Manager Plan

Lumberton voters approved the adoption of the Plan D form of municipal government, the council-manager form, in a record vote on June 14. The largest number of voters ever having participated in a special election in *Lumberton* favored the plan three to one. The five councilors elected from the city at large next April will select a mayor from among their number and elect the city manager.

New Municipality

Jamestown, which includes the oldest urban area in *Guilford County*, has been reborn and is entering the ranks of the most active and spirited towns in the State. Workers have been laying water mains and installing hydrants for a water distribution system which was authorized by an almost unanimous vote of the residents and which is expected to be in service by the end of this calendar year. The first municipal budget provides for purchase of fire-fighting equipment, and a volunteer fire department is being organized.

Personnel—Police

Since July 1 members of the *Statesville* police department, excluding Chief Frank Hartness and detective J. C. Rumble, have been working nine-hour shifts instead of the previous twelve-hour stints. Examinations were held in late June for the four new positions authorized in the 1948-1949 budget.

Purchasing

Winston-Salem officials are planning to establish a large storage warehouse which will make possible bulk purchasing of materials used by city departments and institutions. It is believed that with annual purchases totalling approximately \$1,000,000 the city can by purchasing goods in large quantities on a competitive basis save enough in one year to pay for building the warehouse and maintaining it through the year.

An addition of authority to the *Greensboro* purchasing agent was granted in June by an ordinance which reads: "Any personal property not exceeding \$250.00 in value at the time of sale may be sold by the Pur-



chasing Agent with the written approval of the City Manager."

Persons making excavations or doing other work which may cause hazardous conditions in the streets and sidewalks of *Farmville* must obtain a permit before starting the work, under an ordinance enacted in June. The ordinance sets forth the conditions under which permits will be issued, provides for restoration of the streets to previous condition, prohibits the making of excavations which would cause damage to streets and sidewalks (e.g., caving in), requires the use of guard rails and signal lights on the site, and imposes a deposit fee for making openings in streets and sidewalks.

Subdivision Regulation

The *Greensboro* ordinance regulating real estate subdivisions was amended on July 6 by the addition of the following sentence: "At its discretion the Commission may waive the requirement for the submission of a preliminary sketch and may issue regulations governing the waiver of the preliminary sketch provided no new street, alley, or drainage improvement, dedications, or easements are required as provided for elsewhere in this chapter."

Counties

Ad Valorem Taxes

A three-man revaluation board was named by the *Vance* Board of County Commissioners on July 1 to make the regular quadrennial revaluation of property for the 1949 assessment. The city council of *Raleigh* on June 29 directed the city attorney to prepare a resolution requesting the Board of Commissioners of *Wake* to

arrange for a scientific revaluation of real property in *Wake County* and the City of *Raleigh*. Revaluation has been discussed also in *Durham* and in *Davidson*, where the commissioners were visited by delegations of city officials from *Thomasville* and *Lexington*.

Mapping of the city of *Greenville* for tax purposes is being considered by the governing boards of the city and *Pitt County*. It is proposed that the expense of mapping be assumed jointly by the two local units.

Domestic Relations Court

The juvenile court operated by *Raleigh* and *Wake County* was abolished on June 30, and in its stead the two units of government established a joint city and county Domestic Relations Court. All expenses incident to the operation and maintenance of the court, including salaries of the judge, substitute judge, clerk, and all officers, assistants and employees, and all supplies and equipment, will be borne in equal measure by *Wake County* and the City of *Raleigh*.

Electrical Inspection

"An Ordinance for safeguarding life and property by regulating and providing for the inspection of electrical wiring, devices, appliances and equipment; creating the office of Electrical Inspector and prescribing his authority and duties" was recently passed by the *Orange County* Board of Commissioners.

Register of Deeds

The monumental task of reading and indexing 190,000 instruments recorded in the office of the *Robeson* register of deeds is to be done during the next two or three years by a commercial company hired to install the most modern indexing system in existence. Title searching will be simpler, quicker, and more accurate, and savings that "cannot possibly be estimated" will accrue to the benefit of the property owners and the county in years to come. Instruments dating back to 1787 will be cross-indexed by grantee, grantor, and property description. The system is now in use in *Cumberland* and *Columbus* and some other North Carolina counties.

The Attorney General Rules

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

I. AD VALOREM TAXES

B. Matters Affecting Tax Collection 49. Tax collection—prepayments

To Dorothy Mitchell.

Inquiry: Is it discretionary with a Board of County Commissioners to order the county Tax Supervisor to refuse to accept prepayment of ad valorem taxes and allow the discount allowed by law for such prepayment?

(A.G.) In the absence of a public-local statute applicable to your county, there is no such discretion in the Board. The General Statute with respect to this subject will be found as G.S. 105-345.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

64. License tax on out-of-town businesses

To H. M. Eastwood.

(A.G.) Under the provisions of the Revenue Act, a town may levy upon solicitors of dry cleaning to be done in some other town a tax not to exceed \$25, which is the maximum tax which may be levied upon local plants. A town may levy a tax not to exceed \$12.50 upon solicitors of laundry work coming in from other towns. Since the Revenue Act is silent with respect to municipal taxation of laundries located within the municipality, there appears to be no limitation upon the amount of tax which may be levied upon local laundry establishments other than that the tax must not be discriminatory or unreasonable.

69. Ice cream dealers

To Charles L. McCullers.

(A.G.) The Revenue Department has included ice cream as being within the term "products of the dairy" contained in subsection (e) of Section 121 of the Revenue Act, so that no license tax has been imposed under the section upon ice cream vendors. Such vendors may be taxed under the provisions of Section 161 if they purchase the ice cream sold from a manufacturer who has not paid the tax under the section or if the vendor is a manufacturer using counter freezer equipment and selling ice cream at retail only. But, since Section 121 does not specifically authorize a county to impose a license fee upon ice cream peddlers, and since the counties of the State have no general taxing power but may only levy taxes which are specifically authorized, I am of the opinion that a board of county commissioners may not levy a tax on ice cream peddlers.

IV. PUBLIC SCHOOLS

B. Powers and Duties of Counties 20. School elections—expense

To Algernon L. Butler.

Inquiry: Where a "Cleveland Coun-

ty Act" type of school district has been created pursuant to proper authority, and an election on the question of issuing bonds is being held, should the expenses of such an election be borne by the county out of its general fund, by the county board of education out of the school current expense fund or by the citizens of the school district?

(A.G.) Since the legislation pursuant to which the election is being held is silent on the question of election expenses, and since the election is conducted by the board of county commissioners, such expense apparently should be paid out of the general fund of the county. This is true for the reason that there are no funds in the current expense fund of the county board of education for the payment of this cost.

65. Exclusion of pupils

To W. R. Walker.

(A.G.) G.S. 115-371 makes it necessary for a child to be six years of age on or before the first day of October in order to be entitled to be enrolled in the public schools for that year, and the child must be enrolled within the first month of the school year. I do not believe that the fact that a child has attended a public school in another state would entitle him to transfer to our public school system unless he had reached the age of six years on or before October 1, the child having been able to comply with the age requirements of the other state.

