January, 1949

POPULAR GOVERNMENT

IMPROVING THE ADMINISTRATION OF JUSTICE IN NORTH CAROLINA

JUDICIAL MANPOWER

What is the most desirable method of securing additional judicial manpower when needed? Should it be done only by redistricting the State or by providing for more Special Judges, as the Constitution now allows? Or is another method necessary in some instances?

ADMINISTRATIVE SUPERVISION OF THE JUDICIAL SYSTEM

Should the authority to assign judges rest with the Governor or the Chief Justice of the Supreme Court? Should not the Chief Justice be the administrative head of our judicial system?

JURISDICTION OF SPECIAL JUDGES

Should the Constitution fix this jurisdiction or should it be within the control of the Legislature?

ROTATION OF SUPERIOR COURT JUDGES

Should not the rotation of Superior Court Judges be a matter of legislative rather than constitutional policy? Should the present inflexible Constitutional requirement be retained?

JURORS—THEIR SELECTION AND QUALIFICATIONS

Is our present method of preparing the jury list satisfactory? Are our present qualifications for jury service stringent enough? May we expect improvement in the quality of jurors if the duty of preparing the jury list is given to a Jury Commission?

RULE-MAKING

Which agency of government is best qualified to prescribe the rules of practice and procedure in the Superior Courts? How may our procedure best be kept up-to-date—by the Legislature or by the Supreme Court, assisted by an Advisory Commission?

PRE-TRIAL

What is pre-trial? Will it help to relieve crowded dockets? Will it save the time of jurors, witnesses, litigants, lawyers, and judges? Can the work of a term of court be planned more effectively if a better opportunity for such planning is given?

WAIVER OF INDICTMENT AND WAIVER OF JURY TRIAL

Cannot waiver of both indictment and jury trial be safely allowed in non-capital felonies if safeguards against imprudent waivers are provided? What will be the results in the administration of criminal law?

OTHER ISSUES

Does the State need a permanent agency for the study of law reform? Are there enough probation officers? Should the State provide counsel for indigent defendants in felony cases? Does a magistrate's endorsement of a warrant serve any useful purpose? Is the practice of taking formal exception to rulings on the admissability of evidence necessary? Will a law requiring a calendar for all criminal terms of Superior Court be helpful? Should private prosecutors be required to disclose the identity of their employers? Should a jury's recommendation for mercy in a capital case be given effect? Should suspended sentences be enforceable only in term time?

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OUTLINE

of the

Report of The Special Commission

For The Improvement of The Administration of Justice

The Improvement of The Administration of Justice

in

North Carolina

Report of the Special Commission

Chairman, Sam J. Ervin, Jr., Justice of the Supreme Court; Secretary, Harold Shepherd, Dean of the Duke University Law School; W. A. Devin, Justice of the Supreme Court; W. H. Bobbitt, Judge of the Superior Court; R. Hunt Parker, Judge of the Superior Court; Harry McMullan, Attorney General; Clifton L. Moore, Solicitor of the Eighth Judicial District; Basil L. Whitener, Solicitor of the Fourteenth Judicial District; W. E. Church, Clerk of Superior Court, Forsyth County; W. G. Mordecai, until December 1, 1948, Clerk of Superior Court, Wake County; Henry Brandis, Jr., Professor of Law, University of North Carolina; Robert E. Lee, Dean of the Law School of Wake Forest College; John G. Dawson of the Kinston Bar; Fred B. Helms of the Charlotte Bar; Carlisle W. Higgins of the Winston-Salem Bar; Charles R. Jonas of the Lincolnton Bar; Louis J. Poisson of the Wilmington Bar; Kerr Craige Ramsay of the Salisbury Bar; O. L. Richardson of the Monroe Bar; John C. Rodman of the Washington Bar; W. Frank Taylor of the Goldsboro Bar; Sam. N. Clark of Tarboro; George Watts Hill of Durham; Francis Paschal, Research Director.

His Excellency R. Gregg Cherry, Governor of North Carolina.

Pursuant to the provisions of Resolution 23 of the last General Assembly, the Commission for the Improvement of the Administration of Justice respectfully submits the following report to supplement the interim report submitted November 1, 1948. Drafts of bills embodying our recommendations are appended.

[The drafts were appended in the original Report. However, since some may wish to have the pertinent bill before them as they read, we have, with the consent of the Commission, placed the draft of each bill immediately after the section of the Report in which it is discussed. Those who do not care to read the drafts may omit doing so, of course, without loss of continuity.]

I. The Establishment, Organization, and Procedure of the Commission

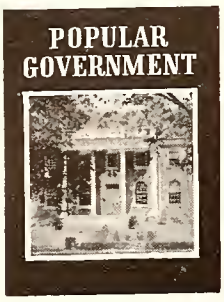
The Commission was created and assigned its task by the 1947 General Assembly. It was charged with the duty "of making a thorough study of the problems in connection with the administration of justice" and preparing "recommendations in the form of proposed legislation for consideration by the 1949 session of the General Assembly." The Act establishing the Commission provided that it should have a membership of twenty-three. It was specified that it should include a Justice of the Supreme Court, two Superior Court Judges, the Attorney General, two Solicitors, two clerks of the Superior Court, representatives from the Law Schools of Duke University, the University of North Carolina, and Wake Forest College, ten representatives of the legal profession, and two laymen. The stated purpose of the General Assembly in stipulating such diverse qualifications was to secure a "representative" membership for the Commission. We should like to think that this purpose was achieved. At any rate, in our deliberations we have had the benefit of many different points of view based on widely differing experiences and outlooks. The fact that we are so nearly unanimous in our recommendations despite this great diversity gives us added assurance of their soundness.

The initial meeting of the Commission was held on July 24, 1947, at which time the Honorable Sam J. Ervin, Jr., was elected chairman and Dean Harold Shepherd of the Law School of Duke University, Secretary. At a subsequent meeting, the Commission perfected its organization by providing for three main sub-committees as follows:

1. Committee to Study the Machinery of the Superior Courts with Mr. Fred B. Helms as Chairman.
2. Committee to Study Problems Involved in the Trial and Disposition of Civil Matters in the Civil Courts with Mr. W. Frank Taylor as Chairman.
3. Committee to Study the Administration of Criminal Law in the Superior Courts with Mr. David M. Clark as Chairman.

After the untimely and regrettable death of Mr. Clark, Mr. John G. Dawson was named chairman of the committee last named.

The Commission was authorized by the statute to employ a full-time Research Assistant. Pursuant to this authority, Mr. J. Francis Paschal was selected for that position. Since assuming his duties in October, 1947, Mr. Paschal has participated in all the deliberations of the Commission. In addition, he has continuously engaged in research activities for the Commission in quarters made available by the School of Law of Duke University.



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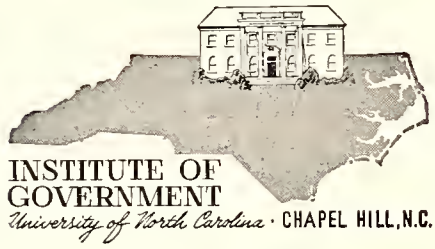


Before presenting and discussing our proposals, it would perhaps be well to state the general consideration which governed our approach to the task assigned us. First of all, we are convinced that the administration of justice in North Carolina is and has been for many years in need of substantial improvement. The creation of this Commission is sufficient evidence of that fact. If more were needed, one would have only to consult those who have business with our courts—litigants, jurors, witnesses, lawyers, and judges. In some of our urban counties, he would hear of crowded dockets which preclude all hopes of an early trial. He would hear that in some instances the expense of achieving an adequate remedy for a substantial wrong is so great as to discourage a resort to legal processes at all. He would hear of witnesses who, at great personal sacrifice spend hours, and perhaps days, in court waiting to give testimony. He would hear of the results of long and expensive trials being negatived because of the overly technical commands of some of our laws. Worst of all, he would hear the sad complaint that justice too frequently is not discernible in the results.

Such conditions can not be tolerated—least of all in times like the present when the very idea of law, as we conceive it, is being subjected to relentless attack. Yet, serious as the situation undoubtedly is, we wish to record our conviction that there is much that is good in our system of courts and procedure. And none of our criticisms should be allowed to obscure that fact. We have not approached our task in a revolutionary spirit which indiscriminately condemns existing institutions. Rather, we have sought to preserve and strengthen those components of our system which have worked well and have called for substantial changes only where we were convinced that the existing arrangements have been proved to be inadequate.

Another thought which we have had with us always was that our recommendations should be as few as would permit an effective beginning on the solution of our difficulties. Changes in the law have to be assimilated and a people's capacity for such assimilation is necessarily limited. It is possible, of course, that we have been too cautious. Error in this respect, however, is not disastrous in its consequences. There will be other opportunities in later years to add to our work. Accordingly, we have made no effort to propose action in respect to many problems which we now recognize but which we believe can wait for solution. Our feeling is that if the program we offer is accepted, a substantial beginning will have been made and one which will open the way for further progress in the years to come.

II. Institutional Changes Recommended

The most important measures which we are recommending involve changes of an institutional nature. In some cases, they involve amendment of the Constitution. The Commission is unanimous in believing that Sections 10 and 11 of Article IV should be rewritten. Section 10, as it presently stands, empowers the General Assembly to divide the State into Judicial Districts, authorizes the election of "*a* judge" for each district, and guarantees to each county at least two terms of Superior Court each year. Section 11 provides that judges shall reside in the district for which they are elected, for the present rotation system, for the assignment by the Governor of judges to hold terms of court in certain instances, and for our present system of Special and Emergency Judges. In addition, this section defines the jurisdiction of such Special and Emergency judges.

Additional Judicial Manpower

The new draft of Section 10 proposed by us offers a simple solution of a problem which has often given the General Assembly much difficulty—the problem of securing sufficient judicial manpower. We propose that Section 10 be so rewritten as to permit the General Assembly, whenever it thinks such action wise, to provide for the "election of *one or more* Superior Court judges for each district." The other features of this Section are retained. The General Assembly is left with power over judicial Districts and the guarantee of two terms of Superior Court a year to each county is repeated. The entire substance of the change we propose is found in the words "one or more."

As indicated before, our object here is to make easily available additional judicial manpower when and *where* it is needed. Under the Constitution as it now stands there are two ways, neither entirely satisfactory, of meeting this problem. The state may be redistricted or the appointment by the Governor of Special Judges may be authorized. The difficulties of redistricting are well-known. Inevitably, it involves, for a time at least, great inconvenience and confusion. Moreover, any redistricting bill is almost certain to collide with serious political obstacles. These considerations aside, redistricting can never solve the problem when a single city requires two judges—a possibility perhaps not too remote in North Carolina. The Special Judge solution has much to recommend it in some situations. However, so long as it stands alone and is not utilized simply as a part of a broader solution, it leaves much to be desired. It does not relieve the regularly elected resident judges of any of the burdens of the chambers work in their districts. In our more heavily populated areas, this type of work is making increasingly heavy demands on the time of the judges. Yet, regardless of the number of Special Judges, the regularly elected judges can not share with

them many responsibilities which are enormously burdensome.

The desirability of the change we propose becomes apparent when the situation in the 14th Judicial District is considered. In this District, there are regularly over 100 weeks of court a year. This means that there are practically always two judges holding court in this District at one time, and sometimes, three. Of course, this is possible only because of the relief afforded by the Special Judge system. But this system affords little relief to the resident judge in the discharge of his out-of-court duties although these duties are correspondingly as heavy as the court schedule. In such a situation, it seems apparent to us that the proper remedy is not to throw the whole State into turmoil by redistricting or to add Special Judges. What is needed is another regularly elected judge from the 14th District. Quite plainly, there is more than enough work for two judges in that district. Under our proposal, The General Assembly could provide for this second judge, or a third if he should ever be needed. Relief could be directed to the exact locality in which it was needed.

Two questions will arise about the workings of such a plan. First, how will it fit into the rotation system? Our thought is that in any district which has two regular judges, a judge rotating into that district will remain a year rather than six months as at present. The Courts of the district would be divided into two schedules. Six months would be spent on each schedule and, at the expiration of every six months period, one judge would leave the district. Perhaps a simple way of stating the result would be to say that a judge would take two steps in passing through a district rather than one.

The second question is: How will the plan affect the existing Special Judge system? Our answer is that there will still be need for the Special Judges. We are justified, we believe, in thinking that the General Assembly will not authorize the election of an additional judge in a district unless there is clearly enough work for two judges to do. But there will be many districts, as now, where there is not such an amount of work but still more than a single judge can meet. So long as such a situation prevails, we must have Special Judges. Our plan only leads to a situation where this number might be reduced, but it in no way contemplates the abandonment of the system. The plan has the merit of simplicity and we support it unanimously.

Our proposed draft is as follows:

A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION SO AS TO PERMIT THE ELECTION OF MORE THAN ONE REGULAR SUPERIOR COURT JUDGE IN ANY DISTRICT.

The General Assembly of North Carolina do enact:

SECTION 1. That the Constitution of the State of North Carolina, be and is hereby amended by striking out Section 10, Article IV, and inserting in lieu thereof the following:

SEC. 10. Judicial Districts For Superior Courts. The General Assembly shall divide the State into a number of judicial districts which number may be increased or reduced and shall provide for the election of one or more Superior Court judges for each district. There shall be a Superior Court in each county at least twice in each year to continue for such time in each county as may be prescribed by law.

SEC. 2. That this amendment shall be submitted to the qualified voters of the whole State at the general election to be held November 7, 1950.

SEC. 3. That the electors favoring the adoption of this amendment shall vote a ballot on which shall be written or printed, "For permitting the General Assembly to prescribe the number of regular Superior Court judges in each judicial district, provided each district has at least one"; those opposed shall vote a ballot on which shall be written or printed, "Against permitting the General Assembly to prescribe the number of regular Superior Court judges in each judicial district, provided each district has at least one."

SEC. 4. That the election upon the amendment shall be conducted in the same manner and under the same rules and regulations as provided by the laws governing general elections; and if the majority of the votes cast shall be in favor of the amendment, it shall be the duty of the Governor of the State to certify the amendment under the Seal of the State to the Secretary of the State who shall enroll the said amendment so certified among the permanent records of his office, and the same shall be in force in every part thereof from and after date of such certification.

SEC. 5. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 6. That this Act shall be in full force and effect from and after its ratification.

The redraft of Section 11 which we are presenting has three principal objects. They are: (1) The transfer to the Chief Justice of the Supreme Court of the authority now exercised by the Governor in respect to the assignment of judges. (2) A grant of authority to the General Assembly to define the jurisdiction of the Special and Emergency Superior Court judges. (3) The elimination from the Constitution of the requirement that judges rotate and making such rotation a matter of legislative discretion.

The Power to Assign Judges

Without intending any criticism of the manner in which our Governors have exercised the authority vested in them to assign judges, we believe that in our form of government such authority properly belongs to the judicial department. The problem of which judge to assign to hold a particular term of court may involve a keen appreciation of judicial skills. It seems to us reasonable to suppose that the Chief Justice of the Supreme Court is the officer in our government likely, year in and year out, to discharge these functions most successfully. By training and experience, he will be able readily to assess the needs of a particular county and to know the judge best fitted to meet those needs.

