SEPTEMBER-OCTOBER, 1949

POPULAR GOVERNMENT

The Carolina Charter—1663

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

The Carolina Charter

The document reproduced in part on the cover is the birth certificate of North Carolina. It is the charter of Carolina, 1663, under which the area was first permanently settled and the first lasting government established. It ranks among the most important documents of North Carolina history, including the other charters to the region, the Fundamental Constitutions of 1669, and the state constitutions of 1776 and 1868.

The 1663 charter was the fourth issued by the British crown that included the area that is now North Carolina or parts thereof. The first was granted by Queen Elizabeth in 1584 to Sir Walter Raleigh and his half brother Sir Humphrey Gilbert for a vast region called Virginia. The second was the charter of Virginia, granted in 1606 to the Virginia Company and voided in 1624. The third, which called the area Carolina, was granted in 1629 to Sir Robert Heath and was voided soon after 1660. The charter of 1663 granted Carolina (a vast area extending from Virginia southward to Spanish Florida and westward to the "South Seas" or Pacific Ocean) to eight lords proprietors, favorites of King Charles II. Two years later another charter extended still farther the boundaries of the region. The proprietors, except Lord Granville, in 1729 sold the crown their rights to the area.

The document was offered for sale in 1947 by Mr. Charles W. Traylen, an antique manuscript dealer of Guildford, Surrey, England. Subsequently it was sent on approval to the North Carolina Department of Archives and History and since has been checked by many historians in this country and England, by experts on old paper, on ink, and on the handwriting of the period, and by other specialists. All have given a favorable report as to its authenticity. The Executive Board of the Department of Archives and History voted on September 16 to close the deal and to pay the price of 2,000 pounds sterling.

The necessary funds for the purchase have been generously subscribed by Mrs. Elizabeth H. Bahnson, Winston-Salem; the late George Gordon Battle, New York; Edwin P. Brown, Murfreesboro; Burnham S. Colburn, Asheville; Herman Cone, Greensboro; Mrs. Julius W. Cone, Greensboro; Ralph W. Gardner and the Gardner family, Shelby; Gordon Gray, Winston-Salem; Mrs. James A. Gray, Winston-Salem; Ralph P. Hanes, Winston-Salem; John Sprunt Hill, Durham; Mrs. John A. Kellenberger, Greensboro; Mrs. Graham Kenan, Wilmington; Mrs. J. E. Latham, Greensboro; K. P. Lewis, Durham; J. Spencer Love, Greensboro; James G. W. MacClamroch, Greensboro; John M. Morehead, New York; North Carolina Society for the Preservation of Antiquities; Ralph C. Price, Greensboro; W. N. Reynolds, Winston-Salem; Reuben B. Robertson, Canton; William H. Ruffin, Durham; and W. H. Woolard, Greenville.

The charter will be displayed in the Hall of History as soon as a special case for the purpose can be secured.

CHRISTOPHER CRITTENDEN, Director
State Department of Archives and History

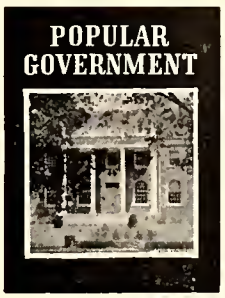
THE CLEARINGHOUSE

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

Rent De-Control

The question of home rule was before Congress early this spring when the legislators considered and approved an amendment to the new rent control bill which gives to local units of governments the power to de-control rents. The so-called "home rule provision" outlined three ways in which communities may end federal controls. 1.) The Governor of a state may notify the Housing Expediter that his state will replace federal rent controls with adequate state controls, in which case federal controls will end on the date that state control becomes effective. So far no state has taken advantage of this opportunity. 2.) The Housing Expediter will end federal rent controls in a state 15 days after notification of passage of a state law declaring that federal rent control is no longer necessary in that state. Only the Nebraska legislature has voted for statewide de-control of rents. Four states—Iowa, Tennessee, Oklahoma and North Carolina—have turned down de-control bills. 3.) The governing body of a city, town or village may find, after a public hearing, that rent control is no longer necessary in their community. If their resultant resolution is approved by the Governor, controls in that area will be lifted. This has been the most popular method of de-control, 16 cities and towns mainly in the south and southwest having used it. Eleven cities have submitted resolutions which Governors are still considering, and the resolution of one town, in Virginia, has been vetoed by Governor Tuck.

In North Carolina cautious governing officials have discussed the question but have taken little action. Davidson County was the first locality in the state to approach the Governor with a resolution calling for the end of rent controls throughout the county, but the legality of the action is doubtful since the law provides for such a move to be taken by incorporated communities and only after a public meeting has been held. The situation has a good chance of being straighened out, however, if Governor Scott approves a resolution recently tendered him by the city of Lexington, in Davidson, where the city council voted 5 to 1 for de-control immediately following a public hearing. Under the rent control law when controls are lifted in a municipality the Housing Expediter is also required to lift them in the surrounding unincorporated area. Consideration has been given to rent de-control in Greensboro and Newton, but action in both cities has been deferred, and in High Point a public hearing due to take place late in August was postponed indefinitely.



Sept.-Oct., 1949 Vol. 16, No. 1

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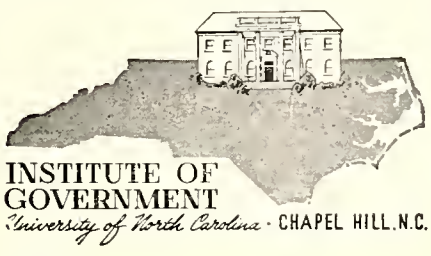
POPULAR GOVERNMENT is published nine times yearly by the Institute of Government, the University of North Carolina, Chapel Hill. Editor: Albert Coates; Associate Editors, W. M. Cochrane, Claude R. Edwards, George Esser, Philip P. Green, Jr., Donald B. Hayman, Henry W. Lewis, Ernest W. Machen, J. A. McMahon, Clifford Pace. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: Per year, $2.00, single copy, 25 cents. Advertising rates furnished on request. Entered as second class matter at the Post Office in Chapel Hill, N. C.



Intergovernmental Relations

In February a little publicized bill, S. 810, was introduced by eight Senators calling for the establishment of a permanent National Commission on Intergovernmental Relations. A slightly revised version of this bill—S. 1946—is now awaiting Congressional action. The duties of the 14-member bi-partisan commission provided for in the bill would be to conduct studies of an extremely broad yet intensive nature and to report to Congress each year on its activities and recommendations. Two general areas would be covered by the continuous study. The first includes "all past and present relations between the National, State and local governments, . . . the past and present allocation of governmental functions and powers among the National, State and local governments, . . . and the most desirable future allocation of governmental functions and powers among the National, State and local governments of the United States . . ." The second broad area of concern to the Commission would be intergovernmental fiscal relations, with special emphasis on intergovernmental tax immunities, tax competition between the three levels of government, and grants-in-aid, tax sharing and other similar devices for financial assistance. Members of the Commission would include two officers of the Executive branch and two private citizens appointed by the President, two Senators appointed by the President of the Senate, and Representatives appointed by the Speaker of the House. In addition, the President would choose three state officials, two

municipal officials and one county official from lists submitted by the Council of State Governments, American Municipal Association, International City Managers' Association, United States Conference of Mayors and the National Association of County Officials.

The bill is at present being studied by the Joint Congressional Subcommittee on Intergovernmental Relations. Last June Mayor J. Ray Shute of Monroe testified for the bill before the committee at the request of the American Municipal Association: "I have the feeling that both the National Congress and the state legislatures need to study more carefully the many and varied problems of government on the local level and in the light of this knowledge seek the proper implementation of a philosophy of mutual assistance which would at once prove a boon to all levels of government . . ."

From the Home of the Bean and the Cod

An old New England custom has been introduced into North Carolina by the citizens of Washington Park, a town of about 350 residents in Beaufort County. A bill passed by the General Assembly calls for the election of Washington Park's municipal officers at town meetings, to be held biennially on the first Tuesday after the first Monday in May. Qualified citizens will register in the usual way but on election day will meet together, nominate their candidates for office from the floor, and vote immediately afterward by secret written ballot. The votes will be counted and results announced on the spot. Such an election procedure is rare in North Carolina but is common throughout Maine, Massachusetts, Vermont and New Hampshire.

Durham City-County Zoning

The first step toward county zoning in Durham has been taken by the county zoning commission and the city planning board, which last spring approved the proposal of City Planning Director Frank L. Dieter to conduct a land use survey of the perimeter area outside of the city. The survey, which will serve as the basis for a county zoning ordinance, will take about five months to complete at a cost of $7,500 and is being done by University of North Carolina students in the department of city and regional planning. In mid-June a field party launched initial land-mapping operations in the suburban area. They will eventually cover approximately 55 square miles of territory surrounding the city as well as land along the main roads throughout the county. The project, financed by the county, is being directed jointly by the city and county on a cooperative basis, but the board of county commissioners will have final veto power over any county zoning ordinances drawn up.

Forsyth, in 1947, became the first county to begin zoning operations when the General Assembly authorized the county and the city of Winston-Salem to engage either in separate or joint planning activity. Durham is the second North Carolina county to have such power, granted in a special act of the 1949 legislature, SB 387, which enables the county of Durham to adopt and enforce zoning regulations for all county territory outside municipal corporations. The 1949 legislature also gave to Craven and Carteret counties the power to establish a joint zoning commission to adopt regulations governing the Cherry Point Marine Corps Air Station, which covers portions of both counties. And the town of Chapel Hill, in HB 1004, was authorized to exercise "perimeter zoning" powers in the territory outside the town and within one mile of it.

Upstairs Parking Lot

Governing officials and other citizens of Raleigh returned from a visit to Bluefield, W. Va. this summer with unstinted praise for that city's method of solving its parking problem. One short block from the center of Bluefield's shopping district lies an imposing granite structure, one of only three municipally owned and operated parking buildings in the United States.

The project, which cost a total of about $550,000, was financed partly by the city and mainly by $495,000 worth of self-liquidating revenue bonds authorized by the legislature. The building normally holds 800 cars on three levels, each with direct access to the street. Under emergency conditions as many as 1,000 cars can be parked there. Parking fees are collected at the rate of 25c for the first two hours, an additional 10c for the third hour, and 5c for each additional hour up to six. The overnight charge for parking is one dollar. Bluefield officials reported that the building is paying for itself and estimated that it will bring in a surplus of more than $500,000 over a thirty-year period.