D. Powers and Duties of Present Districts and Agencies

42. Liability for injuries to children

To Paul A. Reid.

Inquiry: When a school child is injured while attending school, may there be any liability therefor on the part of the school board or its members?

(A.G.) Neither your county board of education nor your local school committee would be liable for damages in tort since they are agencies of the state. See *Benton v. Board of Education*, 201 N.C. 653; and *Bridges v. Charlotte*, 221 N.C. 472.

The general rule as to the personal liability of public officers for an injury caused by their official acts is that such liability will attach when the cause of action is based on failure to perform or the negligent performance of a ministerial duty; but that when the duty is discretionary, the officer's conduct must be corrupt and malicious if there is to be any liability. *Betts v. Jones*, 203 N.C. 590; *Moffitt v. Davis*, 205 N.C. 565.

F. School Officials

7. County and city boards—contracting with members

To D. B. Teague.

Inquiry: Would a member of a county board of education have authority to write insurance on school buildings of his county, partly through his own agency companies and partly through the assignment of the rest to other companies, without violating G.S. 14-234?

(A.G.) It is my opinion that the statute would include the members of a county board of education and would prohibit any member of the board from being in any manner interested, directly or indirectly, in any contract made by the board, including the purchase of fire insurance.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

H. Issue of Notes

5. Constitutional debt limitation

To Robert T. Wilson.

Inquiry: May a county build a school auditorium by issuing notes to the contractor without the approval of the Local Government Commission and without a vote of the people?

(A.G.) Money can be borrowed by a county only to the extent of two-

(Continued on page 12)

HARRY McMULLAN

Attorney
General
of
North
Carolina



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CHARLOTTE

WINSTON-SALEM

RALEIGH

East is East and West is West -- But Which is Which?

On February 6, 1948, when William Kerr Scott of Alamance County announced that he was running for Governor of North Carolina, Johnson forces cried out: "Give the East its Governor!" . . . "Alamance County has always been considered West."

More than one dividing line has been drawn between East and West in North Carolina.

The original line was drawn shortly after the turn of the 18th century as settlers moved west of the Albemarle, Neuse and Cape Fear regions along the Atlantic seaboard, across the piedmont plateau, into the foothills of the Blue Ridge. It crystallized by 1835 along the present western borders of Granville, Wake, Harnett, Hoke and Scotland, over issues of race and tradition, eastern dominance and exploitation, representation in the General Assembly, internal improvements, and location of the state capitol. It was a wavering line—Person and Moore sometimes voting with the East and Granville and Cumberland (including Hoke and Harnett at that time) sometimes voting with the West. Some men argued against election of the Governor by the people in the Constitutional Convention of 1835 on the ground that "it would become a question of East and West, and be productive of party rancor. Instead of the inquiry being, as it ought to be, 'is he capable, is he honest, is he fit for the office?' It would be, 'is he an Eastern or Western man?'"

The industrial line. Much of this song has ended since the compromise of differences in the Convention of 1835, but snatches of its melody linger on for other reasons and swell with new volume in modern political breezes. "Failure to elect an Easterner will mean the rotation agreement is broken, and in the future the governor, lieutenant governor and speaker of the House will be elected at large. In the Democratic primary, the industrial West can outvote the agricultural East, but in the general election the West needs the heavy Democratic vote of the East." On this reasoning the dividing line would be drawn between the "agricultural

By
ALBERT COATES
Director
Institute of Government

East" and the "industrial West," but this is not a hard and fast line and it wavers with industrial development.

The population center line. Scott forces drew another line based on the 1940 census showing Asheboro to be the population center of the state. If that line were drawn North and South through the state it would run thirty miles west of Scott's home in Haw River, put Alamance County in the East, and considerable portions of Rockingham, Guilford, Randolph, Moore, Richmond and Scotland.

The geographic center line. Scott forces drew still another line and made assurance doubly sure: It is around 280 miles from Scott's home in Haw River to the western extremity of the state and around 240 miles to the eastern extremity, putting him in the East by twenty miles from the geographic center of the state.

The judicial division line. Scott forces pointed to still another line and made assurance trebly sure: The boundary line between the Eastern and Western judicial divisions of the State runs along the western borders of Person, Alamance, Chatham, Lee, Hoke and Robeson. This line puts Alamance in the East and Caswell—just as far east as Alamance, in the West.

The physiographic line. Others pointed to the Piedmont as a geographic and economic segment divided into political halves and emerging as a political segment of the State to claim its share of gubernatorial honors in its own name. This would rub out one dividing line, put in two, and create three sections in the state: coastal plain, piedmont plateau, and mountain region, with the governorship rotating to each section every twelve years instead of every eight. "A line drawn along the eastern edge of Warren, Franklin, Wake and Montgomery Counties, from thence along the southern boundaries of Montgomery and Stanly Counties then south-

east following the southeastern edge of Mecklenburg," divides the coastal plain from the piedmont plateau, which reaches "westward to the eastern edge of Surry, Wilkes, Alexander, Burke and Rutherford Counties." It might be argued that if the East and West have played both ends against the middle under the rotation system as it now exists, the Piedmont under the existing system might be in a strategic position to play the middle against both ends.

The political line. But the East-West dividing line in contests for public office has from the beginning been a political line—influenced at one time or another by all these physiographic, geographic, population, industrial and agricultural factors furnishing the raw materials of politics.

Most if not all observers will agree that for political purposes all Counties within the western boundaries of Granville, Wake, Harnett, Hoke and Scotland are usually considered Eastern Counties.

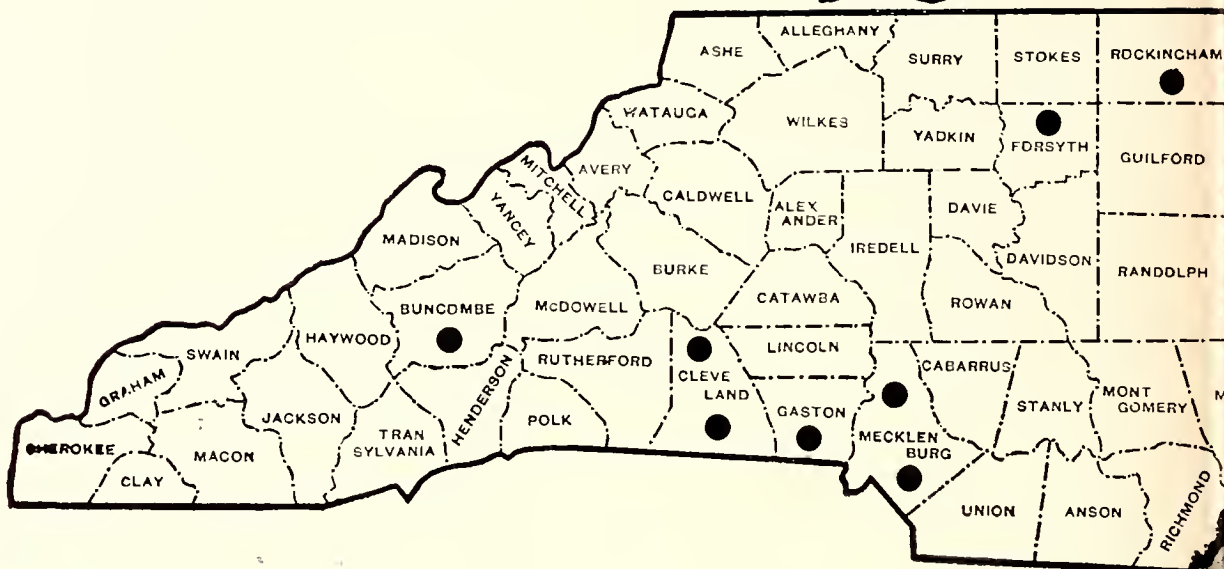
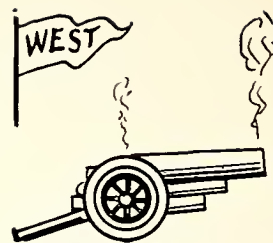
Most if not all observers will agree that counties within the Eastern boundaries of Rockingham, Guilford, Randolph, Moore and Richmond are usually considered Western Counties.