We urge that the Chief Justice be given these powers for another reason. Is is our belief that the successful administration of justice, like any great labor, requires unified direction. Obviously, the Chief Justice of our Supreme Court is the public officer who can best be expected to supply this unity. But he can not do so if the administrative direction of the judicial system is in other hands. Our propesal is a beginning towards making the office of Chief Justice the decisive one in the administration of justice in this State. We contemplate that through this and other measures, the Chief Justice will be not only the

presiding officer of our highest court but the chief judicial officer of the entire State to whom all others in the judicial department will be responsible. He would inform himself of the needs of the various sections of the State, of how the task of administering justice is being performed and of the proper measures to take or recommend to others for improvement. And the people of the state could hold him responsible for the performance of such duties. When difficulties arose, the people would know to whom to turn for remedial action.

Of course, we do not expect the Chief Justice to assume the administrative responsibility of the entire judicial system unless he is furnished the necessary assistance. But for the fact that any such recommendation would be premature before our amendment is accepted, we would in this report urge the establishment of the Office of Administrative Assistant to the Chief Justice. Such an office would perform for the judicial system of North Carolina a work comparable to that now done for the United States Courts by the federal Administrative Office in Washington. It would collect and publish quarterly a set of judicial statistics which would enable one to know the status of the administration of justice anywhere in the State. If such statistics should demonstrate the need for more courts in a particular locality, they could be provided. If they revealed in certain areas a marked prevalence of particular types of cases, the Chief Justice could assign to those areas the judges most skillful in the trial of such cases. In short, such an office would make possible an administration of justice based on valid information rather than conjecture. The business of our courts is much too enormous and affects the lives of our people in too many ways for us not to supply it with the most excellent administrative supervision at our command. It seems to us that the Chief Justice is the one whom we may expect to discharge this task most successfully. We therefore unanimously urge that this beginning be made in giving him the authority to do the job.

The Jurisdiction of Special Judges

The part of our redraft of Section 11 which proposes that the General Assembly be given authority to define the jurisdiction of the Special and Emergency Judges is a much less complex question. The Constitution as it now stands says that such judges "shall have the power and authority of regular judges of the Superior Courts, *in the courts which they are . . . appointed to hold.*" Our Supreme Court has interpreted this language to mean that a Special or Emergency Judge has no out-of-court jurisdiction. His powers are wholly dependent on his commission from the Governor to hold a term of court. This results in some confusion and much inconvenience. Special Judges are unable to act in many matters which they could settle to the satisfaction of all parties concerned.

To remedy this situation, we propose simply that the General Assembly be given authority to define the jurisdiction of the Special Judges. The desirability of such an amendment can hardly be questioned and we endorse it without reservation.

Rotation of Judges

The final major change involved in our redraft of Section 11 is that part of it which would eliminate from the Constitution the provision which requires the rotation of judges and substitute in its place a provision which would allow the General Assembly to retain the rotation system as it now exists, or modify it, or, if it should see fit to do so, abolish it altogether. This proposal is the only one on which we have disagreed. A minority of seven believes that the present provision in the Constitution concerning rotation should be retained.

In the view of the majority of us, the proposal we offer does not entail a discussion of the merits or demerits of the principle of rotation. From all the discussions which this question has provoked, one thing stands out sharply to us. It is that the question of what to do with rotation is clearly one which demands, at a minimum, that the General Assembly be empowered to take action concerning it. If the controversy which has raged over this question for over forty years has any meaning, it is that rotation is one of our most serious problems. To us, it appears futile to expect any solution of the difficulty until there is power somewhere to act. It is equally apparent to us that the proper repository of such power is our General Assembly. It can be trusted, through its own efforts and through such assistance as it might solicit, to come to a wise decision. In this conviction join men who believe in rotation, men who oppose it, and men who seek only to modify the present system. Here, it seems, is the one bit of common ground available upon which men of every shade of belief can meet. We believe that a majority of our people will wish to take advantage of it.

Both the majority and minority redrafts of Section 11 follow:

A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION SO AS TO MAKE THE ROTATION OF JUDGES A MATTER OF LEGISLATIVE RATHER THAN CONSTITUTIONAL POLICY, TO TRANSFER TO THE CHIEF JUSTICE OF THE SUPREME COURT THE AUTHORITY NOW EXERCISED BY THE GOVERNOR IN THE ASSIGNMENT OF JUDGES, AND TO EMPOWER THE LEGISLATURE TO DEFINE THE JURISDICTION OF THE SPECIAL JUDGES.

The General Assembly of North Carolina do enact:

SECTION 1. That the Constitution of the State of North Carolina, be and is hereby amended by striking out Section 11, Article IV, and inserting in lieu thereof the following:

SEC. 11. Judicial Districts, Rotation; Special Superior Court Judges; Assignment of Superior Court Judges by Chief Justice. Each judge of the Superior Court shall reside in the district for which he is elected. The General Assembly may divide the state into a number of judicial divisions and provide for the judges within a division to hold successively the courts of the different districts within that division. The General Assembly may provide by general laws for the selection or appointment of Special or Emergency Superior Court Judges not assigned to any judicial district, who may be designated from time to time by the Chief Justice to hold court in any district or districts within the State; and the General Assembly shall define their jurisdiction and shall provide for their reasonable compensation. The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court Judge to hold one or more terms of Superior Court in any district.

SEC. 2 That this amendment shall be submitted to the qualified voters of the whole State at the general election to be held November 7, 1950.

SEC. 3. That the electors favoring the adoption of this amendment shall vote a ballot on which shall be written or printed, "For making the rotation of judges a matter of legislative rather than constitutional policy, transferring to the Chief Justice of the Supreme Court the authority now exercised by the Governor in the assignment of judges, and empowering the legislature to define the jurisdiction of the special judges"; those opposed shall vote a ballot on which shall be printed, "Against making the rotation of judges a matter of legislative rather than constitutional policy, transferring to the Chief Justice of the Supreme Court the authority now exercised by the Governor in the assignment of judges and the calling of special terms of court, and empowering the legislature to define the jurisdiction of the special judges."

SEC. 4. That the election upon the amendment shall be conducted in the same manner and under the same rules and regulations as provided by

the laws governing general elections; and if the majority of the votes cast shall be in favor of the amendment, it shall be the duty of the Governor of the State to certify the amendment under the Seal of the State to the Secretary of the State who shall enroll the said amendment so certified among the permanent records of his office, and the same shall be in force in every part thereof from and after date of such certification.

SEC. 5. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 6. That this Act shall be in full force and effect from and after its ratification.

Minority draft of Proposed Amendment to Section 11, Article IV of the Constitution:

A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION SO AS TO TRANSFER TO THE CHIEF JUSTICE OF THE SUPREME COURT THE AUTHORITY NOW EXERCISED BY THE GOVERNOR IN THE ASSIGNMENT OF JUDGES AND TO EMPOWER THE LEGISLATURE TO DEFINE THE JURISDICTION OF THE SPECIAL JUDGES.

The General Assembly of North Carolina do enact:

SECTION 1. That the Constitution of the State of North Carolina, be and is hereby amended by striking out Section 11, Article IV, and inserting in lieu thereof the following.

SEC. 11. Judicial Districts; Rotation; Special Superior Court Judges; Assignment of Superior Court Judges by Chief Justice. Each judge of the Superior Court shall reside in the district for which he is elected. The General Assembly may divide the state into a number of judicial divisions. The judges shall preside in the courts of the different districts within a division successively; but no judge shall hold all the courts in the same district oftener than once in four years. The General Assembly may provide by general laws for the selection or appointment of Special or Emergency Superior Court Judges not assigned to any judicial district, who may be designated from time to time by the Chief Justice to hold court in any district or districts within the state; and the General Assembly shall define their jurisdiction and shall provide for their reasonable compensation. The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court Judge to hold one or more terms of Superior Court in any district.

SEC. 3. That the electors favoring the adoption of this amendment shall vote a ballot on which shall be written or printed, "For transferring to the Chief Justice of the Supreme Court the authority now exercised by the Governor in the assignment of judges and empowering the legislature to define the jurisdiction of the special judges"; those opposed shall vote a ballot on which shall be printed, "Against transferring to the Chief Justice of the Supreme Court the authority now exercised by the Governor in the assignment of Judges and the calling of special terms of court, and empowering the legislature to define the jurisdiction of the special judges."

SEC. 4. That the election upon the amendment shall be conducted in the same manner and under the same rules and regulations as provided by the laws governing general elections; and if the majority of the votes cast shall be in favor of the amendment, it shall be the duty of the Governor of the State to certify the amendment under the Seal of the State to the Secretary of the State who shall enroll the said amendment so certified among the permanent records of his office, and the same shall be in force in every part thereof from and after date of such certification.

SEC. 5. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 6. That this Act shall be in full force and effect from and after its ratification.

Rule-Making by the Supreme Court

In our opinion, perhaps the most important single proposal offered by us is that the Supreme Court be given power to prescribe the rules of practice and procedure in civil cases in the Superior Court and all inferior courts other than Justice of the Peace Courts. The weight which we attach to this bill is apparent from the fact that, except for two other measures, this is our sole recommendation in the entire field of civil procedure. The question properly arises: Why do we regard the grant of the rule-making power to be of such paramount importance?

The answer is relatively simple. We believe that few will argue that our present code of civil procedure is adequate for present-day purposes. By and large, it is over eighty years old and there are many modern procedural devices of great utility which it does not incorporate. On the other hand, it retains many provisions which have clearly outlived their usefulness. Clearly there must be major changes in our present code of civil procedure and continuing changes if justice is to be administered in this State as fairly and efficiently as possible. We therefore believe that the question faced by us—and by the General Assembly—is not whether we shall modernize our procedure, but rather *how* shall we do so?

We are united in the belief that the most effective means of securing in North Carolina a procedure suitable to the needs of our people is for the Supreme Court to have the rule-making power. The task of devising a court procedure is admittedly one requiring expert competence and the highest order of skill. Of all the agencies of our government it seems to us that the Supreme Court is most likely to have such abilities. The members of our Supreme Court have practically always been men who have had a rich experience in procedural problems. From the vantage point of the bench, they have an opportunity to see the failings and inadequacies of existing methods. They are representative of the people quite as much as the General Assembly, and they are as likely to be as sensitive to popular needs as the members of the General Assembly.

The record of our Supreme Court conclusively demonstrates that it can be trusted to discharge effectively the high responsibility of prescribing rules of procedure. For over seventy-five years now, the Supreme Court has, without any legislative supervision, prescribed its *own* rules for practice before it. Its success has been notable indeed. The dispatch with which it handles cases is equaled by few courts in the land. While in many states eighteen months to two years are required to secure a ruling from the highest court, in North Carolina such a ruling is generally had in from one to three months from the time an appeal is filed. Our court could not have achieved such a record had it not found for itself the most efficient way of regulating its business. It is worthy of comment that of the eleven proposals recommended to the states by the American Bar Association for the improvement of appellate procedure, ten are already in effect here in North Carolina. Quite clearly, our court has performed the function of prescribing its own rules of procedure with conspicuous success. We believe that such a success would attend its efforts in respect to the Superior Courts.

It is no discredit to the Legislature to say that it is not as well suited for this task as the Supreme Court. Legislators have many burdens. They must acquaint themselves with intricate appropriations and revenue bills. They must be concerned with much of a purely local nature. Furthermore, there is not the continuity of membership in the Legislature which makes for expertness in such a technical matter as prescribing rules of procedure. More and more Legislators are coming to realize that the judicial branch of the government is better fitted for this task. In recent years, state after state has granted the rule-making power to its highest court. The number of such states now stands at twenty-four. Nineteen states have taken this step in the last fifteen years. Even so

great a legislative body as the Congress of the United States has done so. For years the federal courts struggled under the weight of a cumbersome procedure. But when the rule-making bill was passed in 1934, in the space of four short years the federal courts accomplished a procedural reform which has drawn enthusiastic praise the nation over. From all this evidence, it is apparent to us that the first step towards a court procedure in keeping with the needs of our people in the grant of authority to that branch of the government most intimately associated with the problem. We therefore strongly urge favorable action on the rule-making bill proposed by us.

The bill which we recommend has been carefully drawn. Pains have been taken to include in it elaborate safeguards. It is specified that any rules which the Supreme Court might promulgate "shall not abridge, enlarge, or modify the substantive rights of any litigant, or any right of trial by jury, nor shall any rule be made enlarging the power of the presiding judge to express an opinion on the facts." It is further specified that the rules shall not take effect until they shall have been published in the Advance Sheets of the Supreme Court Reports and until the first day of July following the adjournment of the ensuing regular session of the General Assembly. The General Assembly therefore will have an opportunity to reject any of the rules which it may regard as unsatifactory. To aid the Supreme Court in its task, there is provided an Advisory Commission to consist of six to ten of our judges, law teachers, and practicing lawyers. No proposed rules are to be submitted to the Supreme Court by the Advisory Commission until a tentative draft of such rules has been published in the Advance Sheets of the Supreme Court Reports and suggestions from the legal profession and the public invited and considered. With these safeguards, one can hardly imagine that we will have foisted on us a system of procedure alien to our habits and customs. Rather, with power to act lodged in a body representative of our people and expertly informed of the nature of the problem, we will have a right to expect as fine a system of procedure as it is possible to devise.

Our proposed bill follows:

A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE SUPREME COURT TO GOVERN BY RULES OF COURT THE FORMS OF PROCESS, WRITS, PLEADINGS, PRACTICE, AND PROCEDURE IN ALL CIVIL PROCEEDINGS IN ALL COURTS BELOW THE SUPREME COURT, EXCEPT THE COURTS OF JUSTICE OF THE PEACE.

The General Assembly of North Carolina do enact:

SECTION 1. That Section 7-20 of the General Statutes of North Carolina is hereby repealed.

SEC. 2. The Supreme Court is authorized to govern by rules of Court the forms of process, writs, pleadings, practice and procedure in all civil proceedings in all courts below the Supreme Court, except the courts of Justice of the Peace.

SEC. 3. These rules shall not abridge, enlarge or modify the substantive rights of any litigant, or any right of trial by jury, nor shall any rule be made enlarging the power of the presiding judge to express an opinion on the facts. They shall not take effect until they have been adopted by the Supreme Court and published in the Advance Sheets of the Supreme Court Reports, and until the first day of July following the adjournment of the next ensuing regular session of the General Assembly. They shall be reported to the General Assembly at the beginning of that session by the Attorney General.

SEC. 4. All statutes relating to the forms of process, writs, pleadings, practice and procedure in all civil proceedings, in all of the courts below the Supreme Court, excent Courts of Justice of the Peace, shall henceforth have the status of rules of the Supreme Court and shall remain in full force unless and until they shall have been modified or repealed by rules of court promulgated pursuant hereto.