The ubiquitous parking problem, which is currently troubling officials of almost every major city in North Carolina, made the parking building Bluefield's main postwar municipal project two years ago, and, Mayor A. Harry Vest told the Raleigh contingent: "Today if we didn't have this building I don't know what we would do."

Although it is not certain whether or not North Carolina cities have authority to erect parking building such as Bluefield's, G.S. 160-200 (31) does give to all cities and towns the power to own and operate municipal parking lots and to charge for the use of them.

Buggs Island Budget

The progress from the Executive Department through the Congress of the appropriation bill to finance the Buggs Island Dam has perhaps resembled nothing so much as a hectic ride on a delicately balanced see-saw. Two years ago the corps of Army engineers outlined the six-year building program on the Roanoke River in Virginia and set $19,200,000 as the amount necessary for construction in 1949-50. This requested appropriation took a sudden drop downward when the director of the budget reduced it to $16,500,000 in January, and thumpingly hit bottom when the House of Representatives further reduced it to $12,277,500 in early spring. In June the appropriation figure shot up again, this time to $18,500,000 when the Senate almost unanimously approved such an amount. After teetering in mid-air all summer while a joint Senate and House conference committee sought a compromise on the sum to be allotted, the bill finally came to rest early in September carrying an appropriation of $15,500,000.

The Buggs Island Dam is the first of a series which the government hopes to build in the Roanoke Basin of Virginia and North Carolina, comprising the valleys of the Dan, Staunton, Roanoke and Smith rivers. The project, when completed will furnish

flood control, electric development, recreational facilities and stream pollution control over wide areas in North Carolina and Virginia. The two states will share equally in the estimated 200,000,000 kilowatt hours of electricity to be produced annually by the Buggs Island dam. The dam is also expected to put an end to the floods which have done more than $16,000,000 worth of damage in North Carolina within the past 50 years. The tax losses to six counties which will be caused by the necessity of flooding parts of them will be reimbursed each year by Congressional appropriation.

Open Season on Urban Rats

With the pumpkin ripening on the vine and the leaves beginning to turn, the approach of late Autumn again means that rat-control season has returned. Last year 200 million bushels of grain in this country never reached the markets but went toward the upkeep of a standing army of rats which easily exceeded in numbers the nation's human population. Since the average rat requires $20 a year in food and shelter, chances are that most Americans are contributing substantial portions of their family budgets this year toward the maintenance of a most unwanted pet. And this cost represents food and property losses only, not the vast toll of human lives taken by typhus, tularemia, trichinosis and food-poisoning, only a few of the rat-borne diseases. Last year, the 600th anniversary of the almost legendary Black Plague, typhus reached epidemic proportions in parts of the south and spread rapidly northward across the Ohio river

City authorities are realizing that individual action by property owners and sporadic rat-killing campaigns bring only illusory results. While an impressive number of rat carcasses is produced, rats, like "schmoos" continue to multiply at an accelerated rate, and with less beneficial effects. The National Committee for Rat Control cites a case in which poisoning drives taking place during a two-year period in a section of Baltimore, where 100 rats were estimated to be living in 1946, resulted in the killing of 145 rats by 1948. Meanwhile the number of living rats in the area had increased to 150.

Traditionally the autumn months have been the time for yearly rat-killing campaigns, but this year municipal health officials are looking beyond December and attempting to attack the root of the problem. It has been estimated that if basically unsanitary conditions are eliminated, the rat population will automatically be reduced by 50 per cent. In an effort to insure unanimous cooperation from citizens in meeting the problem through more sanitary measures, a few cities have replaced brief ordinances which simply penalize the harboring of rats, with more comprehensive ordinances requiring the property owner to take the basic steps which will prevent rats from entering his premises. The most modern of this type of ordinance provides for rat-proofing by the city if the property owner fails to, and requires the owner to pay the costs. These ordinances have been upheld by the courts, except in cases where their administration was shown to be arbitrary or discriminatory.

Greensboro and Charlotte are among major North Carolina cities having rat control ordinances which may serve as models in other parts of the country. In addition to outlining actual measures for building owners to take in rat-proofing their premises, these ordinances contain three strongly worded provisions which lend effectiveness to the cities' anti-rat campaigns. 1.) The Chief Health Officer is authorized to make unannounced inspections of any building at any time to see that rat-proofing measures have been taken and he may order the owner to correct any conditions which allow for the entry or harboring of rats in the building. 2.) If the owner fails to comply with such an order he shall be guilty of violating the ordinance and will be subject to fine or imprisonment. 3.) If the order is not carried out, the Chief Health Officer is authorized to have the rat-proofing done by the city, the cost of labor, materials, and equipment to be paid by the owner and collected by the Tax Collector.

Leaksville Unites Within Itself

After four years of keeping two sets of administrative machinery going within the city limits, the citizens of Leaksville voted decisively this spring to end the duplication of functions and to become one in fact as well as in name. The unusual arrangement came into being in 1945, when the adjoining Boulevard district was annexed to Leaksville under a statute providing that the new territory was to maintain its own tax rate, accounting system and financial arrangements and to elect its own representatives to the city council. An act passed by the last legislature authorized an election on the question of erasing the administrative dividing line and by late August, following the favorable vote in May, Leaksville's unification was announced to have been accomplished.

Draper Incorporates

Five years of effort, sustained despite a series of unsuccessful petitions and elections, culminated last May in final success for the citizens of Draper, who gathered in the local school auditorium to watch as James E. Tucker, assistant attorney general of North Carolina, presented the town's charter of incorporation to the new mayor and town commissioners. The petitions to incorporate Draper were delivered to the office of the Secretary of State last March, containing the names of 600 citizens in favor of incorporation. The town officials who received the charter were elected in Draper's first municipal election, on May 3, and included Mayor Archie S. Daniels and Commissioners John East, Homer Vernon, Landon Johnston, W. J. Squires and Spencer Powell. Assistant attorney general Tucker, officiating at the ceremony, hailed Draper's incorporation as "a step forward in the function of individual self government."

The town took another step forward on July 1 when after drawing up a tentative budget of $45,000 it assumed the full duties of municipal government by taking over the functions of police protection (and buying a new police car), garbage collection, street maintenance and sanitation. During the summer the town purchased all water lines leading to homes inside the city limits and began, on September 1, to bill its water customers, thus building up a much-needed financial reserve. In about a month the street repair job undertaken in August in cooperation with the state highway department will be completed. Draper has entered into a contract with the state whereby repair work is being done by state highway crews at a cost to the town of $5,000. The date of payment is to be postponed until tax col-

lections are underway—the final step in Draper's progress toward corporate adulthood.

Blue Laws

Three cities approached the question of Sunday Blue Laws from different directions late this summer and in only one was decisive action taken. A referendum called by the Marion board of aldermen on the proposal that Sunday baseball games be allowed resulted in a vote of 506 to 312 opposing the game on the Sabbath. In Dunn, where the Blue Laws were abolished about ten years ago, the city commissioners are considering an ordinance which would require business firms to close between the hours of 9 and 12 on Sunday mornings to give employees the opportunity to attend church. In Newton, on the other hand, the board of aldermen has received a motion to repeal portions of the existing ordinance governing Sunday recreation so as to permit certain places of amusement to remain open. The opinion of the recreation commission has been sought on the matter and there is some chance that the question may be submitted to a vote of the people.

Ancient American Sport Prohibited

The citizens of Monroe being average people with normal instincts, the city council seemed to be flying in the face of human nature this summer when it ordered strict enforcement of a previously passed ordinance forbidding persons to follow fire trucks to fires. The perhaps futile-sounding action followed severe provocation, however. It was reported that the city had remained unprotected from fire for nearly an hour a few days before when the department's trucks were bottled up by a traffic tie-up involving hundreds of cars following a blaze in the Benton Heights section. Every street leading to the fire was blocked, according to the police, and the untangling process took 40 minutes. The penalty for violation of the ordinance is a $50 fine or 30 days in jail. The Monroe Council is backed up by G.S. 20-157 which makes it unlawful for drivers to follow fire trucks to a fire closer than one block behind or to drive or park within one block of the fire.

Home Rule for Counties

King County, Washington, the county in which Seattle is situated, has recently embarked on a project unique in the history of the state and one that has been undertaken but infrequently throughout the nation. Acting under authorization by the legislature, King County commissioners have appointed a 36-member charter advisory commission which will frame a tentative home rule charter for the county. This will be transmitted to a freeholders charter commission next year, and the freeholders in turn will submit their final draft of a proposed county charter to the voters. "County home rule" is still a nebulous term, since in the fewer than 20 (out of a total of 3,050) counties in the United States which have adopted county charters, the powers delegated to the local units by state legislatures have varied to a considerable degree. In some states counties are empowered to choose one of several charters outlined in the statutes, in others a county may draft its own charter. North Carolina's statutes, while not providing for constitutional county home rule, offer some choice to the counties by permitting them to adopt the manager plan, or to vote in modifications of the county commissioner form of government relating to the number of commissioners or their terms of office.

The King County advisory charter commission will base its new charter on one of three possible plans, according to the Seattle Municipal League. The first would combine legislative and administrative authority in a single governing board or council which would appoint department heads and be responsible for the operation of the departments, as well as enact ordinances involving budgets, building codes, health, zoning and other matters of policy. A second plan divides authority between a county executive responsible for all county administrative functions, and a legislative body which would deal exclusively with legislative matters. The third plan, common in states which do not have county home rule provisions, calls for the election of department heads and many other administrative officials, as well as the legislative body, thus widely scattering the responsibility for the operation of county government.

Last year the voters of Charleston County, S. C. were given the choice of three alternative forms of county government, similar to those being studied in King County, provided in a statute passed by the 1948 legislature. The county manager plan, giving a single executive complete administrative responsibility and transferring to the council legislative powers over appropriations, tax levies and other functions formerly held by the state legislature, was adopted by a large majority. Recently the South Carolina Supreme Court unanimously upheld the constitutionality of the statute which gave to Charleston a measure of home rule. The court held, however, that the general assembly could not delegate police powers to one particular county.

. . . And for Washington, D. C.