Opinions differ on the Counties in between: Caswell and Person at the North; Alamance, Orange and Durham, to the south of them; and Chatham and Lee below.

Kitchin of Person County ran as an Eastern candidate for Governor in 1908, and Harris of Person ran as a Western candidate for Lieutenant Governor in 1936. Long of Durham ran as a Western candidate for Lieutenant Governor in 1924, and Barker of Durham ran as an Eastern candidate for Governor in 1948. Graham of Orange ran as a Western candidate for Lieutenant Governor in 1932 and as a Western candidate for Governor in 1936. Holt of Alamance ran as a Western candidate for Lieutenant Governor in 1888, and Scott of Alamance ran as an Eastern candidate for Governor in 1948. Horton of Chatham ran as an Eastern candidate for Lieutenant Governor in 1936

(Continued on page 16)

EAST IS EAST AND WEST IS WEST



● HOME COUNTIES OF NORTH CAROLINA GOVERNORS 1877-1949



Vance



Scales



Holt



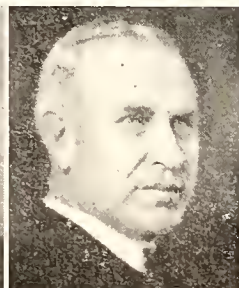
Glenn



Craig



Morrison



Gardner



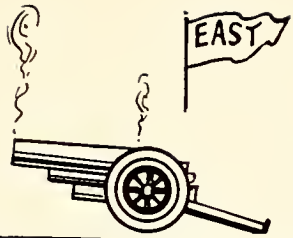
Hoey



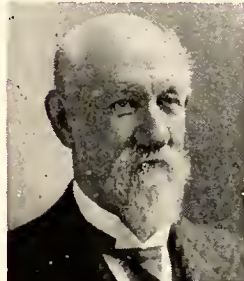
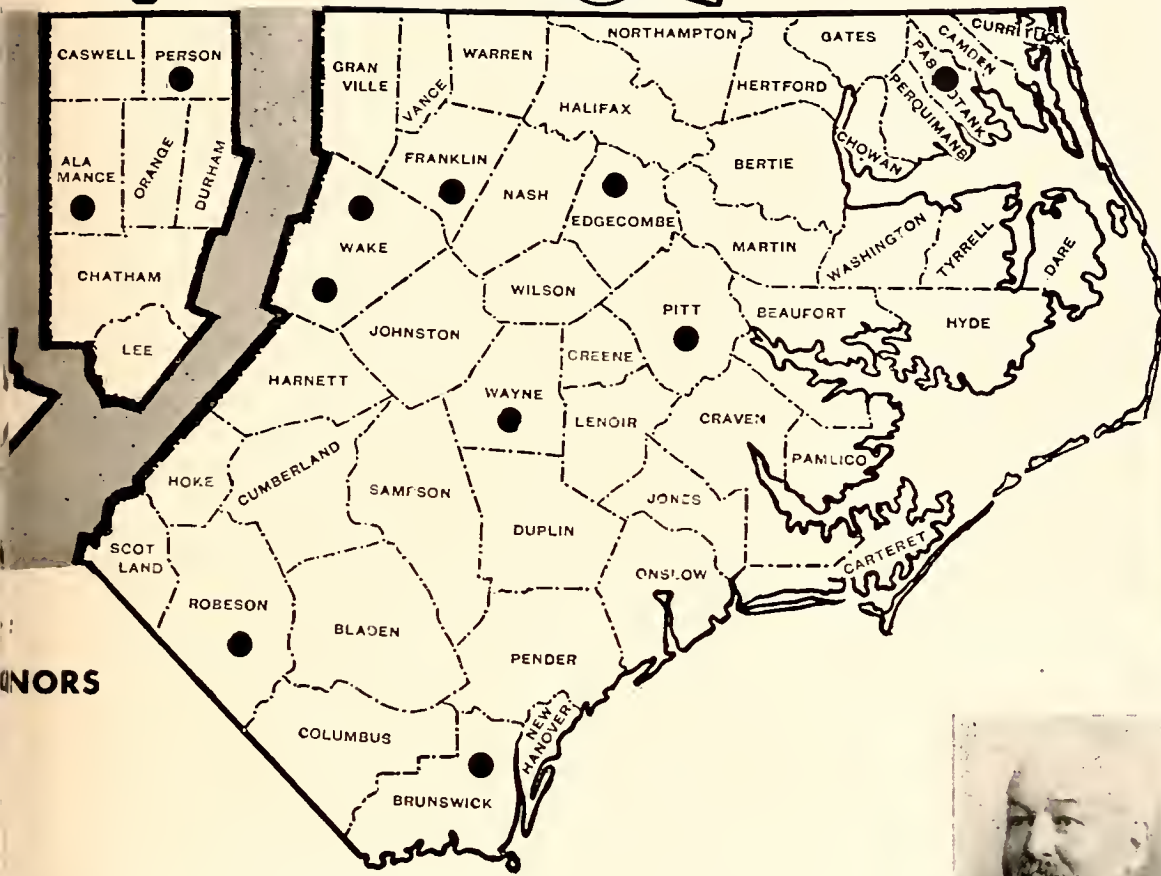
Cherry

NORTH CAROLINA GOVERNORS

NO.	TERM	GOVERNOR
1.	1877-79	Zebulon B. Vance
3.	1885-89	Alfred R. Scales
5.	1891-93	Thomas M. Holt
9.	1905-09	Robert G. Glenn
11.	1913-17	Lockwood Craig
13.	1921-25	Camden M. Morrison
15.	1929-33	O. Max Gardner
17.	1937-41	Clyde R. Hoey
19.	1945-49	R. Gregg Cherry
2.	1779-85	Thomas J. Bland
4.	1889-91	Daniel G. Foy
6.	1893-97	Elias Ligon
7.	1897-1901	Daniel R. Foy
8.	1901-05	Charles B. Aycock
10.	1909-13	William W. Holden
12.	1917-21	Thomas W. Bland
14.	1925-29	Angus M. Bland
16.	1933-37	J. C. Brantley
18.	1941-45	J. Morgan Kousser



BUT WHICH IS WHICH?