SEC. 5. To aid the Supreme Court in its discharge of the duties imposed by this Act there is established an Advisory Commission, which shall consist of the Attorney General, ex-officio, and of not less than six nor more than ten additional members, who shall be appointed by the Supreme Court, from the judges of the trial courts, the practicing lawyers, and the faculties of the law schools. The members of the Advisory Commission shall be deemed commissioners for a special purpose within the meaning of the proviso to section seven of Article fourteen of the Constitution of North Carolina. Any member of the Advisory Commission who, at the time of his appointment or during his period of membership shall hold any office or place of trust or profit under the State of North Carolina or any of its sub-divisions, shall perform his duties as a member of the Advisory Commission in addition to the duties of his office or place of trust or profit. The members of the Advisory Commission, other than the Attorney General, shall serve for periods of four years each. The terms of the first members, however, shall be so arranged that one-half shall serve for periods of two years each. The first meeting of the Advisory Commission shall be called by the Chief Justice of the Supreme Court within sixty days after this Act shall have taken effect, whereupon the Advisory Commission shall organize and elect its own Chairman and Secretary. The members of the Advisory Commission shall serve without compensation but they shall receive their necessary travel and subsistence expenses while actually engaged in the duties imposed upon them by the Act. These expenses shall be paid, according to law, out of the contingency and emergency fund provided for in the biennial maintenance appropriation Act, upon bills approved by the Chairman of the Advisory Commission.

SEC. 6. It shall be the duty of the Advisory Commission to recommend from time to time to the Supreme Court such rules and modifications and repeals of existing rules as in its judgment will tend to improve the administration of justice. To that end the Advisory Commission is authorized to obtain from the officers of the trial courts such information as it may deem necessary. No rules or modification or repeal of an existing rule shall be submitted by the Advisory Commission to the Supreme Court, however, until the Advisory Commission's tentative draft thereof shall have been published in the Advance Sheets of the Supreme Court Reports, one or more public hearing held, suggestions from the legal profession and the public invited and considered, and the original draft adhered to or revised, as the Advisory Commission may determine. Any written objections filed with the Advisory Commission shall be transmitted by the Commission to the Supreme Court along with its recommendations.

SEC. 7. The Supreme Court may on its own motion initiate and originate new rules or modification or repeal of existing rules subject to limits set forth in Section 3.

SEC. 8. This Act shall be in full force and effect from and after its ratification.

Jury Reform

Another important institutional change which we recommend is the establishment of a Jury Commission in every county of the State. In our jurisprudence, the jury occupies a crucial position. It is no exaggeration to say that the quality of the results obtained in the administration of justice depends, in a large part, on the quality of the juries which hear our cases. Our problem, then, is to obtain the most capable juries which our citizenship can furnish.

It seems plain to us that we do not now uniformly enjoy such juries. Over and over again, we hear of verdicts which shock the conscience of the community. The defects of our juries can largely be traced, we believe, to the present method of preparing the jury lists. Clearly, the character of our juries can not be much superior to the lists from which they are drawn. At the present time, the preparation of these lists is the responsibility of the county commissioners. Many of these commissioners have rendered excellent service in discharging this responsibility. But there are weighty reasons, we think, for now placing it in other hands.

Quite probably, the job of preparing the jury list requires more time than the commissioners have available for it. Moreover, with the great increase in population, the day is past when the commissioners can know from their personal experience the qualifications of the county's citizens for jury service. Under the present statute, they are not provided with any means for getting this information. Furthermore, so long as the county commissioners have the duty of preparing the jury lists, an important segment of our court machinery is in the control of people actively engaged in politics. This would be considerably less objectionable if the commissioners were judged by the electorate on the basis of their performance of their jury work. But, necessarily, the commissioners must be considered by the voters largely from another point of view. By the more pressing problems facing the commissioners, that of preparing the jury lists too often appears small and incidental.

This condition makes for considerable irresponsibility. The county commissioners do not have to bear the blame for failures in the administration of justice resulting from poor juries. They do not have to fear defeat at the polls as a result. In short, under the present arrangement, there is no compulsion to do the best job possible other than the commissioner's zeal for public service. And however abundant this zeal—happily, there is much of it—it is not always sufficient to overcome the obstacles raised by lack of time or information.

As a remedy for these difficulties, we propose the establishment in every county of a jury commission of three members to be appointed by the resident judge of the district in which the county is situated. We propose that the members of this commission shall serve three-year terms but that they shall be removable at the pleasure of either the Resident Judge or the Chief Justice of the Supreme Court. In this arrangement, we believe, there is a strong guarantee that the jury lists will contain the names of only those persons who meet the standards set by law. The jury list will be prepared by men who have this single public duty, by men selected for the position by reason of their special competence. Should they fail in the performance of their duty, there is a remedy immediately available. They can be dismissed and new men put at the job. The responsibility for taking such action will be in the hands of the public servant best able to say when it is needed.

In preparing our bill providing for jury commissions, we have been careful to write in limitations on expenses. In the smaller counties, this limit is set at $600, and in the largest, at $2,800. While these figures are moderate, it should be remembered that they represent the uppermost level which can be reached. It is likely that the actual amount spent will be something less.

We are proposing other changes in the laws relating to jurors which we believe will be beneficial. We recommend that the following qualifications for jury service be added to those now existing: 1. that a person be in possession of his natural faculties and not be infirm or decrepit. 2. that a person be thoroughly literate. The intent of these provisions is manifest. We believe their desirability is equally so.

We further recommend that G.S. 9-19 be so amended as to withdraw the exemption from jury service now accorded druggists, telegraph operators, pilots, printers, millers, radio announcers, optometrists, and various military personnel. We do not propose to disturb the existing discretion of the trial judge to excuse anyone from jury service.

Our attitude towards exemption from jury service is that it is, at best, a necessary evil. We think it should be allowed generally only where an obvious public gain will result. If widely indulged, it tends to bring jury service into disrepute. The feeling grows that service on a jury marks one as not being important or influential enough to secure exemption. In our view, just the opposite sentiment should be cultivated. Jury service should be esteemed for what it is—one of the most important duties of citizenship To this end, we also urge that the authorities concerned take steps to provide an hour's instruction in each of our high schools each year on the citizen's obligation in this respect and how best he may discharge it. We further urge the state-wide adoption of the salutary practice now existing in some counties of supplying each prospective juror with a small handbook outlining his duties and some of the problems he will meet.

The changes we propose here in the qualifications and methods of selecting jurors are extensive. But we believe they will appeal to a people devoted to the jury system. The jury can serve its historic function as a bulwark of liberty only if we exert our best efforts to guard and strengthen it. This has been our object and we believe it will be achieved by favorable action on the bill we propose.

It is as follows:

A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A JURY COMMISSION IN EACH COUNTY OF THE STATE AND TO MAKE OTHER CHANGES IN THE LAWS RELATING TO JURORS.

The General Assembly of North Carolina do enact:

SECTION 1. That Section 9-1 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

In each county of the State, there shall be appointed by the resident judge of the judicial district in which said county is situate a jury commission of three members who shall serve for a term of three years except that in the case of the first appointments made to the commission one member shall serve for a term of one year and one member for a term of two years. Any member of the jury commission may be removed before the expiration of his term by the resident judge or by the chief justice of the Supreme Court. Each member of the jury commission shall be a resident of the county for which he is appointed. No member shall be a licensed attorney. Members of the commission shall not during the term for which they are appointed and during their tenure in said office hold any other office by appointment or election or perform any other public duty under the federal, state, county, or municipal government, which carries with it any compensation whatsoever.

The members of the jury commission shall elect one of their number chairman of the commission. Any two members of the commission shall be a quorum for the transaction of business. Every member before entering upon the discharge of his duties

shall take the oath of office prescribed by Article VI, Section 7 of the Constitution.

Each member of the jury commission shall be paid the sum of five dollars per day for the time actually engaged in the discharge of his duties as such member. This sum shall be paid on the certificate of the resident judge. The compensation of each member of the commission shall not exceed for any year of his term the following amounts: In counties of twenty-five thousand population or less one hundred dollars; in counties exceeding twenty-five thousand and not exceeding fifty thousand population two hundred dollars; in counties exceeding fifty thousand and not exceeding seventy-five thousand population three hundred dollars; and in counties exceeding seventy-five thousand population six hundred dollars; the population of said respective counties to be determined by the last preceding federal census.

The clerk of superior court in each county shall serve as the clerk of the jury commission. The commission may employ such other clerical assistance as the commission deems necessary and proper but compensation for such clerical assistance shall not exceed the following amounts for any one year: in counties of seventy-five thousand population or less three hundred dollars; in counties exceeding seventy-five thousand population one thousand dollars.

The board of county commissioners of each county shall, upon the request of the chairman of the jury commission, purchase the necessary supplies required by the jury commission.

The jury commissions for the several counties shall meet on the first Monday in July, in the year 1949, and as often thereafter as necessary, to prepare the jury lists. The jury lists shall include only the names of persons found to be qualified for jury service. In preparing the jury lists, the jury commission shall use all sources of information deemed reliable.

In order to be qualified to serve as a juror a person must: be a citizen of the United States and a resident of the county; be not less than twenty-one years of age; not have been adjudged non compos mentis; be in possession of his natural faculties and not infirm or decrepit; not have been convincted of any crime involving moral turpitude; be able to read, write, speak, and understand the English language and be of good moral character and sufficient intelligence.

SEC. 2. That Section 9-2 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

The jury commission shall cause the names on the jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, to which there shall be two sets of keys, one to be kept by the sheriff of the county, the other by the chairman of the jury commission, and the box by the clerk of the superior court.

SEC. 3. That Section 9-3 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

At least twenty days before each regular or special term of the superior court, the jury commission of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, a number of scrolls equal to the number of jurors which the jury commission shall determine is needed for the term, but not less than twenty-four. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawings, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. Before any juror is drawn, the jury commission shall determine for which week of the term he is to be summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined.

SEC. 4. That Section 9-4 of the General Statutes of North Carolina be, and the same hereby is, repealed.

SEC. 5. That Section 9-9 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

If the jury commission for any cause fail to draw a jury for any term of the superior court, regular or special, the sheriff of the county and the clerk of the superior court, in the presence of and assisted by two justices of the peace of the county, shall draw such jury in the manner above prescribed.

SEC. 6. That Section 9-10 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

The clerk of the jury commission shall, within five days from the drawing, cause the list of jurors drawn for the superior court to be delivered to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such court. The summons shall be served, personally, or by leaving a copy thereof at the house of the juror, or by mail, or by telephone, at least five days before the sitting of the court to which he may be summoned. Jurors shall appear and give their attendance until duly discharged.

SEC. 7. That Section 9-16 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

It shall not be a valid cause of challenge that a juror called from those whose names are drawn from the box is not a freeholder or has not paid the taxes assessed against him during the preceding two years. It shall, however, be a valid cause of challenge if he has served upon the jury either as a regular or tales juror during the twenty-four months preceding the beginning of the term. Nothing herein shall modify any law authorizing jurors to be summoned from counties other than the county of trial.

SEC. 8. That Section 9-19 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

All practicing physicians, train dispatchers who have the actual handling of either freight or passengers trains, officers or employees of a state hospital for the insane, regularly paid members of a fire company, funeral directors and embalmers, linotype operators, all United States railway postal clerks and rural free delivery mail carriers, locomotive engineers, brakemen and railroad conductors in active service, radio broadcast technicians, registered or practical nurses in actual practice, and practicing attorneys at law shall be exempt from service as jurors. The judge presiding may, in his discretion, excuse any person from jury service when such service will entail undue hardship.

When any woman is summoned to serve on any regular or tales jury, she or her husband may appear before the clerk of the superior court and certify that she desires to be excused from jury service for one of the following causes: (1) that she is ill and unable to serve; (2) that she is reguired to care for her children who may be under twelve years of age; (3) that some member of her family is ill which requires her presence and attention; whereupon the clerk in his discretion may excuse her from jury service and so notify the judge of the superior court upon convening the court.

SEC. 9. That Section 9-20 of the General Statutes of North Carolina be, and the same hereby is, rewritso as to read as follows:

The clerk of the superior court shall record alphabetically in a book kept for the purpose the names of all grand and petit jurors and talesmen who serve in his court, with the term at which they serve. Said book shall at all times be available to the jury commission.

SEC. 10. That Section 9-25 of the General Statutes of North Carolina be, and the same hereby is, amended so that the eighth paragraph shall read as follows:

If it should appear to the board of county commissioners of Union county, thirty days before the beginning of the term of superior court that begins on the third Monday after the first Monday in March, that the condition of the criminal docket, and the number of prisoners in jail make it necessary that said March term should be used as a criminal term, the said board of county commissioners shall request the jury commission to draw a grand jury for said term. The board of county commissioners shall give thirty days' notice in some local paper that criminal cases will be tried at said term, and all criminal processes and undertakings returnable to a subsequent term shall be returnable to said March term. A grand jury for Union county shall be selected at each January term of the superior court in the usual manner by the presiding judge, which said grand jury shall serve for a period of one year from the time of their selection.

SEC. 11. That Section 9-30 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

When a judge deems a special venire necessary, he may, at his discretion, issue an order to the clerk of the superior court commanding him to bring into open court forthwith the jury boxes of the county, and he shall cause the number of scrolls as designated by him to be drawn from box number one by a child under ten years of age. The names so drawn shall constitute the special venire, and the clerk of the superior court shall insert their names in the writ of venire, and deliver the same to the sheriff of the county, and the persons named in the writ and no others shall be summoned by the sheriff. If the special venire is exhausted before the jury is chosen, the judge shall order another special venire until the jury has been chosen. The scrolls containing the names of the persons drawn as jurors from box number one shall, after the jury is chosen, be placed in box number two, and if box number one is exhausted before the jury is chosen, the drawing shall be completed from box number two after the same has been well shaken.

SEC. 12. That Section 127-84 of the General Statutes of North Carolina be, and the same hereby is, amended by striking out the last sentence.

SEC. 13. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 14 This Act shall be in full force and effect from and after July 1, 1949.

An Expanded Probation Commission

We also recommend that the number of probation officers be increased. We believe that probation offers perhaps the best hope of rehabilitating young offenders and saving them from lives of crime. But for probation to be successful, there must be constant supervision. We think that there should be at least one probation officer resident in each judicial district. This would make it easier for such an officer to be in attendance at all terms of court.

We have another reason for wishing for a significant increase in the number of probation officers. We have been greatly concerned with the office of Solicitor and means to make it as efficient as possible. We considered, for example, the idea of putting Solicitors on a full-time basis. We also considered a proposal to provide each Solicitor with an assistant. What we were searching for was a way to furnish a Solicitor before trial with the maximum amount of information concerning every defendant. This information should not be confined solely to the facts of the present case or the offender's previous criminal record. It should include all there is to know about the accused. Such information is essential if the wisest possible disposition of a case is to be made. Moreover, if it is available before trial, it will establish, in appropriate cases, that the offender is a good probation risk. The Solicitor will be able to assure him that he will recommend probation and oftentimes useless trials will be avoided. On the other hand, when probation is not appropriate, the Solicitor will be better able to resist it. It seems to us that the Probation Commission can best perform the service we have in mind. But it can do so only if its personnel is substantially augmented.