The cry for greater home rule for cities rang through the assembly halls of state legislatures all across the nation this year and while most municipal representatives have retired to gird for the next biennial legislative session the battle is still very much on for residents of Washington, D. C. who must wage it on the floor of Congress. Last May, after years of pressure from the citizens and newspapers of the District, the Senate finally passed a bill to give the capitol city a measure of home rule. The bill, which is still being considered by the House Committee on the District of Columbia, provides a city council of eleven members—nine elected by the people of Washington and two appointed by the President—which in turn is authorized to appoint a city manager for the District of Columbia. The now voteless residents of Washington would also elect a school board of seven members. The city council is empowered, under the bill, to pass city ordinances and to legislate for the District of Columbia, which Congress hitherto has done. But the bill gives Congress a limited veto over such acts, its disapproval requiring a concurrent resolution by House and Senate within 45 days of the city council's action. The federal government would continue to share in the upkeep of the city, but by contributing 20 cents for every dollar of taxes paid by local citizens instead of appropriating a lump sum each year to the city as is currently done.

In a recent letter to Speaker Sam Rayburn urging passage of the bill, President Truman wrote: "It is little short of fantastic that the Congress of the United States should—as it does—

devote a substantial percentage of its time to acting as a city council for the District of Columbia. During the past two years during which it was confronted with many major problems of national and international importance, the Congress has had to find time to deal with such matters as parking lots, the regulation of barbers, the removal of street obstructions, and the establishment of a metropolitan police force band . . ."

Local Government in the Machine Age

The day may come when trained mechanics are running county governments and the electricians will be second in importance only to the city manager in municipal affairs. That day is not quite imminent, but the trend toward increasing mechanization of governmental operations is growing rapidly in counties and cities across the country with claims of great savings in money and time as well as added efficiency. In cases where local units have expanded greatly within a short period of time, such as Los Angeles County, the use of mechanical installations has been especially valuable in doing away with backlogs of work, bringing files and records up to date, and keeping them on a current basis. The punch card tabulating system has been the major installation in Los Angeles, where a Tabulating Bureau was set up to carry out the combined operating procedures of the Assessor, Auditor and Tax Collector. The equipment has also been used at various times by numerous other administrative departments, thus avoiding the necessity of hiring temporary clerical workers by these departments. The punch card system is in operation at the county hospitals and in the offices of the superintendent of schools, the county recorder and the civil service commission.

The adoption of the photographic method of recording instruments in Riverside, California was made possible by an act of the legislature in 1947. The county recorder claims that the use of this method of recording has enabled him to reduce his staff from 18 to 10 employees and has speeded service to the public by making it possible to return instruments in forty-eight hours instead of three weeks as before.

Modern technology in Toledo, Ohio has wrought two changes in procedure at city council meetings. The use of a wire recorder to take the minutes instead of the stenographic staff has meant the end of off-the-record comments at these meetings. Whereas formerly the stenographer would pause with pen raised, on request, the recorder hears and reproduces everything down to a slight cough. Also gone with the advent of machinery is the age-old legislative procedure of rising to gain the floor. With a microphone at each councilman's place at the table the speakers must remain seated in order to have their voices caught. The recorder, at a cost of less than $2,000, has helped to insure the accuracy and completeness of records in Toledo. Also claimed as an advantage is the fact that it was easy to link an amplification system to the recorder and thus successfully combat the poor accoustics of the council chamber.

Cooperative Government In High Point

This summer the mayor and city council of High Point formally invited the citizens of the city to share in the deliberations of their governing body and thereby threw open the doors to semi-official citizen participation in policy planning within the city government. The two-point program designed by Mayor W. F. Bailey "to rekindle the collective spirit of the people" was unanimously endorsed by the city council at their first meeting. The first point calls for one evening meeting of the city council to be held each month and open to the public. The second provides for the appointment by the Mayor of three citizens' committees. The economic development committee will work with civic groups to further the industrial and commercial development of the city; the public improvement committee will advise the council on matters pertaining to water, sewer, street and electric distribution improvements; and the broad concerns of the cultural and civic committee will include entertainment of conventions, public celebrations, development of the recreation program and improvement of the city school system. All three committees will consult together on the advisability of expanding municipal facilities and on possible revisions of the tax structure. The mayor and council believe that the new program of cooperation will help tear away the veil of mystery which seems to surround city government and will give new confidence in the city administration to the people.

Police and Firemen Join Forces

Kings Mountain and Mooresville are among a handful of small cities in the United States which have taken a step toward greater cooperation between their police and fire departments in the field of public safety. These cities have combined the job of desk sergeant for the police and radio telephone operator for the fire department under a single employee. Five other cities, ranging in size of population from 748 to 7,652, are seeking greater efficiency and economy by using the same personnel both as firemen and policemen in a department of public safety headed by a single chief and corps of officers. In Oakwood, Ohio (7,652) where this setup has served for eleven years, three corporals work eight hour shifts for six days primarily as policemen, while the 14 non-officer members of the department serve primarily as firemen, 24 hours on duty, 24 hours off. They rotate assignments during each 24-hour day on fire and police duties. Thus a man may serve as radio operator for the first eight hours, as a patrolman on the second shift, and as a fireman during his final eight hours. All new employees are trained in both police and fire work, and emphasis is placed on the function of police in effective fire prevention, as they are taught to spot fire hazards in the course of their regular rounds. Oakwood's city manager cites as three improvements resulting from combining the two departments: 1.) Firemen have better knowledge of the city due to their experience in police cruising. 2.) Additional men are available when a serious fire breaks out since those on duty as police are also trained firemen, and 3.) Policemen on duty are more alert to fire hazards.

Regulation of Charity Solicitation

The Charlotte city council has been considering since early summer an ordinance closely governing solicitation campaigns within the city "in order to provide against overlapping solicitation and too many and too frequent campaigns." The ordinance empowers a seven-man commission to "limit, group or combine solicitation efforts . . . and fix the quota or maximum amount which the citizens of Charlotte may be called upon to provide . . ." Every public fund raising

campaign must be approved by the commission through the issuance of a permit. Written applications for permits must include detailed information about the organization and its program, the purposes for which the money will be spent, financial statement of the organization's operation, and other pertinent data. Cost of raising the funds would be limited to 20 per cent of the amount raised and the commission is further empowered to make its own investigation of the fund raising organization during the campaign, with power to revoke a permit if investigation proves it ad visable. In such case the applicant would be given the opportunity to appeal to the commission at a hearing. Solicitation without a permit may be penalized by a $50 fine. A somewhat similar ordinance has been in effect in Winston-Salem for the past three years.

Such ordinances are valid, according to a 1948 ruling of the Attorney General, despite the existence of a State law governing fund-raising efforts. Organizations making solicitations must in any case secure State licenses, but they may also be required to observe more stringent regulations enforced by a city.

Open Wells

The death of Cathy Fiscus in an abandoned well earlier this year caused more than sympathy among citizens of Stanly County, where several years ago a similar tragedy occurred. In an effort to prevent recurrence of such accidents, the County board of health in late August passed an ordinance requiring all abandoned wells to be filled with rocks and dirt to a level with the surrounding ground, and either capped with a metal cap or covered with a concrete slab at least four inches thick and projecting beyond the wall of the opening for at least six inches on either side. This ordinance also makes it unlawful for any person to permit standing water to collect without proper drainage facilities. Since 1923 a state law, G.S. 14-287, has required that all wells no longer being used "shall be carefully and securely filled."

Municipal Smoke Control

Among the laws passed by the 1949 General Assembly of which little notice was taken at the time was one which may be of considerable importance to every municipality in this state which attempts to control the emission of smoke within its limits.

At the common law mere emission of smoke was not a nuisance *per se*, although the common law recognized that dense smoke in a particular case might become a nuisance in fact. During the late 19th and early 20th centuries, amid great popular interest in the expansion of rail transportation, the courts showed considerable reluctance to hinder their development by any extension of the common law rule, holding railroads liable for damages only when they "needlessly and heedlessly cause suffering and inconvenience"—which left them free to make "necessary" smoke. *Taylor v. Seaboard Airline Railway*, 145 N. C. 400. In thus shielding the railroads against damage suits by all whose property or lungs received a coating of locomotive smoke, the courts were weighing such personal damages against the public importance of rail development, and deciding in favor of the latter. However, by the time of the first World War, private objection to railroad and other dense smoke as expressed in private actions for damages began to be reinforced by public objection expressed through municipal ordinances attempting to define and control excessive smoke, on the theory that "whatever is injurious to human life or detrimental to health, or whatever deprives the inhabitants of pure, uncontaminated and inoffensive air, constitute a public nuisance."

Municipalities in North Carolina have long possessed the power, under G.S. §160-55, to "pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens." The Municipal Corporation Act of 1917 added the specific power "to regulate the emission of smoke within the city." G.S. §160-200 (32). Typical of an early ordinance regulating locomotive smoke was that of Asheville in 1923, which forbade emission of dense locomotive smoke "for a period of more than 1 minute except for a period or periods aggregating not to exceed 6 minutes in any one hour," the exception to apply only when the fire box was being cleaned or new fires were being built. Typical of recent ones is that of Charlotte, which requires use of "smokeless fuel, or oil or diesel or locomotives equipped with mechanical fuel-burning equipment" in all operations involving locomotives used principally for shifting and making up trains in the Charlotte yards. The Charlotte ordinance also forbids emission of dense smoke from any source except for two minutes in any fifteen minute period, or an aggregate of six minutes in any hour, during fire-building or fire-box cleaning operations. The ordinance provides for grading of density by reference to the Ringlemann Smoke Chart, which is published by the U. S. Geological Survey and now used widely throughout the country. Full-time smoke abatement engineers administer and enforce the smoke control regulations of several North Carolina municipalities, including Charlotte and Winston-Salem.

Against the background of these and similar ordinances long in effect in this state, Chapter 594 Session Laws of 1949, raises questions with respect to control of coal-burning railroad smoke. It adds a proviso to the general grant of power to prevent and abate nuisances contained in G.S. §160-55, to the effect that "it shall not be a nuisance for an employee or servant of a railroad company to make necessary smoke when stoking or operating a coal burning locomotive." And it whittles down the power granted by G.S. §160-200 (32), making it read as follows: "To regulate the emission of smoke within the city but no regulation relative to the emission of smoke shall extend to the acts of an employee or servant of a railroad company in making necessary smoke when stoking or operating a coal burning locomotive." Obviously the key word in both amendments is the word "necessary," and the question arises whether, if modern devices at reasonable cost are available to eliminate much of the smoke, dense smoke from a locomotive not so equipped is "necessary." What is the effect of the amendments on an ordinance which requires use of "smokeless fuel" or special devices to eliminate smoke in locomotives used for shifting, as in the Charlotte ordinance? Taken literally, the amendments seem to place coal burning locomotives safely beyond the reach of municipal smoke control regulation, for all practical purposes.