Jarvis



Fowle



Carr

GVERNORS, 1877-1949

GVERNOR	HOME COUNTY
W. Vance	Mecklenburg
W. Scales	Rockingham
W. I. Holt	Alamance
W. Glenn	Forsyth
W. Craig	Buncombe
W. Morrison	Mecklenburg
W. Gardner	Cleveland
W. Hoey	Cleveland
W. Cherry	Gaston
W. Jarvis	Pitt
W. Fowle	Wake
W. Russell	Edgecombe
W. Aycock	Brunswick
W. Kitchin	Wayne
W. Bickett	Person
W. McLean	Franklin
W. Ehringhaus	Robeson
W. Broughton	Pasquotank
	Wake



Russell



Aycock



Kitchin



Bickett



McLean



Ehringhaus



Broughton



Walter Clark at 17

(Continued from page 4)

education, less intelligence, less humor or less understanding, the injunctions to commit himself "into the hands of that Great & Good Being, who careth for us, & never forsakes those who trust him," reiterated in all her letters, might well have alienated the boy and turned him from the thing she most desired for him. But this wise woman persisted, through her letters, in training the boy in a simple Christian faith, in honesty and in industry, long after he left home in his early teens. Letters from Clark's father were less frequent, but one of them is sufficient to show something of the man. Walter was at school at Hillsboro, and having some inkling that he might be awarded first honors at a coming commencement, he had written his father in some detail. In answer David Clark wrote: "I do not know that I care about your getting first distinction but should like for you to deserve it . . . If you do not think you deserve it & should come to get it [,] request Col Tew to let the right one to Have it . . ."

From the time he left home for school until he followed the footsteps of his Revolutionary drummer-boy ancestor into the Army as drill master, Clark's letters show the development of that habit of prodigiousness that was to characterize the man. Under the constant admonitions of his mother and father, he studied diligently and achieved distinction at school. He was fascinated with history and with Napoleon in particular. This interest in history presaged his monumental efforts with the records

of the Civil War regiments from North Carolina and with the State Records. It is interesting to find school-boy letters home inquiring whether his mother had been saving all his letters. Whether this was childish vanity can best be understood in the realization that Clark's sense of history was not confined to the past; over and over he makes it clear that he was thinking of his own career to come. He had a sense of history and of his own place in it.

Walter Clark was ambitious, but what was much more, he was willing to work. Diligent in school, punctilious in military service, persevering in farming, studious in the practice of law, and tireless worker on the bench, he rose rapidly. But there was another side to the man. He had a conviction of sin. It is strange that students of North Carolina social history have devoted so little time to the effect of militant protestantism on the political mind of the state. Our thinking commonly confines puritan influences to New England and the areas populated with New England stock. The truth is that even from the early settlements in the Albemarle and certainly since the days of Shubal Stearns, the influence of puritan thought has been significant in North Carolina. The more we read of Walter Clark, the more of the New Englander there is to be found in him—diligence, sense of duty, ambition, interest in history, and a strict moral code.

Judge Winston has called Clark a "Tar Heel paradox." In a gentler way the Judge seems to be saying what was said of Franklin Roosevelt when they called him a "traitor to his class." The two men failed to fit the expected pattern. Nothing is more disturbing, or more challenging to the historian. With the talents the man had, with his background and education, Clark should have become, not the foe of commercial and industrial empires, but their protagonist. Indeed this might have been the case had he not deserted his railroad and tobacco clients when he went on the bench, but in that desertion Clark was merely following the pattern he had chosen. Even before he went on the bench, almost within the shadow of Appomattox, Clark began to preach new doctrines in letters to North Carolina newspapers. This was the 19-year old veteran's platform:

"While slavery existed the brain was cudgelled and reason was put to the rack to convince our people that the prosperity of the South depended upon its further

maintenance . . . The force of circumstances has at length burst the chain that bound us . . . I am far from approving the means by which this has been accomplished, but the deed has been one of mercy in disguise . . . Our daughters have grown up in frivolity and our sons without expectation of aught but pleasure. Our old men have lived in ease and the young have followed fast in the footsteps of indolence. Our magnificent country is unimproved, our factories unbuilt, our wants supplied from without, and the South, like the sun upon Gideon, has stood still in the onward race . . . Slavery is dead, let us rid ourselves of the dead carcass. . . Politics has been a fatal trade to us and ours.—We need repose from political excitement, increase of population, immigration of labor, influx of capital and development of our systems of general education and internal improvements."^{*}

When he studied law at Chapel Hill, Clark was still determined to make the Regular Army his career: "I have no idea *whatever* of being a lawyer." And even when he had to take the law as second choice, there are repeated indications not only when he took over a newspaper, but even when on the bench, that he had far wider interests than are generally attributed to the practicing attorney or judge. In fact those very interests, almost catholic in breadth, inspired the travel, the study and the action that infuse Clark's writings with an intimacy with the world around him, with a vision and understanding that his antagonists respected and feared.

It is beyond the scope of this review to delve into the tried and re-tried disputes that marked Walter Clark's career. The Kilgo battle has been aired in a half-dozen books; Clark's railroad decisions, women's, children's and labor's rights decisions have all been treated ably in learned journals. And his insistence on strict enforcement of the criminal law has also drawn comment. One observation can be made, however, about the letters reprinted in this volume concerning the Kilgo fight. Forty-nine separate documents compose the record of the dispute presented here; not one of them contains adverse criticism of Clark's position. Whether there were none or whether Clark de-

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* This quotation is a composite made up of portions of several letters to newspapers dealing with these ideas, all written within the period of less than a year.

Superior Court Clerks Convene

Thirtieth Annual Meeting Held in Hendersonville, July 7, 8, and 9

The North Carolina Association of Clerks of Superior Court convened at the Skyland Hotel in Hendersonville on July 7th for their thirtieth annual convention with the largest attendance that any convention has enjoyed in the past ten years.

The clerks heard an informative program which, for the most part, was of the informal, group-participation type. They heard 12th District Congressman M. M. Redden comment on the Marshall Plan legislation, the draft law and the tax-reduction law as the most important enactments of the 80th Congress in the convention's only formal address. They had a fun session of barbecue and square dancing. They chose Wrightsville Beach as their 1949 meeting place on July 5, 6 and 7. And they chose their new officers by: elevating Thomas L. Covington, Richmond County, from First Vice President to President to succeed 1948 President L. C. Hand, elevating A. W. Greene, Hertford County, from Second Vice President to First Vice President, naming Carl C. Smith, Iredell County, as Second Vice President, and naming W. S. Babcock, Edgecombe County, as Secretary-Treasurer to succeed W. E. Church, who has served in the office for many years and this year requested that he be released so that he might have adequate time to represent the clerks on the two Statewide commissions to which he has been appointed.

Some of the matters discussed in the course of the program of particular interest to the clerks, and portions of the program of general interest, are commented on below.

The clerk's power to charge a 5 per cent commission on fines under G.S. 2-26—Clifford Pace, Assistant Director, Institute of Government.