Our proposed bill is as follows:

A BILL TO BE ENTITLED AN ACT TO AMEND SECTION 15-203 OF THE GENERAL STATUTES OF NORTH CAROLINA SO AS TO PROVIDE FOR A RESIDENT PROBATION OFFICER IN EACH JUDICIAL DISTRICT.

The General Assembly of North Carolina do enact:

SECTION 1. That the first paragraph of Section 15-203 of the General Statutes of North Carolina be, and the same hereby is, amended to read as follows:

The director of probation shall appoint, subject to the approval of the state probation commission, such probation officers as are required for service in the state and such clerical assistance as may be necessary: Provided, that there shall be at least one probation officer resident in each judicial district: Provided further, that before any persons other than the director of probation shall be appointed, the state probation commission shall make up and submit to the governor a budget covering its proposed organization and expenditures, and no fund shall be available to carry out the purpose of this article except to the extent that said budget is approved first by the state highway and public works commission, and then by the director of the budget.

SEC. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in full force and effect from and after July 1, 1949.

Judicial Council

The last proposal we have to offer of an institutional nature is that a Judicial Council be established as a permanent agency of our state government. The purpose of this Council would be to continue work on the task assigned to us. We believe that we have made recommendations which, if adopted, will greatly benefit the State. But we also recognize that we have made only a beginning. Indeed, the task of improving the administration of justice is an unending one. Accordingly, we think that some agency should have the responsibility of collecting information about our courts and searching for means of betterment. For this purpose we recommend a council of twelve, to be assisted by a full-time Executive Secretary. The various arrangements for the Council are clearly set forth in our draft bill, which follows.

A BILL TO BE ENTITLED AN ACT TO ESTABLISH A JUDICIAL COUNCIL.

The General Assembly of North Carolina do enact:

SECTION 1. A Judicial Council is hereby created which shall consist of the Chief Justice of the Supreme Court or some other member of that court designated by him, two judges of the Superior Court designated by the Chief Justice, the Attorney General, and eight additional members, two of whom shall be appointed by the Governor, one by the President of the Senate, one by the Speaker of the House of Representatives, and four by the Council of the North Carolina State Bar. All appointive members of the Judicial Council shall be selected on the basis of their interest in and competency for the study of law reform. The four members to be appointed by the Council of the North Carolina State Bar shall be active practitioners in the trial and appellate courts.

SEC. 2. Members of the Council shall hold office for the following terms:

1. If he designates no other member of the Supreme Court, the Chief Justice during his term of office.
2. The Attorney General during his term of office.
3. All other members for a term of two years.

SEC. 3. Vacancies shall be filled for the remainder of any term in the same manner as the original appointment.

SEC. 4. The member from the Supreme Court shall serve as chairman of the Council.

SEC. 5. The Council shall meet at least once each quarter of the calendar year, or more often at the call of the chairman.

SEC. 6. It is the duty of the Judicial Council:

1. To make a continuing study of the administration of justice in this state, and the methods of administration of each and all of the courts of the state, whether of record or not of record.

2. To receive reports of criticisms and suggestions pertaining to the administration of justice in the state.

3. To recommend to the Legislature, or the courts, such changes in the law or in the organization, operation or methods of conducting the business of the courts, or with respect to any other matter pertaining to the administration of justice, as it may deem desirable.

SEC. 7. The Council shall annually file a report with the Governor. The Council shall submit any recommendations it may have for the improvement of the administration of justice to

the Governor, who shall transmit the same to the General Assembly.

SEC. 8. The members of the Council shall be paid the sum of $7.00 per day and such necessary travel expenses and subsistence as may be incurred.

SEC. 9. The Council, by and with the advice, consent and approval of the Governor and Council of State, may employ an executive secretary either full-time or part-time and fix his salary in an amount not exceeding $5,000.00 per annum and also a stenographer or clerical assistant and fix her or his salary, said salaries to be paid out of the Contingency and Emergency Fund. The executive secretary shall perform such duties as the Council may assign to him.

SEC. 10. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 11. That this Act shall be in full force and effect from and after its ratification.

III. Civil Procedure Recommendations

We have indicated that in our view the rule-making bill is of such paramount importance that we do not think it proper at this time for us to make any great number of suggestions relating to civil procedure. There is one procedural device, however, which seems to us to promise so much that there should be no delay in adopting it. We refer to the pre-trial conference.

Pre-Trial

What is pre-trial? Like most effective legal procedures, it is only common sense applied to the solution of a problem. It is based on the knowledge that if judges and lawyers will confer about a case before trial, many of the difficulties which cause annoying delays and great expense will disappear. In the pre-trial conference, lawyers can, with the help of the judge, resolve many of these difficulties without forcing witnesses and jurors to sit in on the performance. They can consider the issues in the case. They can examine the pleadings to see if they meet the legal requirements. The need of a reference can be determined. In appropriate cases, they can agree that certain facts susceptible to definite proof will be admitted. They can reach agreements which will eliminate the needless repetition of particular types of testimony. The result will be that the trial of cases will be devoted to considering those matters about which the parties are actually in dispute.

As a matter of fact, many of our judges and lawyers already resort to pre-trial conferences, informally and entirely on their own volition. The most outstanding feature of the bill we propose is perhaps the provision it makes for a time when pre-trial conferences can be held. As drawn, it provides that the first day of each civil term of Superior Court shall be devoted to pre-trial and the disposition of cases not requiring the intervention of a jury. The bill vests in the clerk of the Superior Court authority to determine the desirability of summoning Jurors for the first day of the term. Should the clerk be convinced that there will be enough pre-trial and non-jury business to consume the first day of the term, he can delay the call of jurors until the second day. He can, of course, direct that they be called the first day if they are likely to be needed.

We believe that there is a great advantage in this arrangement aside from the opportunity it affords for pre-trial. It will give the judges and lawyers an opportunity to plan the work of the term. It will provide a time for the consideration of chambers matters. It will save the time of witnesses and jurors as well as their fees.

Our bill, it will be noticed, does not require pre-trial except where it is seasonably requested by one counsel or ordered by the judge. Even when pre-trial has been requested, it may be dispensed with on order of the judge. This flexibility thus makes pre-trial available when it will be of advantage without rigidly requiring it in cases where it will not.

We are thoroughly convinced that pre-trial will be of advantage in a great number of cases. Where it has been used, laymen, as well as lawyers and judges, have responded enthusiastically. One judge has written that jury expense in his county has been cut in half. Another has written that but for this device he could never keep abreast of his docket. The Readers Digest, although a lay publication, was so impressed that it published an article of approval. Of course, we do not claim that pre-trial will solve all our difficulties but we do believe that it has a contribution to make which we should utilize in our search for a more satisfactory administration of justice.

Our proposed bill is as follows:

A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR PRE-TRIAL HEARINGS IN CIVIL CASES

The General Assembly of North Carolina do enact:

SECTION 1. The Clerk of the Superior Court of every county shall maintain a pre-trial docket. Upon written request of counsel for any party, filed with the clerk and served upon counsel for all other parties after issue has been joined and not less than ten days prior to the term at which the case is to be tried, a civil case, except a case specified in section 5 hereof, shall be placed on this docket. The court, at any time after issue has been joined, may, in its discretion, order that any civil case except a case specified in section 5 hereof, be placed on the pre-trial docket. Except by order of the presiding judge, no case on this docket shall be tried until a pre-trial order has been entered therein in conformity with this act, but this shall not be construed to prohibit the calendaring of any case for trial prior to the pre-trial hearing or the entry of such order.

Pre-trial hearings in the cases on the pre-trial docket shall be held on the first day of every term of Superior Court for the trial of civil cases only, preference being given those cases on such docket which are calendared for trial at the same term. The attorneys for the parties shall appear before the presiding judge to consider:

1. Motions to amend or supplement any pleading.
2. The settling of the issues.
3. The advisability or necessity of a reference of the case, either in whole or in part.
4. The possibility of obtaining admissions of facts and of documents which will avoid unnecessary proof.
5. The limitation of the number of expert witnesses.
6. Facts of which the court is to be asked to take judicial notice.
7. The determination of any other matters which may aid in the disposition of the case.
8. In the discretion of the presiding judge, the hearing and determination of any motion, or the entry of any order, judgment or decree, which the presiding judge is authorized to hear, determine, or enter at term.

Following the hearing the presiding judge shall enter an order reciting the stipulations made and the action taken. Such order shall control the subsequent course of the case unless in the discretion of the trial judge the ends of justice require its modification.

After the entry of the pre-trial order, the case shall stand for trial and may be tried at the same term in which the pre-trial hearing is held or at a subsequent term, as ordered by the judge.

SEC. 2. The presiding judge may devote any additional day or days of the term to pre-trial hearings as he may find necessary or desirable. In the event pre-trial hearings, herein provided for, do not consume the whole of the first day of the term, the presiding judge may proceed to the consideration of the motion docket or any other matters not requiring the intervention of a jury. At the time jurors are to be summoned for the first week of the term, the clerk of the Superior Court shall determine whether it is probable that the pre-trial docket and other matters not requiring the intervention of a jury will consume the first day of the term

and, in accordance with such determination, shall direct the sheriff to summon the jurors for the first or second day of the term.

SEC. 3. Upon agreement of counsel for all parties to any civil case, the resident judge or the regular judge holding the courts in the district may hold pre-trial hearings out of term and in or out of the county or district. At any such hearing the authority of the judge shall be the same as at pre-trial hearings conducted at term time.

SEC. 4. At terms of the Superior Court devoted to both civil and criminal matters, the pre-trial docket shall be the order of business after the criminal docket has been disposed of, or may be considered earlier in the discretion of the presiding judge.

SEC. 5. The provisions of this act shall not apply to uncontested divorce cases or to proceedings after judgment by default, and shall apply to special proceedings only after transfer to the civil issue docket.

SEC. 6. For purposes of permitting pre-trial hearings to be held under section 3 hereof, this act shall be in full force and effect from and after its ratification. With respect to pre-trial hearings to be held under section 1 or section 4 hereof, this act shall become effective as to civil cases in which issue is joined on or after July 1, 1949.

SEC. 7. Effective July 1, 1949, the judge of every court, other than the Superior Court, having jurisdiction to try civil cases beyond the jurisdiction of a justice of the peace, may in his discretion, upon not less than five days notice, direct the attorneys in any civil case at issue in his court, including those in which issue was joined prior to July 1, 1949, to appear before him for a pre-trial hearing for consideration of the matters set forth in section 1 hereof. Upon request for pre-trial hearing by the attorney for any party to a civil case at issue in his court, the judge shall, upon not less than five days notice to the attorneys for the other parties, order such a pre-trial hearing. After each such pre-trial hearing, the judge shall enter an order as contemplated by section 1 hereof.

SEC. 8. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

IV. Criminal Procedure Recommendations

In our remaining recommendations, we are principally concerned with criminal procedure. It will be recalled that in our proposal granting to the Supreme Court the rule-making power, we did not include authority to prescribe rules of criminal procedure. For this reason, we have felt it necessary to offer some specific suggestions of our own respect to this branch of the law.

Waiver of Indictment

The first is an amendment which would allow an accused when represented by counsel to waive indictment in all except capital felonies. At the present time, of course, indictment by a grand jury is required in all felonies. Among students of criminal procedure, there has long been a vigorous dispute as to whether or not action by the grand jury serves any useful purpose. We are of the opinion that it does and we would not countenance a suggestion that it be abolished. The Grand Jury renders many valuable services. One of these services is the protection it offers from unreasonable prosecutions. But when there is another protection available which accomplishes this same purpose we believe it should be utilized —especially where it promises advantages to both the State and the accused.

Such, we believe, is the case of allowing waiver of indictment when the accused is represented by counsel. His own self interest, informed by the assistance of his counsel, is an ample guarantee that he will not sacrifice any right vital to him by waiving the formal accusation of the grand jury. By doing so, he will frequently be able to advance substantially the date of his trial. A simple illustration will make the point clear. A term of court will begin on Monday. The Grand Jury will meet that day, complete all outstanding business, and adjourn. An offense is committed on Tuesday for which the offender is promptly arrested. Although he may be willing and anxious for trial at the term of court then in progress, and although the State might be just as ready for trial, the case must be put off to the next term when the Grand Jury will again be in session. This is true even if the accused wishes to plead guilty and begin serving his sentence. The result is that justice is delayed against the wishes of all concerned, to say nothing of the county frequently having to bear the expense of a prisoner for a period which may run to several months. We see no reason why our Constitution should prevent defendants, when well advised of their rights, from seeking to hasten the final determination of their cases. Under our proposal, a clear statement of the charges against a defendant would still be required in spite of his waiver of the more formal type of accusation. In these circumstances, we believe that the amendment we propose permitting waiver of indictment will be of substantial benefit without, at the same time, lessening the rights of any one.

It is as follows:

A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION SO AS TO PERMIT ANY PERSON, WHEN REPRESENTED BY COUNSEL, TO WAIVE INDICTMENT IN ALL EXCEPT CAPITAL CASES.

The General Assembly of North Carolina do enact:

SECTION 1. That the Constitution of the State of North Carolina, be and is hereby amended by adding to Section 11, Article I the following: But any person, when represented by counsel, may, under such regulations as the Legislature shall prescribe, waive indictment in all except capital cases.

SEC. 2. That this amendment shall be submitted to the qualified voters of the whole State at the general election to be held November 7, 1950.

SEC. 3. That the electors favoring the adoption of this amendment shall vote a ballot on which shall be written or printed, "For permitting any person, when represented by counsel, to waive indictment in all except capital cases"; those opposed shall vote a ballot on which be written or printed the words, "Against permitting any person, when represented by counsel, to waive indictment in all except capital cases."

SEC. 4. That the election upon the amendment shall be conducted in the same manner and under the same rules and regulations as provided by the laws governing general elections; and if the majority of the votes cast shall be in favor of the amendment, it shall be the duty of the Governor of the State to certify the amendment under the Seal of the State to the Secretary of the State who shall enroll the said amendment so certified among the permanent records of his office, and the same shall be in force in every part thereof from and after date of such certification.

SEC. 5. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 6. That this Act shall be in full force and effect from and after its ratification.

Waiver of Jury Trial

For similar reasons, we urge an amendment to the Constitution which would permit waiver of jury trial in non-capital cases. In addition to proposing that such waiver be allowed only when the accused is represented by counsel, we think it should also require the approval of the presiding judge. With two such dependable safeguards, we do not see that our proposal places in jeopardy any of the personal rights which are so dear to us. In one sense, jury trial can already be waived in North Carolina. A plea of guilty dispenses with a trial altogether. We can not perceive any greater danger from a trial by the judge when the defendant asks it. Undeniably, when waiver of jury trial is had, there is a great saving of time. Many hurdles of a highly technical nature are immediately removed from the course of the trial. There is much less likelihood of reversible error. Of course, trial by the judge is not appropriate in all cases. We believe, however, that in the vast majority of these the defendant will not waive the jury. And in that portion where he attempts to, we have confidence that our judges will not give the requisite approval.