Low-Rent Public Housing

How to Start a Municipal Low-Rent Public Housing Project Under the New Federal Housing Act and the North Carolina Local Housing Authorities Law

By W. M. COCHRANE

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On July 15 President Truman signed the Housing Act of 1949, which had just been enacted after a long and bitter fight in both houses of Congress.

As he gave his official approval to the measure (Public Law 171, 81st Congress), the President said:

"This far-reaching measure is of great significance to the welfare of the American people. It opens up the prospect of decent homes in wholesome surroundings for low-income families now living in the squalor of slums. It equips the Federal government, for the first time, with effective means for aiding cities in the vital task of clearing slums and rebuilding blighted areas. It authorizes a comprehensive program of housing research aimed at reducing housing costs and raising housing standards. It initiates a program to help farmers obtain better homes . . . (It) establishes as a national objective the achievement as soon as feasible of a decent home and a suitable living environment for every American family, and sets forth the policies to be followed in advancing toward that goal . . . (which) are thoroughly consistent with American ideals and traditions. They recognize and preserve local responsibility, and the primary role of private enterprise, in meeting the nation's housing needs . . . . Since the low-rent housing and slum clearance programs depend upon local initiative, I urge state and local authorities to act speedily."

Local authorities in numerous North Carolina cities have already begun to act to take advantage of the low-rent housing opportunities offered by the new act. It is the purpose of this article to summarize the provisions of the low-rent housing part of the federal law, and to outline the steps which must be taken by municipalities interested in participating in the program.

It should be noted at the outset that there are three separate major programs contemplated under the new Housing Act: (1) the program of *low-rent public housing*, under which federal loans will be made to local housing authorities; (2) the program of *slum clearance and community development*, under which both loans and grants will be made to local governing units; and (3) the program of *farm housing*. The scope of this article will be limited to a study of the low-rent housing program (TITLE III of the 1949 Housing Act). The slum clearance program (TITLE I), in which North Carolina municipalities apparently cannot participate for want of adequate enabling legislation, and the farm housing program (TITLE V) will be discussed in later articles in POPULAR GOVERNMENT.

The over-all Federal agency administering the Housing Act of 1949 is the Housing and Home Finance Agency—the HHFA. The *slum clearance* part of the housing program will be administered by the HHFA itself, from the central Washington office. The *low-rent public housing* part of the program will be administered by the Public Housing Administration, which is now a division of the HHFA. The *farm housing* part of the program will be administered by the Department of Agriculture, principally through the Farmers Home Administration.

LOW-RENT PUBLIC HOUSING

Federal Housing Already Built

It may be helpful to take a quick look at the national and state picture, to see what has already been done in the field of public housing with Federal aid. It should be remembered that the program is not new. It began in the nation in 1937, and the low-rent housing sections of the new act are merely an extension and expansion of the Housing Act of 1937, under which about 200,000 units of housing for low-income families were built and are in operation throughout the land today. These housing projects are operated by local housing authorities, created under state law (ours is Chapter 157 of the General Statutes of North Carolina), such as those which have existed in this state since before the war in Charlotte, Fayetteville, High Point, Kinston, New Bern, Raleigh, and Wilmington.

The 1937 Housing Act authorized Federal aid to communities to house "families . . . in the lowest income group . . . who cannot afford to pay enough to cause private enterprise . . . to build an adequate supply of decent, safe and sanitary dwellings for their use." Today there are 472 active local housing authorities in the nation operating projects built before the war under the original act. These authorities serve 582 localities, and since North Carolina's cities and towns are mostly small or medium-sized, it is of interest to note that 63% of these places have populations of less than 25,000.

Low-Rent Public Housing under the 1949 Act

The 1949 Act greatly enlarges the scope of the federal housing program in the low-rent housing field. It is a six-year program, beginning with 1 July 1949, and blocks out a grand total of 810,000 housing units for construction during this period, at the rate of 135,000 per year. If conditions in the building industry or in the national economy so warrant, the President is authorized to raise a particular year's total goal to 200,000 units, or decrease it to 50,000 units.

Other salient features of the 1949 low-rent housing program are:

1. At least 10 per cent (40,500 units) of the total authorization (405,000 units) for the first three years must be used to finance projects in rural, non-farm areas.

2. Private enterprise is to be relied on to do as much of the total housing job as possible.

3. Emphasis is placed upon local initiative and responsibility with respect to getting housing projects under way; the Federal government is not going to try to persuade any city to undertake a housing program.

4. Once a housing project is built, preference in renting its units must be given to veterans of low income, and to low-income families which have been displaced from public slum clearance or redevelopment projects.

5. Private capital will be enlisted to finance substantially all of the cost of low-rent public housing projects, backed by a Government guarantee.

6. The Government will stand ready to subsidize the operation of housing projects, within limits which will be set out later in this discussion, to cover the difference between a project's annual rental income and its annual obligations.

7. Contracts between the Government, the local housing authority, and the municipality must contain agreements under which the municipality promises to eliminate, within five years, through demolition or repair, a number of substandard dwellings substantially equal to the number of new dwelling units provided by the project. Where families are divided up in units which are demolished, two or more families to the unit, each family may be counted as a single unit for "equivalent elimination purposes." These provisions do not apply where a low-rent project is built upon the site of a slum area, nor to projects in rural non-farm areas.

The Public Housing Administration, which will administer the low-rent housing part of the over-all federal housing program, has a field office at Richmond, Virginia, and North Carolina comes within the jurisdiction of this branch office. Its director and address are as follows: A. R. Hanson, Director, Field Office, Public Housing Administration, 900 Lombardy Street, Richmond 20, Virgina.

How Does a North Carolina Municipality Get Started on a Public Low-rent Housing Project?

North Carolina is one of 42 states which have enacted public low-rent housing enabling statutes and are therefore recognized by the Public Housing Administration as being eligible to participate in the federal housing program first authorized in 1937 and now extended by the 1949 act. It is well to note again the distinction between the low-rent housing program and the slum clearance program. The low-rent housing program is specifically authorized by North Carolina's enabling act (G.S. Ch. 157), but there is considerable doubt whether the slum clearance phase of the Federal program is authorized in North Carolina.

Suppose then that a Tar Heel city wants to erect a low-rent public housing project under the new program. What must it do?

Creation of Local Housing Authority

The first step which must be taken is the creation of a local housing authority. The procedure is set out in Chapter 157 of the General Statutes. Briefly put, it is as follows:

1. A petition setting forth the need for a local housing authority must be filed with the city clerk. The petition must be signed by at least 25 citizens of the city (population of the city must have been at least 5,000 at the last Federal census—1940) and of the area around the city but within 10 miles of its corporate limits.

2. The city clerk must publish notice of the time, place and purpose of a public hearing at which the city council or board of aldermen will determine the need for such an authority to function in the city and its surrounding area.

3. At the hearing, opportunity to be heard must be granted to all residents, taxpayers and other interested persons.

4. After the hearing, the city council must determine (a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and surrounding area, and/or (b) whether there is a lack of safe or sanitary dwelling accommodations available for all the inhabitants. In making its determination, the council is required to consider: physical condition and age of buildings; degree of over-crowding; percentage of land coverage; light and air available to occupants; size and arrangement of rooms; sanitary facilities; and the extent to which dwelling conditions endanger life or property.

5. If the council determines that existing conditions warrant creation of a housing authority, it adopts a simple resolution so finding (it need not go into detail other than the mere finding).

6. The mayor must then appoint five commissioners to act as the local housing authority; he appoints one of them as first chairman; none may be a city official; they serve without pay.

7. The commission thus appointed must apply to the secretary of state, under procedures set out in the statute, for incorporation. When this is done, the commission becomes "a public body and a body corporate and politic."

Powers of Local Housing Authority

The local housing authority thus created by the city governing body becomes itself a governmental agency, and the North Carolina housing enabling act specifically grants it the powers it needs to carry out its purposes. These powers are spelled out at length in G.S. 157-9. The main ones are worthy of mention here. The authority can sue or be sued; borrow money on short or long term basis, and mortgage its property as pledge of repayment; contract with local governing bodies and with the Federal government to carry out its housing program; operate housing projects; and acquire property through purchase, lease, option, gift, grant, bequest, devise, or through exercise of the right of eminent domain.

Under these powers to acquire real property, the local authority can acquire a site which is vacant, and erect its housing project there; or it can acquire an area already occupied (relying on eminent domain, if necessary), such as a slum area, clear away the existing buildings, and erect its project on the same spot. In this sense, slum clearance is now possible in North Carolina under the low-rent housing part of the Federal program which we are discussing. However, it is apparently not now possible, under our existing state law, for a local housing authority to take by eminent domain a slum area, clear it off, re-sell the land to other private agencies for whatever use is most appropriate for the land, and then build a new housing project on some other site than the one thus cleared off. The statutes of 27 states now permit such action, and municipalities in such states may take advantage of the slum clearance grants available under the outright slum clearance part of the Federal housing program. As has already been said, this phase of the Federal program will be taken up in a later article in Popular Government. It is necessary to mention it here, however, to distinguish between the kind of limited slum clearance within the present reach of North Carolina's local housing authorities under the low-rent housing program, and the direct slum clearance and re-development with Federal cash grants, which is now beyond the reach of local housing authorities under existing North Carolina law.

Application for "Reservation" and Preliminary Loan

The local housing authority, upon its incorporation by the secretary of state, is ready to open its negotiations with the Public Housing Administration. How many units can it get?

As we have seen, the PHA is authorized to assist in the construction of 135,000 housing units each year for

six years, beginning 1 July 1949. As the program gets underway the PHA is accepting applications for "reservations" from local housing authorities, against 270,000 units, the total authorized for the first two years. No definite quotas will be announced for allocations to the several states and areas of the nation. Nor will the PHA tell a particular city how many units it should apply for. Instead, it is necessary for the local authorities to decide for themselves the number of units considered necessary, and to apply for that number. The PHA will then act on the application, on the basis of the local need shown by the housing figures contained in the 1940 census, plus any available, reliable later data on local housing.

The PHA will accept applications for reservations from no local agencies except local housing authorities organized under the state law. Municipal governing bodies which have not created local housing authorities can not themselves make application for units to be reserved for the locality.

A local housing authority applying for reservation of units should apply at the same time for a preliminary loan, if it desires one, to be used for making local surveys and for planning in connection with the proposed project.