One portion of G. S. 2-26 authorizes the clerk of court to charge a 5 per cent commission on fines, penalties,

amercements and taxes paid him by virtue of his office. Section 5 of Article IX of the North Carolina Constitution provides in part that "... the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State ... shall be faithfully appropriated for establishing and maintaining free public schools." This provision first appeared in the Constitution of 1868 and has remained unchanged since that time. The pertinent portion of G. S. 2-26 was enacted at approximately the same time, with the result that we apparently have a conflict between statute and constitution, both conceived in the minds of our law-makers at approximately the same time, on the question of the clerk's commission on fines, penalties, forfeitures, etc. The constitutional provision is repeated in the statutes as G. S. 115-177, a part of the school law, and another section of the school law, G. S. 115-382, makes it unlawful for any of the proceeds of fines, penalties and forfeitures to be used for purposes other than schools, thus further complicating the confusion.

This conflict was resolved by the Supreme Court with the rule that the term used in the constitution, "clear proceeds," means the total sum of any fine, penalty or forfeiture less only the sheriff's fees for collection when the fines and costs are not collected in full, and that the General Assembly cannot appropriate these proceeds to any purpose other than the school fund. *State v. Maultsby*, 139 N. C. 583, and *Board of Education v. High Point*, 213 N. C. 636.

The Attorney General, in reply to many inquiries from Superior Court Clerks about their right to charge the commission, had consistently ruled that the law of the *Maultsby* and *High Point* cases prevented clerks from taking the 5 per cent fee on fines, penalties and forfeitures. However, that office has recently taken the position that, under the familiar rules of law providing that doubt as to the constitutionality of a statute must be resolved in favor of constitutionality and that conflicting statutes should be reconciled if possible, these cases do no more than

prevent the deduction of the 5 per cent commission. The reasoning is this: a clerk's fees are part of the costs in actions and proceedings and are ordinarily added in the bill of costs; as an example, the general law authorizes a fee of 25c for docketing a judgment; and the same thing could be said of the 5 per cent commission on fines.

Under this view, if a defendant were fined \$100 and the costs, one item in the bill of costs would be a \$5.00 clerk's fee, which is 5 per cent of \$100. Considerable interest was shown by the clerks in the possibilities which this new view offers.

Problems connected with the mentally defective—Dr. Bell, Superintendent of the State Hospital at Morganton.

Probably no officials know better than the clerks the pressing problems which this State faces in the handling of its mental defectives. As they see the percentage of mental disease increasing with the complexity of the times and see the unpadded cells of their county jails filling up with cases which should be going to the State institutions but which simply cannot be taken care of there, they, as the men who commit every insane person, grow more and more alarmed. In an unscheduled and informal session, the Superintendent of the State's mental institution at Morganton undertook to answer some of the questions which the clerks had about the immediate possibilities of increasing State facilities and about the clerk's duties in handling insane cases:

The hospitals are operating at absolute capacity now and the rate of discharge is not equaling the demand for space.

At the Morganton institution (for the western portion of the State), no building has gone on under the 1947 legislation creating funds for this purpose, subject to the limitation that the funds are not to be spent "until dollar value can be realized." It is hoped that action on present plans can go forward immediately.

Until such time as additional facilities are available, the clerks can expedite the handling of cases by

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PEYTON B.
ABBOTT

Assistant
Attorney
General

Attorney General

(Continued from page 6)

thirds of the debt retirements for the preceding fiscal year, unless authorized by a vote of the people. This constitutional debt limitation is applicable to the issuance of school bonds. *Hallyburton v. Board of Education*, 213 N.C. 9. It is also necessary that all bonds and notes issued by a county, before being issued, shall be approved by the Local Government Commission and this would include notes given to a contractor for building a school auditorium. See G.S. 159-18.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

N. Police Power

8. Traffic regulation

To W. P. Kelly.

Inquiry: Do incorporated cities and towns have the right to reserve and mark off space on the public streets for bus stops, and if so, do they have the right to charge a fee for the use of these spaces?

(A.G.) G.S. 160-200 (31) provides that all cities shall have the power to provide for the regulation, diversion and limitation of pedestrians and vehicular traffic upon public streets, highways and sidewalks of the city, and to regulate and limit parking on streets and highways in congested areas. This power has been given a broad interpretation by the Court in *State v. Carter*, 205 N.C. 761, 172 S.E. 415. In my opinion a properly drawn ordinance would be a valid exercise of the power given in the cited statute.

I do not think that a fee may be charged for the use of space allocated for the use of buses and taxicabs, as I do not see how this would have bearing on the regulation of traffic. As suggested in *Rhodes v. Raleigh*, 217 N.C. 627, an ordinance regulating the use of streets must be based on some reasonable relation between the restriction applied and the condition sought to be remedied.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

A. County Commissioners

14. Powers—general

To Fred Folger.

(A.G.) I have been unable to find any law authorizing a board of county commissioners to make an appropria-

tion to a county agricultural association corporation to be used for the purpose of buying equipment and paying the expenses of training persons in the breeding of animals by artificial or other means.
39½. Meetings

To Ervin Clark.

(A.G.) It is our opinion that the chairman of a board of county commissioners, being one of the commissioners, has the right to vote at meetings of the board just as any of the other commissioners.

B. Clerks of the Superior Court

19. Duties with reference to adoptions

To York, Dickson and Morgan.

(A.G.) This office has previously expressed the opinion that there is grave doubt as to whether, in an adoption proceeding, failure to answer process by a parent will be equivalent to consent of the parent to the adoption. This office has always considered consent as a positive matter, and we have not been able to find legal support for the proposition that consent can be implied as a matter of default or as a matter of mere acquiescence with knowledge. It is true that G.S. 48-4 provides for service by publication in such cases and states that a parent of unknown name or whereabouts shall be bound in every respect by such service. However, the following section specifically provides for consent to adoption proceedings and names the persons, in order of priority, who have capacity to give such consent or withhold same. This question has not been squarely passed on by the Supreme Court, and this office has consequently advised the State Department of Public Welfare that it was desirable to take every precaution in order to have a sound adoption proceeding. We have advised that department, where a parent or parents were alive and their whereabouts were not known, that it would be much better to have an adjudication of abandonment in the Juvenile Court and likewise to have a next friend appointed under the 1945 statute to give or withhold consent.

82. Decedent's estates—fiduciary's bond

To Paul E. Monroe.

(A.G.) G.S. 28-34 is mandatory in its terms. It provides that every administrator, etc., *must* give the bond required therein. If the bond is executed by personal sureties, the penalty *must* be at least double the value of all the personal property of the deceased; if the bond is executed by a duly authorized surety company, the penalty may be fixed at *not less* than one and one-fourth times the value of all the personal property of the deceased. I can appreciate the feeling of an administrator that this bond would be burdensome and perhaps unnecessary, in view of the fact that he was the father of the deceased, was appointed to bring a wrongful death action, and apparently will be, with his wife, the only parties inter-

ested in the amount recovered in the action. There have been cases, however, where other or different distributees have turned up after the recovery has been distributed by an administrator to the ones who appeared to be the proper distributees at the time. It is by reason of such contingencies that the law requires an adequate bond to be given in every instance. In the event a nominal bond were accepted in such cases and loss resulted to the proper distributee, the clerk might be held liable on his own bond.