Our draft amendment reads as follows:

A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION SO AS TO PERMIT ANY PERSON, WHEN REPRESENTED BY COUNSEL, TO WAIVE TRIAL BY JURY IN ALL EXCEPT CAPITAL CASES.

The General Assembly of North Carolina do enact:

SECTION 1. That the Constitution of the State of North Carolina be and is hereby amended by adding to Section 13, Article I the following: Any person, when represented by counsel, may, in all except capital cases, with the consent of the presiding judge, waive trial by jury and elect to be tried by the presiding judge.

SEC. 2. That this amendment shall be submitted to the qualified voters of the whole State at the general election to be held November 7, 1950.

SEC. 3. That the electors favoring the adoption of this amendment shall vote a ballot on which shall be written or printed, "For permitting any person, when represented by counsel, to waive trial by jury in all except capital cases"; those opposed shall vote a ballot on which shall be written or printed the words, "Against permitting any person, when represented by counsel, to waive trial by jury in all except capital cases."

SEC. 4. That the election upon the amendment shall be conducted in the same manner and under the same rules and regulations as provided by the laws governing general elections; and if the majority of the votes cast shall be in favor of the amendment, it shall be the duty of the Governor of the State to certify the amendment under the Seal of the State to the Secretary of the State who shall enroll the said amendment so certified among the permanent records of his office, and the same shall be in force in every part thereof from and after date of such certification.

SEC. 5. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 6. That this Act shall be in full force and effect from and after its ratification.

State-wide Running of Warrants Without Endorsement

We have two proposals to offer in respect to warrants. The first involves the section of our laws which requires that before a warrant issuing from a magistrate in one county can be executed in a second county, a magistrate of the second county must endorse the warrant. This is a precaution which was necessary in another day when there was little travel and almost always some doubt about the genuineness of a signature given miles away. These conditions are no longer present and we therefore think that the requirement for such endorsement should be removed to the extent that an officer of the county in which the offender is found may execute the warrant.

Our proposed bill is as follows:

A BILL TO BE ENTITLED AN ACT TO AMEND SECTIONS 15-21 AND 15-22 OF THE GENERAL STATUTES OF NORTH CAROLINA RELATING TO THE EXECUTION OF WARRANTS SO AS TO PERMIT STATE-WIDE RUNNING OF WARRANTS WITHOUT ENDORSEMENT.

The General Assembly of North Carolina do enact:

SECTION 1. That Section 15-21 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

Warrants issued by any justice of the Supreme Court, or by any judge of the Superior Court, or of a criminal court, may be executed in any part of this state; warrants issued by a justice of the peace, or by the chief officer of any city or incorporated town may be executed in any part of the county of such justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county. Any warrant may be executed in any county of the State, irrespective of the county in which it was issued and the officer to whom it was directed, by the sheriff or other lawful officer of the county where the offender may be found.

SEC. 2. That Section 15-22 of the General Statutes of North Carolina he, and the same hereby is, amended by striking out the words "authorize and" in the last sentence.

SEC. 3. That all laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 4. That this Act shall be in full force and effect from and after its ratification.

Discretionary Use of a Summons

Our second proposal in regard to warrants is to authorize a magistrate, in misdemeanor cases, to issue a summons instead of a warrant of arrest when he is convinced that the accused will appear. The summons would simply command the accused to appear at a given time and place. This quite possibly will prevent many needless arrests. In perhaps a majority of our less serious cases, the defendants will appear upon orders to do so. In this situation, there is frequently no necessity of subjecting one to the humiliation and inconvenience of an arrest to say nothing of the expense of bail. It should be remembered that whether a summons or warrant shall issue is left by our proposal entirely to the discretion of the magistrate. We are certain that the use of a summons to bring an accused within the jurisdiction of the law will be found highly convenient in certain cases.

The bill proposed is as follows:

A BILL TO BE ENTITLED AN ACT TO AMEND SECTION 15-20 OF THE GENERAL STATUTES OF NORTH CAROLINA RELATING TO THE ISSUANCE OF WARRANTS SO AS TO AUTHORIZE THE ISSUANCE OF A SUMMONS INSTEAD OF A WARRANT OF ARREST IN MISDEMEANOR CASES.

The General Assembly of North Carolina do enact:

SECTION 1. That Section 15-20 of the General Statutes of North Carolina be, and the same is hereby, amended by adding at the end thereof a new paragraph to read as follows:

In all cases of misdemeanors, a magistrate may issue a summons instead of a warrant of arrest when he has reasonable ground to believe that the person accused will appear. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. If any person summoned fails, without good cause to appear as commanded by the summons, he may be punished by a fine of not more than twenty-five dollars. Upon such failure to appear the magistrate shall issue a warrant of arrest. If after issuing a summons the magistrate becomes satisfied that the person summoned will not appear as

commanded by the summons he may at once issue a warrant of arrest.

SEC. 2. That all laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. That this Act shall be in full force and effect from and after its ratification.

Regulation of Private Prosecutions

It is our experience that there has been some abuse of the privilege of private prosecution which prevails in North Carolina. Too often have we known of such prosecutions brought for improper motives—spite or notoriety to mention only two. We are not prepared to recommend that the privilege be abolished although it does not exist in many jurisdictions where the prosecution of offenders is considered exclusively a matter of public concern. We do think, however, that it would be beneficial to require the disclosure of the identity of the party employing a private prosecutor. And we do not think that defense counsel should be put to the burden of asking for such disclosure. Accordingly, we have recommended a bill which would require that it be made as a routine matter.

It reads:

A BILL TO BE ENTITLED AN ACT TO REGULATE PRIVATE PROSECUTION BY REQUIRING EVERY PRIVATE PROSECUTOR TO DISCLOSE THE IDENTITY OF HIS EMPLOYER.

The General Assembly of North Carolina do enact:

SECTION 1. No attorney shall appear in any criminal case as a private prosecutor unless he files with the court a written statement disclosing the identity of his employer or makes such disclosure orally in open court.

SEC. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in full force and effect from and after July 1, 1949.

Counsel For Indigent Defendants in Felony Cases

One of our more important recommendations is that judges be authorized, in their discretion, to award compensation to counsel appointed by them to represent a defendant in a felony case who is financially unable to employ a lawyer. We already have such a provision in our laws in respect to defendants in capital cases. Nobody, we believe, would deny that the right to counsel is an important one. There are some cases where a fair trial is immensely difficult, if not impossible, of achievement unless the defendant is represented by counsel. In such cases, the most elementary conceptions of justice lead to the conclusion that the public should furnish legal assistance to one accused who is otherwise unable to secure it.

There is, in addition, the compelling reason that the Supreme Court of the United States now requires counsel in order for a conviction to be valid in certain circumstances. Since this is true, it is essential as a practical matter that our judges have the authority which we propose. We are sure that it will be used cautiously by them and only after a clear showing of financial inability.

To achieve our purposes, we have prepared two bills. They follow.

A BILL TO BE ENTITLED AN ACT TO AMEND SECTION 15-5 OF THE GENERAL STATUTES OF NORTH CAROLINA RELATING TO THE ASSIGNMENT AND COMPENSATION OF COUNSEL FOR INDIGENT DEFENDANTS SO AS TO AUTHORIZE THE ASSIGNMENT AND COMPENSATION OF COUNSEL IN ALL FELONY CASES WHERE THE DEFENDANT IS NOT ABLE TO EMPLOY COUNSEL.

The General Assembly of North Carolina do enact:

SECTION 1. That Section 15-5 of the General Statutes of North Carolina be, and the same hereby is, rewritten so as to read as follows:

Whenever an attorney is appointed by the judge to defend a person charged with a felony, he shall receive such fee for performing this service as the judge may allow; but the judge shall not allow any fee until he is satisfied that the defendant charged with the felony is not able to employ counsel. The fees so allowed by the judge shall be paid by the county in which the indictment was found.

SEC. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in full force and effect from and after July 1, 1949.

A BILL TO BE ENTITLED AN ACT TO FACILITATE THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CAPITAL CASES.

The General Assembly of North Carolina do enact:

SECTION 1. When any person is bound over to the Superior Court to await trial for an offense for which the punishment may be death, the clerk of the Superior Court in the county shall, if he believes that the accused may be unable to employ counsel, within five days notify the resident judge of the district or any Superior Court judge holding the courts of the district and request the immediate appointment of counsel to represent the accused. If the judge is satisfied that the accused is unable to employ counsel, he shall appoint counsel to represent the accused as soon as may be practicable. He may appoint counsel at any time regardless of whether notified by the clerk and before preliminary examination.

In any capital case where the appointment of counsel is delayed until the term of court at which the accused is arraigned, on motion of counsel for the accused the case shall be continued until the next ensuing term of criminal court.

SEC. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in full force and effect from and after July 1, 1949.

Recommendation for Mercy in Capital Cases

We propose that a recommendation of mercy by the jury in capital cases automatically carry with it a life sentence. Only three other states now have the mandatory death penalty and we believe its retention will be definitely harmful. Quite frequently, juries refuse to convict for rape or first degree murder because, from all the circumstances, they do not believe the defendant, although guilty, should suffer death. The result is that verdicts are returned hardly in harmony with evidence. Our proposal is already in effect in respect to the crimes of burglary and arson. There is much testimony that it has proved beneficial in such cases. We think the law can now be broadened to include all capital crimes.

Our proposed bill is as follows:

A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR SENTENCES OF LIFE IMPRISONMENT UPON A RECOMMENDATION OF MERCY BY THE JURY IN CAPITAL CASES.

The General Assembly of North Carolina do enact:

SECTION 1. Any person convicted of a capital offense and recommended to the mercy of the court by the jury in their verdict, shall be sentenced to imprisonment for life, and the court shall so instruct the jury.

SEC. 2. Section 14-52 of the General Statutes of North Carolina is hereby rewritten so as to read as follows:

Punishment for burglary. — Any person convicted, according to due course of law, of the crime of burglary in the first degree shall suffer death. Anyone so convicted of burglary in the second degree shall suffer imprisonment in the state's prison for life, or for a term of years, in the discretion of the court.

SEC. 3. Section 14-58 of the General Statutes of North Carolina is hereby rewritten so as to read as follows:

Punishment for arson.—Any person convicted according to due course of law of the crime of arson shall suffer death.

SEC. 4. This Act shall be in full force and effect from and after its

ratification, not excepting trials for offenses committed prior to its ratification.

Criminal Court Calendar

We believe that a calendar for our criminal courts, setting as nearly as possible the day of trial of a particular case, will be a great convenience. We are aware that such calendars are already in use in many districts. We are also aware of the difficulties involved. So many are inconvenienced, however, by being forced to wait in court for days to give testimony that we believe a serious effort should be made to improve the situation even at the risk, at times, of a calendar breakdown. The bill which we propose is sufficiently flexible to meet many of the uncertainties which necessarily face a Solicitor and its passage may well stimulate a more orderly presentation of cases to the Court, and the saving of much time for witnesses.

Our proposed bill is as follows:

A BILL TO BE ENTITLED AN ACT TO REQUIRE A CALENDAR FOR ALL TERMS OF THE SUPERIOR COURT FOR THE TRIAL OF CRIMINAL CASES.

The General Assembly of North Carolina do enact:

SECTION 1. At least one week before the beginning of any term of the Superior Court for the trial of criminal cases, the solicitor shall file with the Clerk of the Superior Court a calendar of the cases he intends to call for trial at that term. The calendar shall fix a day for the trial of each case included thereon.

SEC. 2. The solicitor may place on the calendar for the first day of the term all cases which will require consideration by the grand jury without obligation to call such cases for trial on that day.

SEC. 3. No case on the calendar may be called for trial before the day fixed by the calendar except by consent or by order of the court.

SEC. 4. All cases docketed after the calendar has been made and filed with the Clerk of Superior Court may be placed on the calendar at the discretion of the solicitor.

SEC. 5. All witnesses shall be subpoenaed to appear on the date listed for the trial of the case in which they are witnesses.

SEC. 6. Witnesses shall not be entitled to prove their attendance for any days prior to the day on which the case in which they are witnesses is set for trial unless otherwise ordered by the presiding judge.

SEC. 7. Nothing in this Act shall be construed to affect the authority of the Court in the call of cases for trial.

SEC. 8. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 9. This Act shall be in full force and effect from and after July 1, 1949.

Enforcement of Suspended Sentences

We think that the law governing the enforcement of suspended sentences should be amended so that such sentences may be put in effect, upon violation of the terms of suspension, out of term. This is now done in probation cases and no good purpose is served by not allowing it in the very similar case of a suspended sentence. On the other hand, the delay in waiting for a term of court is often very harmful.

Our proposed bill is built around the present statute. It follows.

A BILL TO BE ENTITLED AN ACT TO AMEND SECTION 15-200 OF THE GENERAL STATUTES OF NORTH CAROLINA SO AS TO PERMIT THE TERMS OF A SUSPENDED SENTENCE TO BE PUT INTO EFFECT OUT OF TERM TIME.

The General Assembly of North Carolina do enact:

SECTION 1. That Section 15-200 of the General Statutes of North Carolina be rewritten so as to read as follows:

The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended, terminated or suspended by the court at any time, within the above limit. Upon the satisfactory fufillment of the conditions of probation or suspension of sentence the court shall by order duly entered discharge the defendant. At any time during the period of probation or suspension of sentence, the court may issue a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence.

Any police officer, or other officer with power of arrest, may arrest a probationer or a defendant at liberty under a suspension of sentence without a warrant under the following circumstances:

1. In the case of a probationer, when in possession of a written statement by the probation officer setting forth that the probationer has, in his judgment, violated the conditions of the probation.

2. In the case of a defendant at liberty under a suspension of sentence, when in possession of a written statement by the solicitor setting forth that the defendant has, in his judgment, violated the conditions of suspension of sentence.

Such statements shall be sufficient warrants for the detention in the county jail, or other appropriate place of detention, of probationers or defendants at liberty under a suspension of sentence until they shall be brought before the judge of the court. All arrests made in pursuance of this section shall forthwith be reported to the judge of the court by the probation officer or solicitor issuing the written statement or in superior court cases to the judge holding the courts of the district, or the resident judge of said district. In all such reports, the probation officer or solicitor shall state in what manner the person arrested has violated probation or the conditions of suspension of sentence.

Upon any arrest, with or without warrant, in pursuance to this section, the judge to whom the report was made shall cause the defendant to be brought before him, in or out of term. At such time he may order that the sentence which was suspended be executed. In the case of probationers, he may also revoke the probation and proceed to deal with the case as if there had been no probation.

SEC. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in full force and effect from and after July 1, 1949.