The reservation and preliminary loan applied for may be for either a one- or two-year local program. In North Carolina during August Greensboro's Housing Authority applied for a reservation of 1,000 low-rent units, on a two year basis, with 550 units to be constructed each year (350 Negro, 200 white), at a total estimated cost of $7 million, and for a preliminary loan of $100,000 to make the necessary surveys and plans. Asheville applied for 800 units, 322 to be constructed the first year and 478 the second, at an estimated total cost of $7 million. Fayetteville received in September a commitment from the PHA tentatively approving its application for reservation of 400 units, to be built on a two year program, 200 each year, at an estimated cost of $3 million. Other cities where applications have already been filed or are being considered include Raleigh, Winston-Salem, Concord and Lumberton.

The preliminary loan for surveys and planning is the first financial obligation incurred by the local housing authority, and it is absorbed into the final cost of the project when it is built. The size of the preliminary loan granted is determined by the PHA, on the basis of the number of units applied for. The city council or board of aldermen must approve the local housing authority's application for the preliminary loan.

In making application for reservations and for preliminary loans, local housing authorities must use the forms and follow the instructions prepared and released by the PHA. Sets of model forms and instructions may be obtained from the Richmond office, at the address given above.

Next Steps

Once the tentative reservation of housing units and the preliminary loan for planning have been approved by the PHA, the local housing authority sets the initial phases of the project in motion. First off it must select a site, suitable from the standpoint of size, probable cost, surroundings, and allied considerations. An option to buy the site should be obtained, after the local authority has had its value appraised. The authority should then select architects and engineers to prepare plans for the buildings, and should make an estimate of the cost of building and operating the project. The cost of the project is limited by the Housing Act to $1,750 per room, including cost of buildings and equipment, and excluding the cost of land and non-dwelling facilities. However, the law requires sound, durable and lasting construction (not elaborate or extravagant) and if the project cannot be built within these limits without sacrificing sound construction standards, in a locality where there is an acute need for housing, the $1,750 maximum per room may be increased up to $2,500 per room.

When the foregoing steps have been taken locally and approved by the PHA, the local authority enters into what is called a "cooperation agreement" with the municipal governing body, providing for: (1) tax exemption for the project (in North Carolina, public housing projects are exempt from ad valorem taxation under the state housing act); (2) for payments in lieu of taxes (the 1949 Federal Housing Act restores authorization for these payments, which may be made by the local housing authority to the city and county, in an amount not exceeding 10% of the annual "shelter rent"—the rental income of the local authority from its tenants); and (3) for elimination of a number of slum dwellings in the municipality equivalent to the number of new housing units, where applicable. The city also agrees to furnish the housing project with all city services furnished to private persons, such as water, lights, sewer service, garbage collection, etc., on the same terms such services are available to private users. In other words, the local housing authority will pay for such services just as anyone else does.

Financing Construction

There are two phases in financing the housing project: short-term and long-term.

During the period of construction, costs are financed by sale of the local authority's temporary loan notes to private investors. Since PHA guarantees that it will lend enough to cover principal and interest on these short-term notes when they mature, if it should be necessary, there is no difficulty in obtaining the necessary capital for construction from private sources. It is worth noting that, in localities where construction is already under way in this program, these temporary notes are now being sold at interest rates averaging less than one per cent per year.

When construction has reached the point that the project's cost (including the amount of the preliminary planning loan) can be determined with certainty, permanent financing is arranged through sale of long-term serial bonds. These bonds, like the short-term notes, are sold to private investors. Again the fact that PHA stands behind the bonds, securing them by its pledge to pay annual contributions if necessary, means that the bonds are attractive to investors. The PHA reports that under present market conditions interest rates of from 1-1/2% to 1-3/4% should be obtainable for the long-term financing.

The PHA will make the annual contribution referred to above to cover the difference between the projects' annual income from rent and its annual debt service and other obligations. The maximum government contribution annually is limited to a percentage of the development cost of the project, which percentage is set at 2% plus the cost of long term money to the Government (going Federal rate). At present, when the going Federal rate is 2-1/2%, the Federal contribution is limited to 4-1/2% of the development cost.

The long-term financing is so arranged that the debt service payments will be the same each year (maturi-

(Continued on inside back cover.)

Pennsylvania Law Lets Cities Tax Anything Not Taxed By State

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The most urgent problem in the field of local government since the end of the war has been the need for additional sources of revenue, and one solution frequently advanced is that the state delegate to local units the power to levy a tax on anything not subject to taxation by the state. The practicality of this solution is now being put to test in Pennsylvania which granted the broad taxing powers to a majority of its local units in 1947, and the results in Pennsylvania should be of interest to state and local officials and taxpayers.

It is important to examine first the reasons why the General Assembly of Pennsylvania considered the delegation of additional taxing powers necessary. According to Dr. H. F. Alderfer, director of the Bureau of Municipal Affairs in the state Department of Internal Affairs, writing in the July, 1948 issue of *State Government*, they were:

1. The rising cost of local government coupled with demands for new services.
2. A feeling that revenues to be derived from the taxation of real estate, which provided over 70% of all local revenues, were reaching the point of diminishing returns. Assessments were felt to be too low and inequitable, and despite attempts by the legislature to improve the assessment procedure and bring about valuation increases, assessed valuations were actually decreasing in many localities. In many local units tax rates were approaching the maximum legal limit and still not bringing in the money needed to meet necessary expenditures. Furthermore, high assessments had driven many profitable properties from urban communities, but still the owners of those properties, both residential and industrial, were demanding modern services from the central urban communities even though those communities had no way to force these outsiders to share the tax burden. There was a tendency also to try out new systems of taxation rather than attempt a comprehensive correction of the complex deficiencies of the real property assessment system.
3. The legislature wanted to put a halt to increasing demands for state grants-in-aid for more and more local functions. For example, increasing state grants had been necessary to finance local school systems, which were the responsibility of local school districts.

For a remedy the General Assembly turned to the 1932 legislation which gave the City of Philadelphia, then in a bankrupt condition, the power to impose a tax on anything not taxed by the state. Out of that power had come the Philadelphia wage tax which pulled the city out of the red. The only concerted opposition to this proposed extension of local taxing powers came from the coal companies who feared damaging severance taxes, and on June 25, 1947 the Stonier-Brunner Act, or Act No. 481, became law with the approval of large majorities of both houses of the legislature and of the governor.

Provisions of the 1947 Act

The provisions of Act 481, in general, were:

1. It permitted 49 cities, 937 boroughs, 60 first-class townships and 2,542 school districts to tax anything not subject to taxation by the state. The counties and second-class townships were excluded since they had little need for additional taxing powers.
2. It prohibited any taxes on gross receipts from utility services because utility rates were subject to regulation by the state.
3. It provided that the revenue from all taxes levied under the act may not exceed the maximum amount of property taxes which the unit could levy for general purposes.
4. It provided that notice be published of impending adoption of a new tax and that 30 days elapse after adoption before levy of the tax in order to permit taxpayers to challenge the validity of the tax in the courts.

Immediately following passage of the bill, local units seemed hesitant to exercise the new authority, but slowly throughout the months of 1948 more units began to levy so-called "481" taxes. In March, 1948, only 140 units had adopted new taxes, but by May of 1949 the number had grown to 762 located in 63 of 66 affected counties, and these 762 units were imposing almost 1000 separate taxes.

Types of Taxes Levied

Payroll income taxes. In May of 1949 over 150 units were levying income taxes. Salaries, wages, commissions and net profits from unincorporated businesses were the principal items taxed, and only net income from corporations was not taxed because it is taxed by the state. Since a graduated income tax is not legal in Pennsylvania, all these taxes imposed a flat rate which ranged as high as 1%. The tax was imposed on resident and non-resident alike, so long as he earned income within the boundaries of the taxing unit, but the act provided that any tax paid to the unit wherein the taxpayer resides may be deducted from the tax paid to the unit where he works. The result has been that wherever a large city has levied an income tax, most of the adjacent suburban units have also adopted the tax in order to keep the tax money at home. Only around Philadelphia, where the 1932 law gives Philadelphia priority over like taxes imposed by suburban communities, have the adjacent units not adopted income taxes.

In some cases, however, these local units have coterminous boundaries. Where this was the case the courts held that a taxpayer was liable in full to both units. For example, Mr. A had $4 deducted from his wages, an amount equal to 1% of his wages for the month. This sum was claimed by the city where he worked, the borough where he lived, and the school district which was co-extensive with the borough. Each imposed a tax on earnings at varying rates. The borough and school district were held to have priority over the city for the amount withheld, but Mr. A was held liable in full to the borough and the

school district, even though the total of the two taxes exceeded the $4 withheld.

As evidenced by the example, use of the withholding system for collection of income taxes posed insoluble problems for the collecting firm where more than one unit claimed the amount withheld.

Admissions and Amusement Taxes. Over 170 communities had levied taxes on admissions to places of amusement by May, 1949. The normal rate was 10% and this tax has apparently been the one least objected to by the taxpayers. In addition there have been a number of flat levies imposed on mechanical amusement devices such as juke boxes and pin ball machines.

Severance and Resource Taxes. As foreseen by the coal companies, many of the units in areas where population density was low levied a tax on the mining, processing, loading, transporting and delivery of coal as the principal source of wealth subject to taxation. Over 175 such taxes were being levied in May, 1949.

Per Capita Tax. Act 481 removed the $5 limitation previously imposed on per capita or poll taxes (not levied as a prerequisite to voting). This has been the most popular of the new taxes and in some places taxpayers have had to pay as much as $25.

Mercantile or Gross Receipts Taxes. In lieu of the sales tax, which has not found favor, many cities levied on the gross receipts of merchants, and in some cases manufacturers. The prevailing rate was 1% on retailers, ½% on wholesalers.

Miscellaneous. A large number of other taxes have been reported, including taxes on real estate transfers, intangible personal property, buses and taxicabs, billboards, gasoline curb pumps, newspaper advertising, telephones, and radios. Their continued use rests on the reaction of those subject to the tax. In connection with the obvious reluctance to impose a sales tax, the recommendation of a state association of public officials that a state sales tax be levied in place of all "481" taxes is of interest. Such action would primarily benefit school districts, of course.

Popular Reaction

Popular reaction in opposition to the new taxes was immediate. First of all the constitutionality of the act was attacked in the courts. It was held to be constitutional. Then many specific taxes, such as the income and severance taxes, were attacked as unreasonable as well as unconstitional, but in every case the courts upheld the validity of the tax. They further held that while the taxes levied may not duplicate state taxes, the fact that they tax the same person, object or income is not necessarily a duplication.