91. Juvenile court—jurisdiction

To Paul A. Swicegood.

Inquiry: If a person under sixteen years of age is charged with larceny and receiving of property and becomes sixteen years old before the case comes for trial, does the Juvenile Court have jurisdiction over the defendant?

(A.G.) In *State v. Coble*, 181 N.C. 554 the court said that the jurisdiction of the Juvenile Court is not to be ousted or denied by reason of the fact the defendant has now reached the age of sixteen, for it is clear that his age at the time of the commission of the offense rather than at the time of trial is to determine his guilt or liability and the tribunal which shall take cognizance of his case.

Since the person was under sixteen years when the misdemeanor was committed, the Juvenile Court has jurisdiction of the offense.

D. Register of Deeds

45. Deputy

To J. B. Blalock.

Inquiry: How should a Deputy Register of Deeds sign official papers?

(A.G.) I think he should sign the Register's name first as Register of Deeds and then sign by him as Deputy Register of Deeds.

L. Local Law Enforcement Officers

5. Prohibition law—transportation in intrastate commerce

To J. A. Shaw.

Inquiry: May a dealer legally transport beer through a county which has voted to prohibit the sale or possession for purpose of sale of beer in such county under the provisions of Ch. 1084 of the Session Laws of 1947; if so, may the vehicle conveying such beer stop in the county for any purpose?

(A.G.) Ch. 1084 of the Session Laws of 1947 makes no reference to the transportation of beer and wine, but deals solely with the method of a county's voting for or against the sale or possession for the purpose of sale of these beverages within the county. This being the case, I think it is necessary to resort to the Beverage Control Act of 1939, which does deal with the question of transportation. Section 18-66 specifically authorizes the transportation of the beverages enumerated in section 18-64 (beer not more than 5% and unfortified wines) into, out of or between

(Continued on page 15)

County Commissioners Adopt Resolutions

Reflecting the most pressing current county governmental problems, the following resolutions adopted at the 1948 convention of the County Commissioners' Association are presented in digest form because of their general State-wide interest. **RESOLVED:**

Staggered terms for county commissioners—that legislation be proposed whereby the terms of county commissioners would be fixed at four years; that, at the first election held after the adoption of such law, half of the commissioners (in counties having an even number), or the majority of the commissioners (in counties having an uneven number), be elected for a 4-year term and the remainder be elected for a 2-year term, those receiving the highest number of votes to be declared elected for the longer term; and that thereafter commissioners be elected to fill the vacancies of those whose terms are first to expire.

State aid for school buildings—that legislation be adopted providing that the State participate to some extent in meeting the cost of erecting new school buildings; that \$25,000,000 of the State's surplus be allocated to the counties for purchase of school sites and for the erection of or additions to school buildings, allocations to be made on a per-pupil basis; and that the State allocate to the counties for school-building purposes 25 per cent of each year's sales tax collections, the share of each county to be based on its total average number of enrolled students. It was further resolved that if the fund were not immediately needed it should be set up in a school building reserve-fund, and that counties which have recently issued school building bonds should apply the fund only to the retirement of such bonds issued within the preceding 5-year period.

Allocation of road funds—that the General Assembly, the Council of State and the State Highway Commission should use every effort to expedite the improvement of the farm-to-market roads and the secondary roads of the State; that the funds available for and allocated to this purpose be increased if possible; and that at least the present allocation of such funds not be diminished.

COMMISSIONERS ELECT NEW OFFICERS

President — R. P. Holding,
Johnston County

Vice-President — C. P. Parks,
Rutherford County

Secretary-Treasurer—
John L. Skinner,
Warren County

DIRECTORS

First District—Meade H. Mitchell,
Halifax

Second District—Dan A. Taylor,
Beaufort

Third District—Addison Hewlett,
New Hanover

Fourth District—John P. Swain,
Wake

Fifth District—R. L. Brame,
Durham

Sixth District—F. Knox Watson,
Hoke

Seventh District — Arnie D. Cashion,
Mecklenburg

Eighth District—Mark Goforth,
Caldwell

Ninth District — Clarence P. Parks,
Rutherford

Tenth District—D. G. Wilkie,
Henderson

Chairman—J. Henry Vaughan,
Nash

Local self-government—that a committee of the State Association of County Commissioners be appointed to formulate, in conjunction with the proper State agencies, a State-wide act under which the boards of county commissioners of the several counties would be vested with the power to adopt ordinances for the promotion and protection of the health and safety of the citizens of their counties and, insofar as constitutional provisions will permit, to handle the fiscal affairs of the counties; and that the action on this matter be prompt enough to permit the presentation of such a measure to the next General Assembly.

Legislation providing for recovery of welfare advancements from estates

of decedent—that legislation be adopted providing that, where a welfare department pays old-age pensions or other welfare funds to any client who is the owner of real estate, the department shall record in the office of the register of deeds a certificate to the effect that it is making and intends to continue to make such payments to the individual and that it claims and reserves a lien upon all of the land of the client for the repayment of such funds advanced to him; that this legislation provide that the certificate should constitute a prior lien for the repayment of the contributions; and that this legislation provide that old-age pensions paid to persons being supported by the county in the county home should be divided between the person so supported and the county, with perhaps 80 per cent going directly to the county to be used for the support of the person receiving the pension.

State contributions to county tuberculosis sanatoriums—that, because a wider distribution of institutions for the treatment and care of tuberculosis patients is advantageous both to the patients and citizens in general, the State should encourage and promote the establishment and continued operation of county sanatoriums for the treatment of tuberculosis and that the General Assembly provide by legislation that the State contribute to each county which operates a tuberculosis sanatorium the sum of two dollars per patient-day towards the cost of operation of such sanatorium.

Forest land and forestry program—that the General Assembly of North Carolina and the Congress of the United States give attention to the further strengthening of the forestry program, including forest-fire control, through the State Forestry Department.

Tax valuations—that legislation be adopted leaving the times of revaluation and re-assessment entirely up to the boards of county commissioners, authorizing revaluations and re-assessments to be made by horizontal increase or reduction or by actual appraisal of the property, and providing that no general revaluation or re-assessment be made more often than once in each four years.

State Association of County Commissioners

CONSTITUTION AND BY-LAWS

This association is the official association of the counties in North Carolina. They are united for the purpose of exchanging information and experience upon all problems relating to the administration of county affairs.

"Counties, like individuals, cannot profitably and happily exist in isolation. Their destinies are intertwined. They must progress or fail together. Their problems are largely the same, and to be solved speedily and effectively all counties must band themselves together and work for the common good." Many common problems exist among North Carolina counties, and where common problems exist cooperation is necessary.

ARTICLE I

Objects

SECTION 1. To perpetuate and develop an agency for the cooperation of the counties of North Carolina to investigate, study, discuss, and recommend improvements in and the application of more efficient methods in county government.

SEC. 2. To provide means whereby county commissioners may interchange ideas and experiences and obtain expert advice.