Exceptions Unnecessary

We think that the practice of an attorney taking exceptions to adverse rulings on the admission of evidence might well be dispensed with. His objection clearly indicates that he thinks the ruling of the Court is erroneous and there is nothing to be gained by forcing the attorney to announce formally that he reserves the right to challenge the ruling of the Court on appeal. Our bill here, it should be noted, has relevance for civil procedure as well as criminal.

It follows.

A BILL TO BE ENTITLED AN ACT TO RENDER UNNECESSARY THE TAKING OF EXCEPTIONS TO ADVERSE RULINGS ON THE ADMISSION OF EVIDENCE.

The General Assembly of North Carolina do enact:

SECTION 1. In any trial or hearing no exception need be taken to any ruling upon an objection to the admission of evidence. Such objection shall be deemed to imply an exception by the party against whom the ruling was made.

SEC. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in full force and effect from and after July 1, 1949.

V. The Advisability of a Court of Claims

Chapter 1078 of the 1947 Session Laws directed us to consider "the advisability of the establishment of a Court of Claims" and to report thereon. In our judgment, there is no necessity for such a Court. In saying this, we should like to make it clear that we are neither approving nor disapproving the principle of the State's immunity from suit. Whether such immunity should be retained we regard as a question of substantive law

beyond the province of this Commission.

If the General Assembly should come to the view that the State should be made amenable to suit in certain cases, we are convinced that existing machinery should be utilized. We have accordingly prepared a draft of a bill which would fix the trial of such cases in the Superior Courts. Our bill has been carefully drawn, and if the General Assembly should decide to abandon the existing law in respect to the State's liability, we recommend that it do so along the lines of the following draft act.

A BILL TO BE ENTITLED THE NORTH CAROLINA TORT CLAIMS ACT.

The General Assembly of North Carolina do enact:

SECTION 1 (a) Subject to the limitations of this act, authority is conferred upon the head of each state agency, or his designee for the purpose, acting on behalf of the state, to consider, ascertain, adjust, determine, and settle any claim against the state for money only, accruing on and after July 1, 1949, on account of damage to or loss of property or on account of personal injury or death, where the total amount of the claim does not exceed $500, caused by the negligent or tortious act or omission of any employee of the state while acting within the scope of his office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred: provided, that no such settlement shall be made for an amount in excess of $100 without the written approval of the Attorney General.

(b) Subject to the provisions of section 3 to 6 inclusive of this act, any such award or determination shall be final and conclusive on all officers of the state, except when procured by means of fraud, notwithstanding any other provision of law to the contrary.

(c) There is hereby appropriated for the biennium beginning July 1, 1949 the sum of $————for the purpose of paying claims pursuant to the provisions of this act. Any judgment, award, compromise, or settlement of any claim pursuant to the provisions of this act shall be paid by the state treasurer out of the funds hereby appropriated upon certification by the head of the appropriate state agency in the case of amounts of $100 or less and by the Attorney General in all other cases. Should the total claims authorized for payment pursuant to the provisions of this act exceed the amount hereby appropriated the claims remaining unpaid shall await appropriation by the General Assembly unless in their discretion the Governor and Council of State order payment of one or more of such claims out of the Contingency and Emergency Fund.

(d) The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and receipt of payment thereof shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim, by reason of the same subject matter.

SECTION 2. The state Treasurer shall report to each regular session of the General Assembly a list of all claims certified to him for payment up to and including December 31st of the year preceding the session. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim. The report shall also include the name of the state agency involved in each claim and shall set forth the total claims authorized for payment on behalf of each state agency, and shall specify claims remaining unpaid, if any, because of insufficient appropriations.

SECTION 3. (a) Subject to the provisions of this act, the Superior Court, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the state, for money only, accruing on and after July 1, 1949, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or tortious act or omission of any employee of the state while acting within the scope of his office or employment under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. The venue of such action shall be laid in the county where the plaintiff resides or where the act or omission complained of occurred or where the injury was received or in Wake County.

(b) The measure of damages shall be the same as in cases between private persons except that punitive damages shall not be allowed and the state shall not be liable for interest either prior to or after judgment.

(c) The payment of any judgment under this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the state whose act or omission gave rise to the claim. No suit shall be instituted upon a claim presented to any state agency pursuant to this act unless such agency or the Attorney General has made final disposition of the claim: Provided that the claimant may, upon 15 days notice in writing, withdraw the claim from consideration of the state agency and commence suit thereon: Provided further that as to any claim so disposed of or so withdrawn, no suit shall be instituted pursuant to this section for any sum in excess of the amount of the claim presented to the state agency except where the increased amount of the claim is shown to be based upon newly discovered evidence not reasonably discoverable at the time of presentation of the claim to the state agency or upon evidence of intervening facts, relating to the amount of the claim. Disposition of any claim made by the state agency or the Attorney General prior to litigation thereon shall not be competent evidence of liability or amount of damages in such litigation.

SECTION 4. The party defendant in all actions brought pursuant to this act shall be the State of North Carolina, irrespective of which state agency may be involved, and all process, writs, pleadings and motions shall be served upon the Attorney General. The same rules as to counterclaim shall apply as in litigation between private parties. Initiation of an action under this act shall be deemed to be consent by the plaintiff to trial without a jury of any counterclaim properly pleaded by the state. There shall be no parties other than the plaintiff and the State of North Carolina in any litigation brought pursuant to this act.

SECTION 5. Appeals may be taken to the Supreme Court in the same manner as in other cases in which the Superior Court sits without a jury.

SECTION 6. With a view to doing substantial justice, the Attorney General is authorized to arbitrate, compromise, or settle any claim cognizable under this act, after the institution of any suit thereon, with the approval of the court in which the suit is pending.

SECTION 7. Every claim against the State cognizable under this act shall be forever barred unless suit thereon is begun within one year following the accrual of such claim: Provided that if such claim is presented in writing to the appropriate state agency within said year the time to institute suit thereon shall be extended for a period of three months from the date of mailing of notice to the claimant by such agency or by the Attorney General as to the final disposition of the claim or from the date of the receipt by such state agency of notice of withdrawal of the claim from such state agency pursuant to section 3 of this act. It is hereby declared to be the intention of the General Assembly that the time limitation herein provided, whether the claim be for property damage, personal injury, or death, shall be construed as a statute of limitations and not as a condition annexed to the claim. In all cases for wrongful death brought under Section 28-173 of the General Statutes the limitation

period provided for in this act shall apply rather than the limitation provided in said wrongful death statute.

SECTION 8. The provisions of this act shall not apply to (a) Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the state agency or an employee of the state, whether or not the discretion involved be abused.

(b) Any claim arising in respect of the assessment or collection of any tax or other money claimed to be due the state, or the detention of any goods or merchandise by any revenue or law enforcement officer.

(c) Any claim for damages caused by the imposition or establishment of a quarantine.

(d) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(e) Any claim for damages caused by the fiscal operations of the state.

(f) Any claim arising out of the combatant activities of military or naval forces subject to the control of the state during time of war.

(g) Any claim arising in foreign country.

(h) Any claim based upon the failure of state agencies to maintain highways, bridges, airports and harbors in proper repair.

(i) Any claim by an inmate of a state institution for the treatment of mental or physical diseases, based upon conduct of state employees toward him as an inmate.

(j) Any claim for which a workmen's compensation remedy against the state or its agencies is provided by existing laws.

(k) Any claim founded upon the taking of property by the state or its agencies under the power of eminent domain.

SECTION 9. As used in this act, the term

(a) "State Agency" includes all state offices, departments, commissions and institutions, and corporations whose primary function is to act as and while acting as, instrumentalities or agencies of the state: Provided, that this shall not be construed to include any contractor with the state or its agencies.

(b) "Employee of the state" includes officers or employees, elective or appointive, of the state or any state agency, and persons acting on behalf of the state or a state agency in an official capacity, temporarily or permanently in the service of the state, whether with or without compensation.

SECTION 10. All laws and clauses of laws in conflict with this act are hereby repealed.

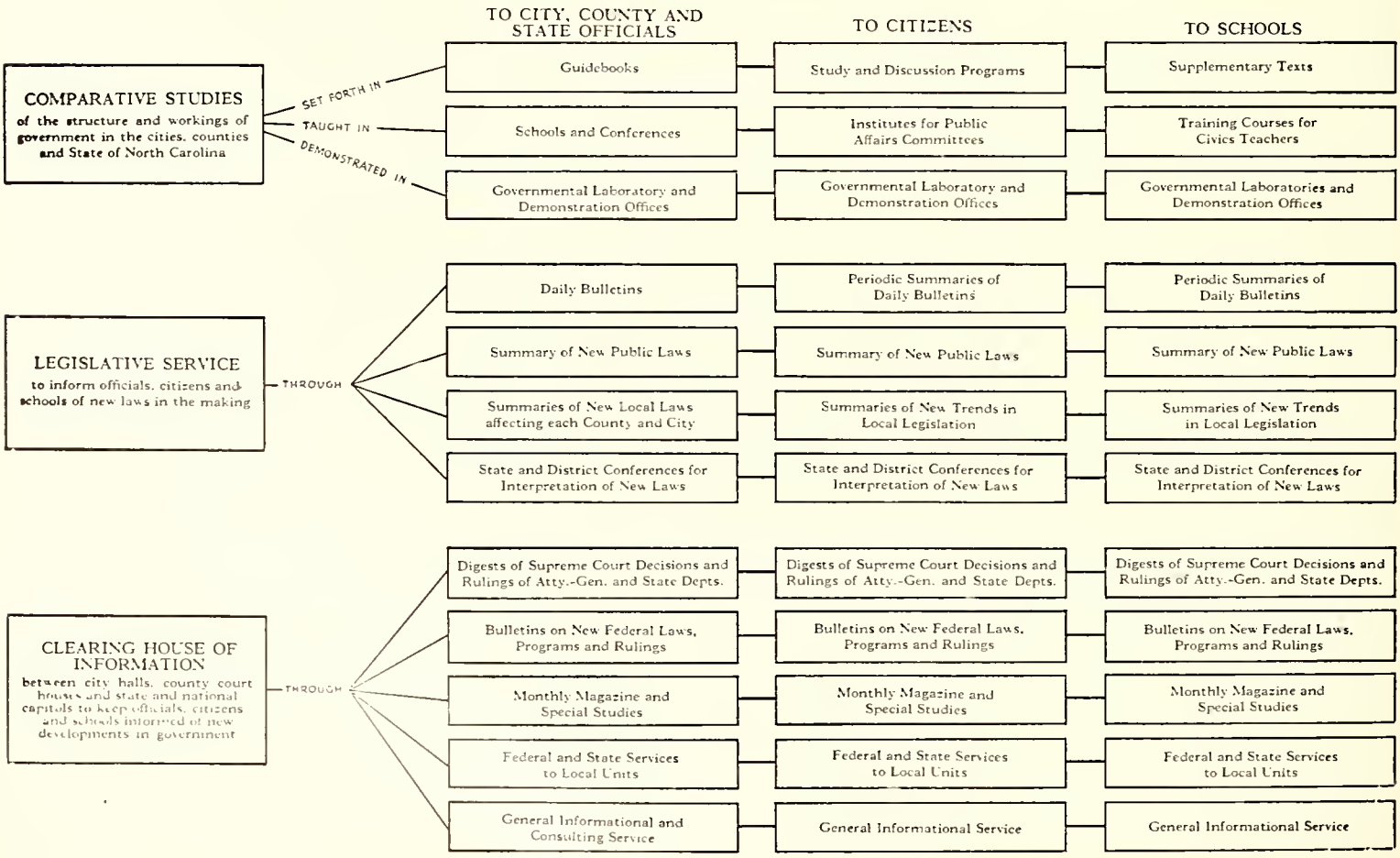
SECTION 11. This act shall be in full force and effect on and after July 1, 1949.

VI. Conclusion

We should like to add that the entire membership of the Commission and its Research Director have felt keenly the responsibility we have borne. The attainment of justice is surely one of the great ends of government. We believe that our proposals serve this end and we respectfully ask for their adoption. We stand ready to furnish any assistance of which we are capable.

Respectfully submitted,
Sam J. Ervin, Jr., *Chairman*
Harold Shepherd, *Secretary for the Commission*

INSTITUTE OF GOVERNMENT SERVICES



THE CLEARINGHOUSE

Recent Developments of Interest to Counties, Cities, and Towns of North Carolina

Cities and Towns

City Manager Government

The council-manager form of government would be adopted under the terms of a proposed new charter for the city of *Monroe*. The present city council has suggested the change, which includes enlarging of the council from three members to five and selection of the mayor by the council from among their number.

Land Buying

The city of *Hickory* is buying land for a garbage dump. *Laurinburg* commissioners have approved the purchase of a lot on which to build a warehouse for the storage of materials and equipment. Mecklenburg County has bought a lot which adjoins the present county garage for future use, possibly as the site for a new county garage. The town of *Sanford* is acquiring land for an extension of the cemetery.

Merging Commissions

The retiring chairman of the *Greensboro* city recreation commission recommended to the council the merging of the Recreation, Stadium, and Fish Commissions into one body of fourteen members.

Rat Control

POPULAR GOVERNMENT prints below the ordinance passed this summer by the city of Greensboro, which describes in detail the conditions which must be met in maintaining rat-free premises. Careful wording and clear definition of terms help to make this an effective ordinance.

ARTICLE 4

"*An ordinance 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.*"

Section 1. Definitions: That for the purpose of this ordinance the following definitions shall apply:

(A) The term "Business building" shall mean any structure, whether public or private, in the City of Greensboro, that is adapted for occupancy for transaction of business, for rendering of professional service, for amusement, for the display, sale or storage of goods,

wares, or merchandise, or for the performance of work or labor, including, but not being limited to, hotels, rooming houses, buildings designed to house or housing two (2) or more families, office buildings, public buildings, stores, theatres, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories, and all outhouses, sheds, barns, and other structures on premises used for business purposes.

(B) The term "Opening" shall refer to any opening in foundation, sides, or walls, ground or first floor, basement, including chimneys, eaves, grills, windows, ventilators, and walk grates, and elevators, and any pipes, wires, or other installations through which a rat may enter.

(C) The term "Rat stoppage or rat-proofing" used herein applies to a form of rat-proofing to prevent ingress of rats into business buildings from the exterior or from one building to another. It consists essentially of the closing, with material impervious to rat gnawing, of all openings in the exterior walls, ground or first floors, basements, roofs, and foundations, that may be reached by rats from the ground, by climbing, or by burrowing.

(D) The term "Rat Harborage" shall mean any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under, or outside of a structure of any kind, including, but not limited to, conditions on vacant lots, creeks, branches, ditches, rubbish heaps, junk yards, and any other places, inside or outside of structure which affords shelter or provides a place or situation favoring the breeding, multiplication or continued existence of rats.

(E) The term "Rat eradication" means the removal, killing, destruction and extermination of rats by systematic use of traps, or by poisons, and by other methods.

(F) The term "Health Officer" means the Chief Health Officer of the City of Greensboro, and it also means any persons whom he has authorized to perform any of the powers or duties hereby conferred upon him.