Court approval could not soothe taxpayer disapproval, however. Mass meetings, newspaper and radio comment, petitions, and investigation of government expenditures and administration were used to emphasize protest. As Governor Duff pointed out to the 1949 Governor's Conference, this has had a healthy effect in educating citizens on the responsibilities of local government, the cost of local services, and in particular the cost of local services when those services are financed directly by the local units rather than indirectly through state grants.

Still the variety of the new taxes, the duplication and possible discrimination, and the legal and accounting difficulties encountered in collection have led to differing opinions on the wisdom of the policy. These are best characterized by comparing the opinions of two state officials, both made before the meeting of the 1949 General Assembly:

> "We believe that Act 481 is a most significant experiment in implementing our conviction in the integrity and trustworthiness of our locally elected officials. We believe that it will not be abused because the rank and file of these officials are characterized by a feeling of deep responsibility to their communities and fellow-citizens. We believe it is needed to raise the money necessary to keep our cities modern in services and administration, and free and independent of the state and federal government."

> "It (the bill) permits the multiplication of taxes upon the same person or subject, it provides no safeguards against capricious or punitive taxes, and it authorizes a multitude of political agencies with no skill or perspective in the exacting science of taxation to exercise to the fullest the taxing power, one of the highest prerogatives of sovereignty, as their essentially uncontrolled whim, prejudice or extravagance may dictate."

Limitations Imposed by the 1949 General Assembly

This opposition had its effect. The General Assembly of 1949 approved the policy of Act 481 insofar as it provided needed revenues, protected local units from bankruptcy, and forestalled appeals to the state for aid, but it also appreciated many of its shortcomings. Some strict limitations had been suggested by a study committee set up by the legislature in 1947, and it was on the basis of these recommendations that some far-reaching limitations were imposed on the broad authority granted by Act 481. Briefly, these included:

Prohibitions:

1. Any tax on goods and articles manufactured in the political subdivision; any tax on minerals, timber, farm products or natural resources produced or processed in the political subdivision; any tax on any act in the process of manufacture or production, or on the by-products of manufacture, or on the transportation or dumping of manufactured products or by-products.
2. Any income tax on non-residents by school districts.
3. Any tax on intangible personal property (except by the city of Pittsburgh).

Rate Limitations:

1. Per capita or poll—not more than $10. Under previous legislation some units can levy an additional $5.
2. Gross receipts taxes on mercantile establishments (gross receipts defined in the bill)—1 mill on wholesalers, 1½ mills on retailers (except in Pittsburgh).
3. Income taxes—1%.
4. Retail sales—2%.
5. Real property transfers—1%.
6. Admissions—10%.

It is further provided that combined rates in any locality where coterminous units impose the same taxes cannot exceed the rate limitation. Local units are authorized to reach an agreement for dividing the maximum rate between them, but in the absence of an agreement the division is to be 50-50. This protects a wage earner, for example, from having to pay income taxes in excess of 1%.

Overall Limitation. The same method of computing the overall amount of "481" taxes which can be collected in any unit has been retained, but the maximum property tax rate to be used in the computation has been reduced for all units except first-class townships. This of course reduced the potential collections in almost every unit. If collections during the year appear likely to exceed this limit, the rate is to be reduced immediately and any surplus is to be

held over for use during the following year.

Court Action. In the event of taxpayers' appeal to the courts during the 30-day period following the adoption of a tax, the court is now authorized not only to determine the reasonableness of the tax but also to "reduce the rates of tax."

Theory Applied to North Carolina

At this time it is still too early to determine the validity of the experiment as the most workable solution to the financial problems of municipalities, but it is comparatively easy to point out how application of the theory would have some different results in North Carolina.

First of all, the financial needs of local communities are not quite the same in this state. There are not thousands of school districts having to meet state-established minimum standards and seeking the tax resources to meet those standards, because in North Carolina the state underwrites the greater proportion of those minimum standards through levy of the sales tax. There is no longer any township responsibility for rural roads, because the state has assumed responsibility for all roads outside municipalities. To the extent that the state now meets these demands, the reasons for granting this broad authority are not so compelling as in Pennsylvania.

Since the number of local units which have been delegated the taxing power is much less in North Carolina (approximately 600 counties and municipalities), the degree of overlapping and duplication of taxes is now proportionately less—and presumably would continue to be less if these units were given additional powers—than is the case in Pennsylvania.

But the most important consideration is that North Carolina would not be in a position to delegate the power to levy income and sales and gasoline taxes without a drastic overhaul of the state financial structure. Nor could it delegate power to levy increased poll or per capita taxes because these are fixed in the constitution. There is already a delegation of power with respect to privilege license taxes, except insofar as that power is limited by Schedule B of the Revenue Act.

Therefore the only principal taxes now levied in Pennsylvania under Act 481 and common in other states which would be granted to North Carolina units under a broad delegation of power are admissions taxes and gross receipts taxes on merchants and manufacturers. Some of the many miscellaneous taxes being used throughout the country would undoubtedly be tried, and possibly with success, but the revenue return on most of them is uncertain and the probable popular reaction is more likely to be unfavorable.

In short, the actual grant of taxing authority under the broadest form of delegation would in fact be much less in North Carolina, but the problems of administration, tax duplication and discrimination would be less serious because there are fewer units having the power to tax.

Conclusion

The very fact that the first two years of trial in Pennsylvania caused such popular discontent, so many court battles, and such extensive limitation by the next General Assembly suggests that other states which are considering the grant of additional taxing power to local units might find it more profitable to delegate particular taxing powers now rather than to delegate broad authority now and cut that authority down to specific powers over a long period of years.

Recent Supreme Court Decisions

Of Interest to City, County, and State Officials

By GEORGE H. ESSER, JR.
Assistant Director
Institute of Government

The Supreme Court of North Carolina has recently:

Held that operation and maintenance of an airport by a municipality is a proprietary or corporate municipal function; that therefore the municipality is liable for torts committed by it in the operation of an airport under the provisions of G.S. 63-50; that while a county ordinarily performs only governmental functions, the legislature may authorize a county to perform a proprietary function; that in the performance of a proprietary function a county is liable for torts committed by it to the same extent as a municipality engaged in the same activity.

The cities of Asheville and Hendersonville and the county of Henderson jointly own and operate the Asheville-Henderson airport. In *Rhodes* v. *Asheville*, 230 N. C. 134 (Filed 23 March 1949), they demurred to a complaint seeking damages for the alleged wrongful death of the plantiff's intestate at the hands of an airport employee serving as night watchman on the ground that they were engaged in the exercise of a governmental function and were thus immune from suits in tort. The county further contended that it could not be liable unless such liability were expressly created by statute. Stress was placed on the wording of G.S. 63-50 where the construction, operation and maintenance of airports by municipalities are stated "to be public, governmental and municipal functions exercised for a public purpose and matters of public necessity." On appeal after the demurrer was overruled the Court decided that the General Assembly intended operation of an airport to be a governmental function only insofar as its operation was for a *public purpose*, and that of the two types of governmental functions operation of an airport was to be classified as a proprietary or corporate function performed for the private advantage of the community. As a proprietary function, the municipality is subject to suit for torts committed by it in the operation of the airport. By a review of cases from other jurisdictions, the Court showed that no state considers the operation of an airport by a municipality to be a governmental function performed for the public good in behalf of the state such as to permit immunity from tort suits, but that in a few cases state statutes have expressly exempted municipalities from such liability.

In disposing of the county's additional argument, the Court pointed out that while counties ordinarily perform governmental functions alone, the legislature can permit county performance of a proprietary function and did so in this case under the provisions of G.S. Ch. 63. In such an event the county is liable in tort to the same extent as a city or town.

Re-affirmed the North Carolina rule that evidence is not inadmissible in court because it was obtained by unlawful means; held that the finding by a jury that the defendant had non-tax-paid intoxicating liquor in his car was sufficient to sustain the court's order confiscating his car and ordering it sold in conformity with G.S. 18-6 and 18-48.

In *State* v. *Vanhoy*, 230 N. C. 162 (Filed 23 March 1949), the defendant appealed from a conviction on charges of unlawful transportation of intoxicating liquor and reckless driving. He particularly objected to admission of evidence that there was non-tax-paid liquor in his car because the presence of the liquor had been discovered without a search warrant after he had been detained for reckless driving. In answer the Court merely referred to its long-standing rule that such evidence is admissible in North Carolina despite its having been obtained by unlawful means, pointed out that the Federal rule is different, and distinguished this case from the situation covered by G.S. 15-27 where evidence discovered by use of a search warrant issued without verification by the oath of the complainant is declared inadmissible. The defendant's exception to the order confiscating his car was dismissed with the observation that the order is justified and conforms to the provisions of G.S. 18-6 and 18-48 when the jury has found that the defendant had knowledge of the presence of intoxicating liquor in his car, whether or not the defendant admits to such knowledge.

Held that a district board of health is a creature of the legislature and thus has only the powers and authority delegated to it by the legislature; that a district board of health does not have authority under G.S. 130-66 to prescribe criminal punishment for violation of its rules and regulations promulgated under authority of that statute; that if G.S. 130-66 is interpreted to give a district board of health the power to prescribe criminal punishment, such a delegation of power is unconstitutional because prescription of criminal punishment creates laws and the legislature cannot delegate its power to make laws.

In *State* v. *Curtis*, 230 N. C. 169 (Filed 23 March 1949), the defendants appealed from conviction for the violation of a milk ordinance, promulgated by the district board of health for the counties of Burke, Caldwell and McDowell, on the ground that the board did not have the authority to establish criminal punishment for violation of the ordinance. The Court concurred with the defendants and acquitted them. The statute provides that the district "shall make rules and regulations, pay all lawful fees and salaries, and enforce such penalties as in its judgment shall be necessary to protect and advance the public health." This power, however, does not include the power to declare unlawful the sale of milk without first obtaining a permit from the board, for that would be tantamount to giving the board power to make a law, and only the legislature can make a law. The very simple solution to this dilemma was afforded by the 1949 General Assembly when it amended G.S. 130-66 to make the violation of any rule or regulation of a district health department a misdemeanor punishable by a $50 fine or imprisonment not exceeding 30 days. Thus the legislature makes the law by delegating to the board the power of determining the facts on which the action of the law depends.