SEC. 3. To collect, compile, and distribute to county commissioners information about county government and the administration of county affairs.

SEC. 4. To advocate and support legislation beneficial to the administration of county affairs and to oppose legislation injurious thereto.

ARTICLE II

Membership

SECTION 1. Membership in the State Association of County Commissioners is not mandatory; but every county in the state has the right, under the law, to become an active, participating member and have the expenses of each member of the board paid to the meetings of the Association.

SEC. 2. Any resident of the State of North Carolina who, in the opinion of the organization, has rendered distinguished service to the cause of better government shall be eligible to honorary membership. Nomination to honorary membership shall be made to the general convention, which shall make all elections to honorary membership.

SEC. 3. Honorary members shall be entitled to all the privileges of membership except that they shall not be eligible to the offices of President and Vice-President of the organization and except that honorary members shall not be accorded the privilege of voting.

ARTICLE III

Officers and Election

SECTION 1. The officers of this Association shall be a president and a vice-president and an executive secretary-treasurer.

SEC. 2. With the exception of the executive secretary-treasurer, all officers shall be elected at the annual meeting and shall hold their offices until the succeeding annual meeting and until their successors are elected and shall qualify. Officers shall assume office immediately after the close of the annual meeting. The executive secretary-treasurer shall be nominated by the nominating committee and elected by the delegates and/or proxies present at the time of holding the election and shall

hold office at the pleasure of the Board of Directors.

SEC. 3. Nominations for elective officers shall be made by a nominating committee of three members who shall be appointed and announced by the president on the first day of the annual meeting. Additional nominations may be made from the floor.

SEC. 4. Vacancies for any cause shall be filled for the unexpired term by the President.

ARTICLE IV

Duties of Officers

SECTION 1. The president shall preside at all business meetings of the Association but may, in his discretion, arrange for presiding officers for any other meetings. He shall appoint all committees unless otherwise provided and shall perform such other duties as are usually incumbent upon that officer or as may be directed by resolution of the Association. In case of absence or disability of the president, the vice-president shall exercise his functions.

SEC. 2. The executive secretary-treasurer shall receive and disburse all moneys, keep an accurate account of all financial transactions of the Association and shall submit at each annual meeting a report of all receipts and disbursements during the preceding year. The executive secretary-treasurer shall perform such duties as are usually incumbent upon that officer and such others as the Association or the board of directors may by resolution direct. He shall receive for his services such compensation as may be determined by the Association.

ARTICLE V

Standing and Special Committees and Their Duties

SECTION 1. The standing committees shall consist of:

(a) A board of directors to consist of the president, the vice-president, the executive secretary-treasurer, and one director from each of the ten Highway Districts, which directors shall be elected at each annual convention. Subject to this Constitution and to such action as may be taken from time to time by the Association at any annual or special meeting, the board of directors shall have general control and supervision over the Association and shall be empowered to determine all questions of policy which may arise during the interval between meetings. The board of directors shall meet at such time and place as may be designated by the president or by any three members thereof.

(b) A general legislative committee to consist of three members to be appointed by the president. This committee shall study all bills introduced in the General Assembly which affect the administration of the affairs of the counties. It shall take such action on each such bill as in its judgment will correctly carry out the wishes of the counties in respect thereto. It shall perform such other duties as the Association by resolution may direct.

(c) A committee on resolutions to consist of three members to be appointed and announced by the president at the first session of the annual meeting. All resolutions presented to the Association at the annual meeting shall automatically be referred to the committee for consideration and report thereon before final adjournment. Any resolution disapproved by

the committee may, by a majority vote of the Association, be submitted immediately after final adjournment by the executive secretary-treasurer to a referendum of the counties of the State. The result of the referendum shall determine the policy of the Association thereon.

(d) The president shall appoint on the first day of each annual meeting an auditing committee consisting of three county commissioners of North Carolina at large, whose duty it shall be to examine all receipts and disbursements of the executive secretary-treasurer and report to the convention their findings as to the correctness of each entry of receipts and disbursements and their approval or disapproval of the purpose for which each voucher was issued.

SEC. 2. The president shall appoint such special committees as he may deem necessary for the proper transaction of the business of the Association.

SEC. 3. No committee shall be authorized to create any financial liability unless it shall have been approved as to its purpose and amount by the board of directors and/or the president.

SEC. 4. A majority of each committee shall constitute a quorum thereof, and any question may be decided by a majority vote of those in attendance. Vacancies shall be filled by the president.

ARTICLE VI

Meetings

SECTION 1. The annual meeting of the Association shall be held beginning on the Tuesday after the second Monday in August, unless otherwise ordered by the board of directors. Conferences of groups of officials may be called at any time by the president.

ARTICLE VII

Voting

SECTION 1. On all questions, each county represented shall have one vote, which shall be the majority expression of the delegates of that county. The vote of any county in good standing may be cast by any member of the board or by any other person holding the written proxy of said county. Except as otherwise provided, a majority vote shall govern in all cases.

ARTICLE VIII

Amendments

SECTION 1. This Constitution may be amended at any annual meeting by a two-thirds vote of all counties voting, provided such amendment shall first have been submitted in writing and read to the convention on the first day thereof and referred to the committee on resolutions. Such vote shall not be taken until a report on the proposed amendment has been presented to the Association by the committee on resolutions.

Clerks of Court

(Continued from page 11)

supplying accurately all of the information which the hospitals' forms call for—full name of the patient, names of next-of-kin or person responsible for the patient and the way of getting in touch with them, etc.

Under 1947 legislation (Section

22 and 23, Chapter 537, Session Laws of 1947), a clerk can restore to competency, so that he can proceed with normal business transactions, any person for whom no guardian has been appointed who has been discharged from his commitment to a mental institution (or can discharge the guardian). Upon proper petition, the clerk simply has to appoint one or more licensed doctors to examine the person and make affidavit as to his mental condition. On the basis of the evidence presented by the petitioning person and the medical affidavit, the clerk can restore any rights of which the person was deprived by the commitment. In this way, the clerk can further the probation program which the institutions are now pursuing under the 1947 legislation providing for discharge on one year's probation leading to complete discharge if no return to the institution is necessary. No jury is necessary in such a proceeding.

Mutual problems of the clerks and the Department of Public Welfare—Dr. Ellen Winston, State Superintendent of Public Welfare.

*Work with mentally defective—*The Welfare Department is making every effort to cooperate with the State hospitals and the clerks to help the person discharged from the institution to return to a normal life—through investigation of the home situation, continuous counsel and advice, financial aid where possible, etc. The Department joins the clerks in doing everything possible to make the best of the situation which grows out of the acute shortage of facilities for caring for the mentally defective and in striving to improve and increase the facilities.

*Adoptions—*The Domestic Relations Commission, on which both the Welfare Department and the clerks are represented, has gone forward with its study and consideration of changes and additions necessary in the confusing and troublesome adoption law. A new adoption law, which is anticipated to serve more satisfactorily the parties and the officials involved in adoptions, will be presented at the next General Assembly to replace 1947's law which the Supreme Court held invalid because the enacting clause was inadvertently omitted.