(G) The term "Owner" shall mean the person owning the business building or premises, or agent of the building or premises, or other persons having custody of the building or premises, or to whom rent is paid. In the case of business buildings leased or rented with a covenant in the lease or other agreement under which the lessee is responsible for maintenance and repairs, the lessee shall also be considered in such cases as the "owner" for the purpose of this ordinance.

(Continued on next page)

Counties

Mental Health Survey

A contribution in the amount of two-thirds the salary and expenses of an additional worker for the *Buncombe* County welfare staff for one year will enable all members of the staff to devote some time to securing information about feeblemindedness and insanity in the county. Activities of the staff in this effort will include: (1) compiling a list of persons in Buncombe county thought to be insane or feebleminded, (2) arranging examinations which will permit definite decisions regarding the insanity or feeblemindedness of persons on this list, (3) determining the birth-rate and taking a count of children among these groups of persons known to be feebleminded or insane, and (4) taking steps to reduce this birth-rate, e.g., by sterilization or segregation.

Property Revaluation

Acting on the recommendations of Thomas J. Gill, County Auditor, the board of commissioners of *Scotland* on December 6 appointed a five-member Advisory Revaluation Board. The duty of the Board is to set up Standards of Value which may be easily applied to different types of property in the county, the Standards of Value to reflect as nearly as possible the true cash value of the properties valued. When all property has been appraised at actual value, the assessment for tax purposes can be made in the amount of any desired per cent of the appraised value. The five members of the Board appointed represent, respectively, the following interests: real estate, building, agricultural, industrial, and banking.

Voting Machines

The *Guilford* county board of elections is considering the cost and relative advantages of the use of automatic voting machines as an alternative to creating new voting precincts. Need for precinct boundary changes became apparent in the last general election when some voting places were overcrowded. Board members have estimated that if machines were introduced in several populous Greensboro precincts, savings resulting from reduction in number of assistants, printing and circulation of

ballots, and construction of additional ballot boxes will equal the cost of the machines in a few years. A possible bottleneck in checking registration books will be prevented by using duplicate books. The machines can be used for all kinds of elections, including bond issues and referendums.

Cities and Towns

(Continued from page 17)

(H) The term "Occupant" as herein used, shall mean the person that has the use of or occupies any business building or any part thereof, or who has the use or possession, actual or constructive, of the premises, whether the actual owner or tenant. In the case of vacant buildings or in case of occupancy in whole or in part by the owner, the owner and agent of the building shall be deemed to be, and shall have the responsibility of an occupant of such building.

(I) The term "Agent" shall mean the person who manages or has the custody of a business building and shall also mean the person to whom rent thereon, if any, is paid.

(J) The term "Person" shall mean individual, partnership, corporation or association.

(K) The singular shall include the plural, and the masculine shall include the feminine.

Section 2. Rat-proofing Required. All business buildings shall be rat-proofed, freed of rats, and maintained in a rat-proof and rat-free condition by the Agents, Owners, or Occupants thereof, under the terms and conditions herein provided.

Section 3. Inspection, Notices. The Chief Health Officer is authorized to make such unannounced inspections of the interior and exterior of business buildings as, in his opinion, may be necessary to determine full compliance with this Ordinance, and he shall make periodical inspections at intervals of not more than six (6) months of all rat-stopped buildings to determine evidence of breaks or leaks in their rat-proofing and when any evidence is found indicating the presence of rats or openings through which rats may enter, or any conditions that need remedying in order that such building may be in a rat-proof condition and freed of rats, he shall serve the agent, owner, or occupant of such building with notice to abate the conditions found and may specify what such agent, owner, or occupant shall do in order to comply with the notice. Without limiting the generality of the foregoing, the Chief Health Officer is authorized to notify such agent, owner, or occupant to do any or all of the following: rat-proof the building; repair breaks and leaks in existing rat-proofing; whenever conditions inside or under a business building provide such extensive harborage for rats that the Chief Health Officer finds it necessary to eliminate such harborage, he may require the owner to install suitable cement floors in basements, or to replace wooden first or ground floors or require its owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time.

Section 4. Compliance with Notices Required. If any agent, owner, or occupant of a business building fails within fifteen days after the receipt of a notice, such as is provided for in Section 3, effectively to commence compliance therewith, or if he fails to complete compliance therewith within the time specified therein (which shall not be less than thirty (30) days from the service of the notice), he shall be guilty of a violation of this Ordinance and each day's delay beyond the said periods shall constitute a separate offense. The Chief Health Officer may, for cause shown, grant extensions of the periods herein provided for, but no agent, owner or occupant shall fail to commence or complete the required work within the time of such extensions.

Section 5. Default. The City may do rat-proofing and rat eradication if any owner, agent, or occupant fails to comply with the notice given in accordance with Section 3. The Chief Health Officer is authorized, at the expense of the City to do those things required by the notice, which said expense, including cost of all labor done and materials and equipment furnished shall be reimbursed to the City by the agent, owner, or occupant. The City may collect such cost by suit or other legal means. If an owner or occupant fails to comply with a notice served on him, the expense incurred shall be certified by the Chief Health Officer to the City Clerk, who shall certify the same as provided in the Charter of the City of Greensboro, the same being Section 66, and shall be collected by the City Tax Collector in the same manner as taxes are collected. If the City rat-proofs and rat-frees a building, the City shall, upon completion of this work, submit a written notice to the owner and occupant of said building that the premises are in a rat-proof and rat-free condition. If the owner or occupant does not notify the City within five (5) days after receipt of this notice that such is not the case, it then becomes the responsibility of the owner, to maintain the rat-proofing and the responsibility of the occupant to maintain the premises in a rat free condition.

Section 6. Service of Notice. Notices may be served as follows upon agents, owners, and occupants in any of the following ways: By personal delivery; by mailing to such person's last known address; in case of a vacant business building or part thereof, when the agent or owner of same cannot be found within the County of Guilford after due diligence, or his mailing address cannot be determined, then a notice posted upon the premises in some conspicuous place will be deemed service upon such agent and owner.

Section 7. Method of Accomplishing Rat-Proofing. Any agent, owner or occupant of a business building in complying with the provisions of this Ordinance may do the necessary work himself or may engage a contractor to do the work, or may have the work performed by the employment of such labor and the purchase of such materials as may be necessary in a manner and according to plans approved by the Chief Health Officer. At the option of such agent, owner or occupant, however, he may make application to the Chief Health Officer who will have the necessary rat-proofing or the work of rat-eliminating done at cost. The cost in each such case, whether for original rat-proofing, or rat-freeing a building, or renewals thereof, or for complying with the provisions of any notice shall be agreed upon by the agent, owner, or occupant, as the case may be, and the Chief Health Officer, prior to the doing of the said work and the amount agreed upon shall be paid in each case to the City Treasurer. The following minimum specifications shall be followed in rat-proofing all buildings in the City of Greensboro, N. C.:

(A) General. All existing business buildings, new construction of business buildings, renovation or remodeling of business buildings must have installed proper footings; proper screening of doors, windows, vents, fans, etc.; proper closing of all holes in outside wall larger than one-half (½) inch; proper repair of doors, door sills, door casings, door transoms; and the removal of harborages. Screens for all food establishments will include sixteen (16) mesh to the inch fly screen and one-half (½) inch mesh nineteen (19) gauge galvanized hardware cloth. Rat guards made of twenty-four (24) gauge galvanized metal or brick mortar shall be properly placed in or around pipe and wire openings through the exterior walls of the building.

(B) Methods and Materials. Footings for all business buildings shall conform to the building code for depth and shall also have a twelve (12) inch horizontal flange at the base of the footing projecting away from the building and on the entire perimeter of the building. In lieu of this added flange, a solid concrete floor, if poured on solid ground, will be acceptable. All window screens, vent screens, fan screens, and transom screens, from which rats may gain entrance to the building, shall be made of nineteen (19) gauge one-half (½) inch mesh or smaller galvanized hardware cloth in a metal frame made of twenty-four (24) gauge galvanized sheet metal. The metal frame shall be made of three (3) inch strips of metal bent to form a closed channel for each side, top, and bottom of the screen. The corners shall be cut in such a manner as to give a double lock joint at each corner. The cloth shall be riveted to the frame with number two tinners rivets. Screens shall be fastened to the casings with screws to facilitate cleaning the windows or replacing of broken glass. Door flashings shall be made of eight (8) inch strips of twenty-four (24) gauge sheet metal bent to form a three and one-quarter (3¼) inch flashing on the outside of the door, a two and one-quarter (2¼) inch flashing on the inside of the door, and an eight (8) inch flashing on lower half of the door where it meets the casing. Tight fitting doors on the front of a building that will be well lighted at night do not need to be flashed.

(C) Workmanship. All metal work shall be bent on a metal bending brake to assure smooth, even bends. Holes in flashing and metal frames shall be made with a standard metal punch to assure neat work. Sufficient braces shall be placed in screens to hold the hardware cloth in a flat plane. The flashing shall form a symmetrical pattern at the base of the door casing, both in cross section and elevation.

(D) Supervision. All rat-proofing shall be under supervision of the Typhus Control Unit, and must pass inspection by the Typhus Control Inspector of the Health Department of Greensboro, N. C.

Section 8. Failure to Restore Rat-proofing. It shall be unlawful for any agent, owner, occupant, contractor, public utility company, plumber, electrician, steam fitter or other person to remove rat-proofing from any business building for any purpose and fail immediately thereafter to restore the same in a rat-proof condition or to make any new openings that are not immediately thereafter closed or sealed against the entrance of rats.

Section 9. Feedstuffs. No person shall keep within the City of Greensboro food for feeding chickens, cows, pigs, horses, or other animals, except stored in rat-free and rat-proof containers, compartments or rooms unless same is kept in a rat-proof building.

Section 10. Garbage and Refuse. Within the City of Greensboro, no person shall place any garbage or refuse consisting of waste animal or vegetable matter, or small dead animals upon which rats may feed except in covered containers of a type prescribed by City Ordinance and at a point where the same will be

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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

A. Matters Relating to Tax Listing and Assessing

12. Exemptions—veterans

To John R. Jenkins.

(A.G.) I am of the opinion that the Veteran's exemption provided for in G.S. 105-344 extends only to the original compensation, whether it be money or an automobile, and does not attach to other and different property into which the cash or automobile may be converted. Consequently, if a veteran trades in the automobile, given him as an amputee by the Federal Government, for another car, I do not believe the new car is exempt from ad valorem taxes.

V. COUNTY AND CITY FINANCE

W. Retirement and Pension System

To Nathan H. Yelton.

Inquiry: Under the Local Governmental Employees Retirement System, would the financing of the retirement of city employees be affected by a charter provision forbidding the city council, without the approval of the electorate, to contract any indebtedness for necessary purposes in amounts that cannot be paid out of current revenues to accrue during the term of office of the council?

(A.G.) The Retirement System contemplates a continuous system of financing the retirement of employees once a city or town has elected to become a member of the System. It cannot function on a term-to-term basis depending on whether one council will authorize the use of the funds when another council opposed to retirement would withhold funds. It is my opinion that the General Statutes governing the Retirement System, and especially those statutes dealing with the financing of the program, set forth a general State policy; and such statutes are controlling notwithstanding any charter restrictions by public-local and private acts. If the city becomes a member of the System, it will be required by the Retirement Act to finance its participation so long as it remains a member of the System and without reference to the Charter provision.

X. Funds in Lieu of Taxes from Federal and State Government

1. Distribution

To Ed Whitaker.

Inquiry: Can funds received by a county from the TVA by way of compensation for taxes lost because of lands appropriated by condemnation or purchase for the purpose of hydroelectric development be used by the county for the construction and equipment of a publicly-owned or non-profit hospital, as contemplated by the law governing the Medical Care Commission?

(A.G.) Funds appropriated for the construction and equipment of hospitals are not considered as being funds spent under the definition of necessary expenses but such expenditures are considered as being for a public purpose. In addition the Medical Care Commission Act specifically authorizes such expenditures for hospital purposes. While the funds received from the TVA are said to be in lieu of taxes, and the amount is based on taxes received in prior periods, still the funds do not partake of nor are they impressed with the inherent qualifications of taxes. These funds are not converted into tax funds by the very fact that the motive or cause of their payment is a tax loss by the county. We are of the opinion, therefore, that your county can use these funds for the construction and maintenance of hospitals or for any public hospital or non-profit hospital that falls within the category of those institutions defined in the Medical Care Commission Act.

HARRY McMULLAN

Attorney General of North Carolina

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

A. Contractual Powers

To Thomas C. Hoyle.

Inquiry: Does a county have authority to contract with a city to house and feed county prisoners engaged in the maintenance of a county building within the city limits?

(A.G.) While there is no specific authority for such action, I am inclined to the view that, in G.S. 153-9(26) there is implied authority for the county commissioners to enter into a reasonable contract with the city to house and feed such county prisoners as it may be necessary to use for the upkeep of the county building.

B. County Agencies

1. Power of agencies to sue and be sued

To Leon T. Vaughan.

Inquiry: Does a County ABC Board have authority to institute a suit for the recovery of damages to its truck because of the reckless driving of another party; and who is the proper party plaintiff?

(A.G.) The statute does not give any county ABC Board the power to sue or be sued. I believe it could be done by making the County and the County ABC Board and its members in their official capacities, parties plaintiff. If either one of these is not a necessary or proper party, it would not be fatal to your suit, as the Court would merely order the elimination of the improper party.

X. Grants and Contributions by Counties

26. Memorials for service men

To M. G. Stamey.

Inquiry: Do county commissioners have the authority to appropriate funds for the purpose of developing and beautifying a memorial cemetery lot for the burial of veterans of World Wars I and II?

(A.G.) I am inclined to think that there is no such authority. However, by the provisions of G.S. 100-10, 1947 Cumulative Supplement, counties and towns, by proper resolution, may become members of any memorial association for the perpetuation of the memory of soldiers and sailors of this State who have served in the Armed Forces, and may subscribe and pay toward the cost of the erection of any memorial to the memory of such soldiers and sailors such sums of money as the governing body may determine. I am not prepared to say officially that a contribution toward developing and beautifying a cemetery would be "erection of any memorial" within the meaning of the statute referred to.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

A. County Commissioners

14. Powers general

To J. A. Shaw.

Inquiry: Is there legal authority for a Board of County Commissioners to employ a deputy sheriff, or to pay a township constable a salary and authorize him to act as a deputy sheriff, in order to give police protection to a section of the county not having any police?

(A.G.) The county commissioners do not have the authority to employ a deputy sheriff in the absence of a public-local act specifically authorizing them to do so. They cannot pay

a township constable a salary and authorize him to act as a deputy sheriff because this would be double office-holding, within the meaning of Article XIV, section 7 of the Constitution.

31. Appointive powers

To T. G. Stem.