Held that the operation of a public dining room for profit is a commercial activity; that a zoning ordinance prohibiting commercial activities within a residential district unless carried on by members of the immediate family with not more than two employees excludes the operation of a public dining room employing nine persons; that the provision of the ordinance permitting commercial activities by members of the immediate family with not more than two employees does not make the ordinance void as being discriminatory because the activities thus permitted are intrinsically different from unrestricted commercial activities. Re-affirmed the constitutionality of a zoning ordinance passed under the police power to promote the health, safety, morals or the general welfare of the community and the holdings that such ordinances do not deprive owners of property without due process of law merely because lots would be more valuable if devoted to a use other than that permitted under the ordinance.

In *Kinney* v. *Sutton*, 230 N. C. 404 (Filed 11 May 1949), the defendant Kinney appealed from an order, obtained by the city of Charlotte to enforce its zoning ordinance, restraining his lessee from conducting a public dining room for profit on premises located in a district zoned as residential and where only commercial activities conducted by immediate members of the family with not more than two employees were permitted. The property had been leased after passage of the zoning ordinance; the lease stated that it would terminate if the zoning restrictions prohibited use of the property as a restaurant; and the lessee was employing nine persons in the operation of the dining room. The maximum rental obtainable under uses permitted in a district zoned residential was $450 per month as a doctor's clinic while as a restaurant the premises were renting for $525 a month. Following issue of the restraining order, the defendant sought permission for restaurant use from the city building inspector who also administered the zoning ordinance. This permission was refused. Both the Board of Adjustment and the Superior Court refused to alter the inspector's decision. In upholding the ordinance the Supreme Court found that a restaurant was clearly a commercial activity and that it was clearly a prohibited activity under the terms of the ordinance when carried on within a residential district. One by one the Court reviewed and disposed of the contentions of the defendant that the legislature had not delegated the power to prohibit restaurants in residential districts, that the prohibition bore no substantial relation to the health, safety, morals or general welfare of the community, that it discriminated against the property rights of the appellant and deprived him of property without due process of law. In re-affirming the power of a municipality under G.S. 160-172 to prohibit businesses otherwise lawful from residential district the Court found that the appellant had not sustained his burden of showing that the restrictions had no substantial relation to the health, safety, morals or general welfare of the community, that the permission to carry on restricted commercial activities was reasonable, and that a pecuniary loss to a property owner under proper exercise of the police power in a zoning ordinance is not deprivation of property without due process of law —particularly when the pecuniary loss was evidenced in a lease signed with knowledge of the zoning ordinance.

The Attorney General Rules

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

Prepared by the Staff of the Institute of Government

I. AD VALOREM TAXES

A. Matters Relating to Tax Listing and Assessing

45. Valuation and listing of property by municipality

To C. V. Jones.

Inquiry: Where parcels of real estate lie partly within and partly without municipal corporate limits, can the county tax supervisor compel the taxpayer to list the part partly within the municipality, for municipal taxes?

(A.G.) Under G.S. 105-333 a municipality is required to accept the valuation placed upon property by the county authorities, except as to municipalities situated in more than one county, and except as to discovered property. G.S. 105-300 provides that all real property shall be listed in the township or place where the property is situated. In my opinion, however, the Machinery Act clearly contemplates that property which is partly inside and partly outside of a municipality shall, as to that part within the city, be listed for city taxes at a valuation for the part within the city. This requirement is suggested in G.S. 105-306(3) and (4). G.S. 160-402 provides that the municipal governing body shall have the power to collect ad valorem taxes on all taxable property in the municipality. It seems to me that this statute is clear authority for imposing a municipal ad valorem tax on whatever portion of a parcel of real estate which lies within the corporate boundaries. I am of the opinion that if the county authorities do not place a valuation upon such portion and do not list the lot or any part thereof as being within the municipality, the latter would be justified in letting such portion of the lot be regarded as a "discovery" and in listing and assessing the portion under G.S. 105-331(5). In order to stay in line with the county's assessment on the whole lot, the county assessment might be apportioned, for city tax purposes, on the basis of the relative value of the parts lying within and without the municipality.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

10. City automobile licenses

To J. W. H. Roberts.

Inquiry: The City of Greenville requires by ordinance that a city automobile tag be purchased and "conspicuously displayed on the front of the automobile" by every resident who owns and operates a car in the city. The license tag has a number, and on the bottom appear the words "World's Greatest Tobacco Center." A resident of Greenville has purchased a tag, but refuses to display it on the ground that since he has a tobacco business in Aberdeen, it is unfair to force him to advertise Greenville as a tobacco center. Is this a violation of the ordinance?

(A.G.) The authority for collecting license fees for such tags is authorized by G.S. 20-97. I have been unable to find authority either way on your specific question. There seems to be no legal prohibition against placing words or a slogan on municipal tags, nor any law which specifically authorizes it. I think, of course, that the man has clearly violated the ordinance. The fact that there is a slogan on the tag is not a legal defense, for the ordinance requires that he get a tag and display it. If he wishes to cover up the slogan part of the tag, he can do so.

43. License tax on movies and theatres

To Winfield Blackwell.

(A.G.) Counties have no authority to levy privilege license tax upon drive-in theatres, and cities and towns may levy such tax only on drive-in theatres located within their corporate limits.

47. License tax on slot and vending machines

To R. Paul Jamison.

Inquiry: Is it illegal in North Carolina to sell machines which will by the insertion of a quarter dispense prophylactic contraceptives? If not, must the operator secure a privilege license before engaging in such activity?

(A.G.) I am not familiar with any statutory provision which would make illegal the placing on location or operation of the machines described above. The operator or person placing such machines on location would be liable for the privilege tax levied by G.S. 105-65.1. In addition, the sales made from the machine would be taxable sales within the meaning of the sales tax article.

HARRY McMULLAN
Attorney General of North Carolina

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

X. Grants and Contributions by Counties

17. Agricultural training

To W. A. Johnson.

Inquiry: Can a county appropriate its funds for the purpose of purchasing livestock to be distributed gratuitously among 4-H boys and like groups under a plan whereby the recipient would return the first offspring to the county with the result that the county would eventually recoup its entire original expenditure, in the absence of express legislative authority?

(A.G.) I am in accord with the high and laudable purposes which the commissioners have in mind in the proposed project, but I know of no statutory authority for such appropriation, and I do not think that it could be legally made unless legislative sanction had first been obtained.

28. Breeding of animals by artificial insemination

To C. C. Howard.

(A.G.) I have been unable to find any law authorizing a board of county commissioners to make an appropriation to a county agricultural association to be used for the purpose of buying equipment and paying expenses connected with the breeding of animals by artificial or other means.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

B. Matters Affecting Municipal Utilities

9. Obligation to render service

To J. R. Davis.

Inquiry: Where residential section developers have installed water and sewage facilities with the understanding that the municipality would reimburse them for such improvements, is there authority for the municipality to make such reimbursements?

(A.G.) I think that if the governing body should find that the installation of such facilities is necessary in the enlargement of the municipal water and sewer system, that the developers could be reimbursed from any available funds on hand not otherwise appropriated. Of course, the municipality could not borrow

for this purpose unless it had the approval of the Local Government Commission.

To Messrs. Price and Osborne.

Inquiry: Where a municipality furnishes water and sewer service in practically all of its areas, may it be forced to furnish such services in a newly developed area where it has no water and sewer line, despite the fact that its town board may feel that it is not now financially able to do so?

(A.G.) I have been unable to find any court decision which authoritatively answers your inquiry, but I am inclined to think that should a test case be made of this question, the Court would not require your town to furnish water and sewerage facilities to every resident therein until it was financially able to do so.

K. Grants by Cities and Towns

7. Advertising

To George W. Ball.

Inquiry: May a town allot money to a civic organization for the purpose of advertising and promoting the town?

(A.G.) This office has rendered numerous opinions to the effect that there is no authority for such action. See *Ketchie v. Hendrick*, 186 N.C. 392. There is a law, G.S. Ch. 158, which authorizes the governing body of a municipality to make such contributions provided an election is held and the voters approve. This act was passed in 1925 and has never been tested in the courts. In the absence of a Supreme Court decision, this office would hesitate to render an opinion as to its validity.

12. Miscellaneous

To J. Roy Proctor.

(A.G.) I seriously doubt the authority of a municipal governing body to provide a dinner at an "Appreciation Night" for city employees, using public funds therefor.

L. Liability for State and Federal Taxes

6. Admissions taxes

To Henry B. Edwards.

(A.G.) In our opinion, federal admissions taxes are due on charges made by a municipal swimming pool to those using the pool, as being taxable admissions under Section 1700 of the Internal Revenue Code.

N. Police Power

10. Building permits

To J. William Copeland.

Inquiry: Where a building permit was issued two years ago, but has never been used, and where in the meanwhile the municipality has adopted an ordinance forbidding erection of a building in the manner authorized by the permit, may the municipality prevent erection of the building now, notwithstanding the permit?

(A.G.) Neither the North Carolina cases nor statutes seem specifically to cover this situation. However, it is a well settled general rule that a building permit has none of the elements

PEYTON B. ABBOTT

Assistant Attorney General

of a contract and may be changed or even entirely revoked in the exercise of the city's police power. Following this line of reasoning, it has been held in other jurisdictions that an applicant's property is not exempt from the application of subsequent ordinances legally enacted. See 43 *Corpus Juris* 349. This rule is particularly appropriate where no action has been taken nor money expended under the permit, since no property rights are imperiled by the city's withdrawal of privilege to proceed. McQuillin, *Municipal Corporations*, 2nd Ed., S. 1021. Further, it is equally well settled that a building permit must be exercised by its possessor within a reasonable time after issuance, and that a nonuser for a reasonable time works a forfeiture of all right to exercise a permit. 43 *Corpus Juris* 350. See *Hanley v. Cook*, 139 N.C. 654.

T. City Health Matters

5. Safety and sanitary regulations

To D. D. Topping.

Inquiry: Can a municipality mow and clean up vacant lots and charge the expense thereof to the respective owners?

(A.G.) There is no authority for a municipality to have a property owner's premises cleaned up and levy an assessment against the property if the owner refuses to pay for such work. It is possible that there might be an accumulation of debris which would constitute a menace to public health, under which conditions the city could require the owner to clean it up, or could abate the nuisance. But a city cannot require a property owner to clean up his premises merely because of unsightly appearance.

V. Miscellaneous Powers

8. Recreation

To Robert E. Bowen.

Inquiry: May proceeds from parking meters be appropriated by the governing body of a municipality for municipal recreational purposes?