Current problems of the clerks—a round-table discussion—J. N. Sills, Nash County Clerk, presiding.

The effect on his taking under a will of a person's witnessing the

*will—*Under G. S. 31-10, it is not questioned that an attesting witness is, by his witnessing the will, excluded from taking thereunder. However, a more serious question is presented in the case of a holographic will. The cases indicate fairly clearly that a person taking under a holographic will can be used to establish the validity of the will. But where a will is clearly in the testator's handwriting, is found in the proper place to qualify as a holograph, but also contains the name of one of the beneficiaries as a witness, strong argument is made that the will is void as to that beneficiary under the provisions of this section. Other argument is that the section was written to apply to wills required to be attested and that the witnessing of a holograph will is surplusage and can be disregarded.

Attorney General

(Continued from page 12)

points in this state over the public highways by motor vehicles upon meeting the conditions prescribed in section 18-66. I am of the opinion that beer may be transported from outside of the county through the county to other points outside of the county by motor vehicle when the conditions of section 18-66 have been met. While this section does not prohibit the vehicle conveying beer from stopping in your county, I think that any stop should be of a necessary and temporary nature.



**T. WADE
BRUTON**

Assistant
Attorney
General

11. Prohibition law—low alcohol content beverages

To Ben M. Rivers.

Inquiry: May a beverage with less than ½ of 1% alcohol be sold on Sunday?

(A.G.) G.S. 18-1 permits the sale of any beverage or liquid produced by the process by which beer is produced when such beverage contains less than ½ of 1% of alcohol by volume and is otherwise denominated than as beer, ale, porter, and is contained and sold in or from sealed and labelled bottles. The prohibition against the sale of beer and wine on Sunday is found in Article 7 of Chapter 18 of the General Statutes, and it is my opinion that this article does

not prohibit the sale of such beverages as you mention, if they contain less than 5% of alcohol by volume.

ILLEGAL POSSESSION OF BEER

To A. B. Johnson.

Inquiry: In a county in which an election has been held prohibiting the sale of beer and wine pursuant to the 1947 legislation permitting such action, does the possession of any quantity of tax-paid beer raise any presumption of possession for the purpose of sale?

(A.G.) I call your attention to G.S. 18-32, which is now in full force and effect in such a county. This section states that proof of the possession of any one of the types or quantities of beverages enumerated therein shall constitute prima facie evidence of the possession of such beverages for the purpose of sale. As to the amount of beer specified, Paragraph 4 of this section makes the possession of more than five gallons of malt liquors at any one time, whether in one or more places, prima facie evidence that the possession of the same is for the purpose of sale.

XII. STATE TAXES

S. Sales Taxes

6. Exemptions

To Erle G. Stillwell.

(A.G.) Under the provisions of Section 427 of the Revenue Act, I am of the opinion that no sales tax is due on building materials which enter into a school building constructed under contract with a county.

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1. Tax on Intangibles
2. What intangibles taxed
To Edwin Gill.

(A.G.) I am of the opinion that bank deposits to the credit of the American Legion or posts of the American Legion are not exempt from the intangibles tax.

East Is East

(Continued from page 7)

and as Eastern candidate for Governor in 1940. Chatham forms the northern boundary of Lee and the southern boundary of Durham, Orange and Alamance, and these three counties form the southern border of Caswell and Person.

East is East and West is West—but which is which? Scott of Alamance won a majority of ballots cast in the primary on June 26. But those ballots did not decide whether Alamance is East or West; nor whether Scott won because the voters thought he was an Eastern man; nor whether he won because the voters didn't care whether he was from the East or West.

The dividing line between East and West is not drawn in the Constitution of North Carolina but in the constitution of North Carolinians, and the votes of the people rather than laws on the books will decide its fate. No one will deny its reality in the past: It has been followed in the election of Governors with clock work regularity since the election of Vance in 1877, with the exception of the Populist upset in 1897.

Geographical considerations affected the choice of Governor by the General Assembly. From 1776 to 1836 seventeen Governors came from Eastern territory, and seven from Western territory. From 1836, when the Governor was first elected by the people, to 1877, seven Governors came from Eastern territory and seven from Western territory. From 1877 to 1948 nine came from the East, eight from the West, and two from disputed territory.

Geographical considerations have affected the choice of Lieutenant Governor and Speaker. From 1868 to 1948 nine men have served as Lieutenant Governor from the West, seven from the East, and four from disputed territory. From 1876 to 1948 fifteen men have served as Speaker of the House from the West, fifteen from the East, and three from disputed territory.

No one will deny that the East-West line is a factor to be gambled with in the present: Scott himself bowed to the tradition in his claim of Eastern residence. The test of its validity will come in the future when it is challenged by some candidate clearly from the East or West.

Walter Clark

(Continued from page 10)

stroyed them is interesting ground for speculation, for it is clear that the editors would hardly have dared fail to print a critical letter had they found one.

As for Clark's judicial opinions, dissenting or otherwise, it can be argued that they have no place in this collection, and such must have been the editors' decision; but in fairness to the whole man, it is principally on those opinions that his fame rests. It is unfortunate that portions of a few of them have not been included, and especially is this true of some of his great dissents, for in Mr. Justice Holmes' words:

"A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed."


We have mentioned the fact that the letters mark Clark as studious, industrious, ambitious, and we have noticed his strong moral sense. His religious faith can hardly be over-emphasized. Army life made no in-

roads on his determination to lead a pure life; his marriage strengthened his zeal. His constant theme was the need for the Christian in politics, that service to one's fellow man comes first. The political activity of which he was accused when on the bench he seems to have justified in the belief that he was acting for the ultimate good of the people. He had no patience with traditions that would keep a judge from entering the arena to fight for a just cause so long as he remained impartial in cases before him for decision.

"The central idea in the teachings of Christ is that between the supremest of supreme powers and the humblest individual the dignity of manhood needs no human intermediate. In that idea is the germ of the political equality of men and before its irresistible force the forms of government established by kings and oligarchies with their artificial and burdensome inequalities become vain barriers against the might and majesty of popular rights. Christ taught that the poor should possess the kingdom of heaven and that the meek should inherit the earth, that God watches over the humblest of his children with more than parental care, that he is no respecter of persons, that in his eyes all men are equal, and that not many mighty nor many rich are called. The unavoidable, the necessary effect of such teachings is democracy. He taught neither agrarianism nor sedition but so far as the influence and spirit of such a religion could leaven human society, it was impossible for it not to promote liberty and brotherhood and equality among men. From such teachings comes the freedom of thought, freedom of speech, freedom of conscience, freedom of action


"There is not that divorce between Christian teachings and principles and the administration of public affairs which corrupt men have always insisted upon and desired . . . Church and Politics should be kept separate—always. But religion is necessary in politics. The devil has already run our politics longer than is safe—for us. A man should carry his religion into his politics just as he carries it into his shop, his store, his law office. The good men of this country must take charge of it and rule it, and put good and true men to rule over us else we are lost indeed. Unless Christianity can save the Republic it will sink by its own corruption. . . ."

—HENRY W. LEWIS.

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