Inquiry: This county has a Recorder's Court and in the election on November 2, the present Recorder was re-elected. However, he died on November 19, before being sworn in for the new term beginning on December 6. Can the county commissioners, under the authority of G.S. 7-219 fill the vacancy for the present term, as well as the term for which the deceased had been elected?

(A.G.) It is my opinion that the commissioners can fill the vacancy for the present term as well as the term for which, because of his death, the deceased failed to qualify.

SWEARING-IN OF COUNTY OFFICERS

To Paul A. Swicegood.

Inquiry: Is it permissible for the Clerk of the Superior Court to swear in the County Commissioners and the other county elected officers?

(A.G.) The clerk is authorized to swear in the County Commissioners under G.S. 153-7. The oaths of office to the other county officers can be legally administered by the chairman of the Board of County Commissioners, after he has been sworn in. See G.S. 153-9(11); G.S. 11-9; G.S. 161-3; and G.S. 151-2. I do not find any statute which authorizes the administration of oaths by the Clerk of the Court, except to the members of the Board of County Commissioners.

D. Register of Deeds

1. Fees

To Paul G. Noell.

Inquiry: Are registers of deeds and officers of county health departments required to furnish copies of such records as birth, marriage, and death certificates to veterans and their dependents free of charge, when to be used in connection with claims with the Veterans Administration?

(A.G.) G.S. 165-20, 21, and 22, taken together, require the officials of these two departments to furnish these records to veterans, upon application of a representative of the North Carolina Veterans Commission, where it is necessary to have such record to secure for such veteran or his dependents any benefit under any Federal, State or local law.

5. Probate and registration

To S. E. Allen.

(A.G.) The fact that Chapter 105 of the Public Laws of 1923 has been brought forward in the Code as the second paragraph of G.S. 47-30 does not eliminate the necessity of probating plats to be recorded in compliance with the first paragraph of that section. Chapter 105 was originally a curative statute, validating the recording of certain plats which had not been probated. It is my opinion that all plats to be recorded by the register of deeds should be probated in accordance with the first paragraph of G.S. 47-30.

9. Marriage—licenses and certificates.

To A. J. Walton.

Inquiry: May a register of deeds issue a duplicate marriage license where his records do not show that the license was ever returned, but the officiating minister and witness sign an affidavit that the marriage was performed?

(A.G.) I think you can issue a duplicate license, attach this affidavit to the duplicate, and file same in place of the original. You should have the minister make the necessary return on the duplicate.

HUGHES J. RHODES

Assistant Attorney General

L. Local Law Enforcement Officers

42. Operating motor with improper license

To R. L. Apple.

Inquiry: Must the operator of a for hire vehicle have a chauffeur's license when he is operating the vehicle on a personal errand, and is not using the vehicle as one for hire on that particular occasion?

(A.G.) I am of the opinion that no chauffeur's license is needed under the circumstances outlined. Whether a chauffeur's license is needed or not depends on the particular operation in which the person is engaged at the time the question arises. This seems to follow from the language of G.S. 20-6, defining chauffeur to mean "every person who drives any motor vehicle *while in use* as a public or common carrier for persons or property."

To N. E. Batchelor.

Inquiry: Is there a period during which a new resident of North Carolina may operate a motor vehicle over the highways of this state without securing a North Carolina operator's license?

(A.G.) There is no period of time during which a new resident of the state is permitted to operate a vehicle on the highways of this state. Only a non-resident is exempted from the provisions of our Uniform Driver's License Act, G.S. 20-8.

To James H. Coleman.

(A.G.) The Uniform Driver's License Act does not apply to persons while driving or operating road machines, farm tractors or implements of husbandry temporarily operated or moved on a highway. G.S. 20-8. Under this provision I advise that, in my opinion, it is legal for a person whose operator's license has been revoked to drive a farm tractor from one farm to another.

JOINT POSSESSION OF WHISKEY

To John H. Zollicoffer.

Inquiry: Has the law been broken where a taxicab brings a passenger into a wet county and the passenger buys more than a gallon of whiskey; on being stopped the operator and the passenger claim that each owns a part of the whiskey, each part being less than a gallon?

(A.G.) We think that in such a case both parties can be indicted and it is possible for them to be convicted for the possession of this whiskey which is in excess of one gallon since possession of whiskey can be joint possession; and the defendants can be indicted for aiding and abetting each other in the possession of the illegal whiskey. See *State v. Meyers*, 190 N.C. 239. *French v. Commonwealth*, 249 S.W. 761 (Ky. 1923). *Miers v. State*, 60 S.W. (2d) 217 (Texas, 1933).

67. Possession of weapons

To Norman Gold.

Inquiry: Can a court confiscate a pistol purchased without a permit?

(A.G.) There is no provision in Article 53 of Chapter 14 of the General Statutes authorizing the forfeiture or confiscation of weapons purchased contrary to the provisions of the Article. Since forfeitures are not favored, I am of the opinion that the pistol can not be confiscated.

69. Concealed weapons

To Lee Mullen.

Inquiry: Is a person guilty of carrying a concealed weapon, if he is carrying a revolver which has been dismantled, part being carried in one pocket and part in another?

(A.G.) Our Supreme Court has not passed on the question of whether or not a defective pistol is a concealed weapon within the meaning of our statutes. However, it is the opinion of this office that should the question be presented to our court it would hold, in accord with the majority of other jurisdictions, that carrying a defective concealed weapon is violative of the law.

M. Health and Welfare Officers

31. Health laws and regulations

To Dr. C. P. Stevick.

Inquiry: Is the county health officer required to perform the physical examinations provided for school teachers in G.S. 115-140; for food handlers under regulations of the State Board of Health as authorized by G.S. 72-46; for domestic servants in G.S. 130-239; and for applicants for marriage licenses in G.S. 51-9? If the county health department does perform these examinations, may it charge and collect fees?

(A.G.) I am definitely of the opinion that the county health officer is not required, as a mandatory duty, to perform these examinations unless the applicant is an indigent person and cannot pay a regularly licensed physician, other than the county health officer. I think the various health departments can formulate regulations governing the charging of fees, and that they can fix reasonable fees or charges for this type of work, to be collected from those persons able to pay the same.

RALPH MOODY

Assistant Attorney General

T. Justices of the Peace

10. Jurisdiction

To C. C. Baliff.

(A.G.) Violation of the regulations of the Commissioner of Motor Vehicles concerning periods during which certificates of inspection must be displayed on such vehicles, is a violation of G.S. 20-183, it is a misdemeanor and punishable in the discretion of the court. Since the punishment is not restricted to a fine of $50.00 or imprisonment for not more than thirty days, this offense is not within the final jurisdiction of the Justice of the Peace.

U. Notary Public

15. Seal

To Charles B. McLean.

Inquiry: In the case of a woman notary public who marries, may she continue using the seal containing her maiden name, and what signature should she use?

(A.G.) In my opinion she could continue to use the seal she had before she was married. I think that she should sign her name as it appears on the seal, adding after her maiden name her husband's family name. If she continues to have her commission renewed, it may be desirable to change the seal to correspond with her signature.

Z. Constables

2. Vacancies

To Thomas E. Rhodes.

Inquiry: Whose duty would it be to appoint a constable duly elected but (1) who failed to qualify for office; (2) who qualified but resigned?

(A.G.) Sec. 151-6 of the General Statutes specifically provides that upon death, failure to qualify, removal, or failure of the voters of a township to elect a constable, the board of commissioners may appoint another person to fill the vacancy. The case where a constable resigns would be taken care of by Article IV, Section 24 of the Constitution of this state, the last sentence of which provides that "In the case of a vacancy existing for any cause in any of the offices created by this section, the commissioners of the county may appoint to such office for the unexpired term."

XI. ELECTIONS

P. Beer and Wine Elections

5. Time of holding

To Zeb V. Long.

Inquiry: In view of Section 1(f) of Chapter 1084 requiring that Wine and Beer Elections not be held within 60 days of the holding of any general, special, or primary election, is it possible to hold the registration for such election within the 60 days following the election of November 2nd?

(A.G.) I am of the opinion that all of the necessary steps may be taken prior to the expiration of the 60 day period, but the election itself should be held after the expiration of such period.

T. Payment of Election Officials

To Bickett Holcomb.

Inquiry: Are election officials to be paid at the time the Chairman presents the bill to the county accountant, when the funds have already been set up for that purpose, or do they have to wait until the bills are approved by the county commissioners on the first Monday in the month following the election?

(A.G.) The County Commissioners are required to authorize the payment of all claims against the county. The Board could, in advance of the rendering of the service by the election officials, set up the money for the purpose of paying them and authorize the county accountant to pay the bills when presented. The answer to your question, therefore, would depend on whether or not the Board has taken the action authorizing payment in advance.

Cities and Towns

(Continued from page 18)

available to be collected by the Sanitary Department.

Section 11. Rubbish; Trash. It shall be unlawful for any person within the City of Greensboro to place, leave, dump or permit to accumulate any garbage, rubbish or trash in any building or on any premises in a manner that does or may afford harborage for rats.

Section 12. New Construction. It shall be unlawful for any person to construct, renovate or remodel, or have constructed, renovated, or remodeled, any business building in whole or in part, in the City of Greensboro unless the same is equipped with rat-proofing and no building permit for the construction, renovation or remodeling for any business building shall be issued unless the plans for same include rat-proofing.

Section 13. Health Officer. The Chief Health Officer shall have such powers as may be necessary or useful to carry out and effectuate the purposes and provisions of this Ordinance, including (without limiting the generality of the foregoing) the following powers in addition to others herein granted: To investigate conditions anywhere in the City of Greensboro in order to determine whether or not such conditions are, or not, conducive to the existence or spread of endemic typhus fever or constitute a violation of this Ordinance, and for this purpose he may enter upon and within premises, dwellings and buildings of all sorts for the purpose of making examinations and investigations, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession; in the case of vacant dwellings or buildings where, after due diligence, he is unable to get in touch with the agent, owner or occupant thereof, he is authorized for the purpose of making such examination and investigations, to enter forcibly; fix the duties of such officers, agents and employees as he deems necessary to carry out the purpose of this Ordinance; to delegate any of his functions and powers under this Ordinance to such officers and agents as he may designate.

Section 14. Penalties. Any person who shall violate any provisions of this Ordinance shall be guilty of a misdemeanor and shall be fined or imprisoned as provided by G.S. 14-4.

Section 15. Severance Clause. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent of the Council that if any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Section 2. That this ordinance shall become effective on the 1st day of July, 1948.

Slum Clearance

During the first four months of enforcement of the Standard House Ordinance, *Charlotte* landlords brought 675 houses up to standard by repair and installations. The City Plumbing Office reports that complete plumbing fixtures have been installed in 235 substandard houses since August 1. A number of other property owners have started such work. James E. Ritch, housing enforcement officer, states that of 596 houses inspected during the period only 36 were found to be beyond repair. The Standard House Ordinance now being enforced requires inside running water, sink, toilet, electric lights, and screens on windows and doors.

Delapidated dwelling-houses in Baltimore have been cleaned, repaired, and refurbished; two thousand houses have been made cleaner and safer by improvements made to satisfy the terms of an ordinance which provides for nonconformists fines large enough "to take the profit out of . . . violations."

Slum clearance is receiving attention also in *Winston-Salem* and in *Durham*, where the Chamber of Commerce has recommended consideration of the problem by the City Planning Department.

Report From Washington

1949 Legislative Program

Interpreted as evidence of a liberal swing on the part of the American people, the Democratic victory has brought in its wake a full program of proposed social legislation to be considered by the new Congress when they meet later this month. On the docket are some of the most far-reaching plans for health, housing, and social welfare in the nation's history. The actual scope of the bills to be proposed will not be fully revealed until the President makes his recommendations in his state of the union and budget messages, but it is generally believed that many of the legislative programs submitted to him in December by the various federal agencies are not out of line with Mr. Truman's own previously expressed views.

Social Security

One of the most sweeping of these programs was made public last month when Federal Security Administrator Oscar Ewing submitted his proposals for a greatly broadened Social Security program which might add an estimated $1,000,000,000 to the national budget if approved by Congress. If adopted, the plan would bring under Social Security protection more than 20 million additional wage-earners, including employees of federal, state, and local governments, in addition to the 35 million now covered. Farm workers, domestic help, the self-employed, institutional employees, and members of the armed forces would also be included. An increase of at least 50% in the amount presently paid for pensions and survivors' benefits was also asked.

Health Insurance

It is almost certain that President Truman will recommend to Congress the portion of the Federal Security Administration report dealing with health insurance, which would guarantee to every man, woman, and child in the nation medical care from cradle to grave. Senator James E. Murray, Democrat from Montana, has announced that he would again bring before Congress his health insurance bill, termed by Mr. Ewing the "keystone" of the Federal Security Agency's ten year plan for health improvement. The bill calls for a program under which salaried workers would regularly pay a small percentage of their incomes, with employees matching the sum, to the federal government in a manner similar to the collection of Social Security taxes. The funds would then be turned over to the states, which would have almost the sole administrative responsibility over them, operating through local boards or doctors and laymen. The local boards in each area could determine the method of payment, either on a fee basis for each call or by a straight salary, to be made to the participating doctors in that particular area. Doctors would be free to participate in the program or not, as they wished, and a patient would be free to go to any doctor of his choice as long as the doctor was taking part in the program. The FSA is asking for an appropriation of $15,000,000 to cover the initial costs of the health insurance program.

Housing

Again this year, after having failed of passage twice, long-range housing legislation will be up for Congressional approval, with the President's full endorsement. The new bill is expected to be similar to the ill-fated Taft-Ellender-Wagner bill, and will cover three major areas of public housing —slum clearance, federal housing projects, and rural or farm housing. Provisions will be made for federal grants to cities to cover losses involved in clearing slum areas and redeveloping them for residential use; federal aid would match funds from local governments to provide minimum standard housing for low-income groups; and the federal government would help finance the modernization and new construction of farm homes through guaranteed loans to farmers and grants and subsidies. In asking for adoption of the comprehensive housing program, supporters of the proposed bill cite the existing need for 6,000,000 new home units.

Education

For 30 years bills providing for federal aid to education have been introduced before Congress, and this year will be no exception. With strong support from the administration, however, the proposal will have a better than even chance before the 81st Congress. The 1949 bill is expected to be modeled closely after the Taft bill which was passed by the Senate last year and which succeeded in reaching compromises on some of the more controversial issues involved in the question. Under the bill $300,000,000 would be distributed among the states to raise the average annual state expenditure per child on schooling to at least $50. This would mean that poorer states would receive far more aid than wealthier ones, many of which spend as much as $125 a year per child. The bill deals with possible federal encroachment in education by limiting the government's position in the plan to that of a bookkeeper charged with distributing the money according to a financial formula. Private or religious schools would receive federal money only in such states in which the law already provides that such schools will receive public funds. Even under the Taft bill 85 per cent of school support would remain the responsibility of state and local governments, but the bill's supporters point to the proposed initial apropriation as a step towards correcting the inequities existing in educational opportunities between rural and metropolitan areas and between the poorer and wealthier regions of the nation.

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