(A.G.) No. Under G.S. 160-200(31), such proceeds must be used exclusively for the purpose of making vehicular traffic and parking regulations effective.

Y. Streets and Sidewalks

To L. C. Marshall.

Inquiry: May a municipality legally remove or cause to be removed large bushes planted at an intersection in the grass plot between the sidewalk and the street, where the bushes have become a traffic hazard by obstructing the view of oncoming traffic?

(A.G.) The solution to this problem is not too clear but it seems to me that under the provisions of G.S. 160-222, a city or town has the authority to control streets and sidewalks and to prevent, abate and remove obstructions, encroachments, etc., therein. All of this may be done as may be deemed best for the public good.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

A. County Commissioners

14. Powers-general

To A. F. Moxley.

Inquiry: The county commissioners, in compliance with G.S. 153-180, have reduced the allowance for feeding prisoners from $1 per day to 50c per day, although they feel that $1 is not too much. Is there any way that the county commissioners can pay more than 75c?

(A.G.) No. G.S. 153-180 allows 50c a day for feeding prisoners unless the board of commissioners deem it necessary to increase the fees, which they may do, but they cannot exceed 50% of the 50c in increase. My opinion is that under this section 75c is the legal limit, unless there is some special public-local act applying to your county which allows the commissioners to allot more than 75c.

15. Public buildings

To Robert T. Wilson.

(A.G.) There is no authority for a board of county commissioners to rent office space, and furnish the same free of charge to the Farm Security Administration or to the State Highway Patrol.

Of course, if there is available office space in any county building, no legal objection is seen to the county making such space available to these organizations free of charge.

B. Clerks of the Superior Court

36. Deputy clerks—powers

To K. W. Lawrence.

Inquiry: May an assistant clerk of superior court also act as clerk of a county recorder's court?

(A.G.) Assuming that the recorder's court was organized under the general laws of the state, it seems that the assistant clerk of superior court could legally serve as clerk of the recorder's court. G.S. 7-231 provides that the clerk of superior court shall be *ex officio* clerk of the county recorder's court. This section provides that whenever the clerk so acts, any of his assistant or deputy clerks shall have power to take affidavits, issue warrants and other process, administer oaths to witnesses, and perform any other duty in connection with such court under direction of the clerk. And G.S. 2-10, generally, allows an assistant clerk to perform any duties that a clerk can perform.

58. Instruments filed with clerks

To George A. Hux.

Inquiry: Is it permissible under G.S. 31-11 for anyone other than the testator to file a will for safekeeping?

(A.G.) This section permits the filing of the will with the clerk of the superior court as a depository. It provides: "Any person who desires to do so may file *his* or *her* will for safe keeping."

We are of the opinion that this is entirely a matter personal to the individual wishing to file the will, and that no one can file it except the testator or testatrix in person.

D. Register of Deeds

4. Books and records

To Mrs. Edna L. Blossom.

Inquiry: Where the county commissioners have authorized the register of deeds to have badly worn deed books restored, is there legal authority under which the register of deeds can release these books from custody for that purpose?

(A.G.) I assume you contemplate removing the books from the office and delivering them to some person for their restoration.

G.S. 161-4, 161-14, 161-22, 132-6, 132-7, and 132-9 impose numerous requirements on the register of deeds relative to records and the manner in which they shall be kept. G.S. 161-18 allows the commissioners to direct the register of deeds to transcribe and index books when they have become decayed, etc., and to allow him compensation for this work as they think proper. It is my opinion that the register of deeds would violate the provisions of the above statutes if the books referred to were removed from his office. G.S. 161-18 contemplates that such books which require restoration from decay or other cause should be restored in the office of the register of deeds.

9. Marriage—licenses and certificates

To Virginia Neister.

Inquiry: Where the marriage records of the register of deeds have been searched without avail in a search for either the original marriage license or the stub showing that a license was issued; where the persons involved say they were married under a license supposedly issued by the office of register of deeds on 12 March 1926; and where both the issuing register of deeds and the justice of the peace who allegedly married the parties are dead, what steps may be taken to give them a certified copy of marriage license?

(A.G.) You are advised that there is no way in which you can issue a certified copy of any record which your office does not contain. I frankly do not see how any relief can be given in a matter of this nature since it does not seem to come within G.S. Ch. 98, which deals with burned and lost records.

L. Local Law Enforcement Officers

13. Prohibition law—illegal possession

To Joe W. Garrett.

Inquiry: Is a person, apprehended while transporting a case of beer in

T. WADE BRUTON

Assistant Attorney General

a county which voted dry at an election held under the 1947 Beer Act, guilty of possessing intoxicating liquors in violation of the North Carolina statutes?

(A.G.) It is not illegal to transport a case of beer under such conditions. Ch. 1084, S.L. 1947, provides that it is illegal to sell or possess for sale any beer in a municipality or county which has voted dry at an election held pursuant to the terms of that Act. The Act does not purport to make the mere possession of beer illegal. In order to secure a conviction it is necessary that there be some evidence that the beer was possessed for the purpose of sale or that a sale had been made. This office has heretofore expressed the opinion that the provisions of G.S. 18-32, which make the possession of more than five gallons of malt liquors at any one time *prima facie* evidence of possession for sale, apply to the possession of beer in counties which have voted dry at an election held under the provisions of Ch. 1084, S.L. 1947. One case of beer does not contain five gallons.

To R. W. Winston.

Inquiry: Is it a violation of law for a person to possess more than one gallon of tax paid liquor in a wet county?

(A.G.) I know of no statutory penalty for such possession, if it is not for purposes of sale. However, G.S. 18-32 provides that possession of more than one gallon is *prima facie* evidence of possession for sale, and the court could convict on the presumption thus raised by the statute, unless the court felt that the presumption in a particular case is not such as to warrant a verdict of guilty.

73. Transportation of prisoners

To W. C. Britt.

Inquiry: Whose responsibility is it to transport prisoners from the county jail to the courtroom for trial, in cases involving defendants arrested by the State Highway Patrol?

(A.G.) After a person has been arrested for commission of a crime by a member of the State Highway Patrol and placed in the common jail of the county, he is in the custody of the jailer who is ordinarily the agent of the sheriff. In the absence of some local statute providing otherwise, it is my opinion that the sheriff would be the proper officer to have the duty and responsibility for conveying prisoners to and from criminal courts of the county in which they are to be tried. It might be doubted whether the Highway Patrol would have the right to take a prisoner from the county jail except as authorized and permitted by the sheriff.

M. Health and Welfare Officers

31. Health laws and regulations

To J. M. Jarrett.

Inquiry: May a local board of health adopt an amendment to their local milk ordinance to provide that all milk sold within their jurisdiction must have been pasteurized and bottled within the county?

(A.G.) I do not think it is constitutional or valid to exclude milk products coming from other counties just because such products have not been pasteurized and bottled in the county where they are offered for sale.

To J. M. Jarrett.

Inquiry: Do provisions of Ch. 378, S.L. 1949 apply to county boards of health or other local boards of health so as to require local regulations adopted by such health units to be filed with the various clerks of the Superior Court of North Carolina as is required of state agencies and administrative boards?

(A.G.) No. Ch. 378, S.L. 1939 amends Art. 18 of G.S. Ch. 143. G.S. 143-195(1943) had previously required such state agencies to file a complete copy of all the rules of each with the secretary of state. Previously, this office stated that Art. 18 of Ch. 143 applied to primary state departments and agencies which exercise state-wide jurisdiction. Since no other counties would be interested in such regulations, and since such regulations can be enforced only within limits of the particular county, no purpose would be served in advising officials outside that county of those rules and regulations.

26. Trading with member of board

To R. Lewis Alexander.

Inquiry: May an insurance agent who was elected to the board of town commissioners in May 1949 renew insurance policies on town property when he has carried insurance on said property for more than five years preceding his election to the town board? May an insurance agent who is a member of the board of town commissioners write insurance policies on local school property when the board of commissioners has the power to appoint the members of the board of trustees of the city school administrative unit?

(A.G.) G.S. 14-234 provides that if any person, appointed or elected a commissioner or director to discharge any trust wherein the state or any county, city or town may be in any manner interested, shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor. It is thus my opinion that it would be unlawful for a member of your board of town commissioners to write the insurance either on a renewal basis or otherwise,

IX. DOUBLE OFFICE HOLDING

52. Members of housing authority board

To J. W. Ellis.

Inquiry: Is a member of a local housing authority a public officer and thus barred from holding another public office at the same time?

(A.G.) In my opinion membership on a housing authority is an office within the meaning of Article 14, Section 7, of the State Constitution, prohibiting double office holding.

59. Municipal recreation commission

To Lucas and Rand.

Inquiry: Can a member of the town board of commissioners be appointed as a member of the recreation commission without thereby forfeiting his office as town commissioner? And is it mandatory on the board to have at all times ten members of the recreation commission?

(A.G.) As to your first question, this office held during 1948 that a member of a recreation commission was a public officer within the meaning of Art. XIV, S. 7, of the state Constitution. The General Assembly of 1949, however, rewrote the first two sentences of G.S. 160-161, and provided, among other things, that the recreation board or commission should be appointed by the governing body of the unit and that the number should consist of ten members. Four of these members are required to be *ex officio* members, "one of whom shall represent the governing body of the unit." I construe this act to mean that representation of the governing body shall be by one of the town commissioners, and this statute imposes the duty on the office of town commissioner to act *ex officio* and perform the duties required for recreational purposes. These duties are not conferred upon such a member as an individual, but they are a part of the duties of the office already held by him as town commissioner and are therefore *ex officio*. *McCullers v. Commissioners*, 158 N.C. 75, 80. I am of the opinion, therefore, that a member of the board of town commissioners can serve as a member of the recreation commission without forfeiting his office as town commissioner.

As to your second question, it seems to me that the statute makes it mandatory on the board to have, at all times, ten members of the recreation commission.

Public Housing

(Continued from page 9)

ty dates of the different bonds issued are set so that this result will be obtained). The annual debt service load is so arranged that it will equal approximately the maximum amount the Federal government may be called upon to contribute each year, now 4-1/2% of the capital cost.

This means that under present conditions the yearly debt service load would be slightly under 4-1/2% of the capital cost, according to PHA figures. Thus the PHA reports that if the bonds were sold at interest rates averaging 1-7/8%, the project cost would be amortized—paid off—in 29 years. The maximum period allowed for amortization is 40 years. When the project is finally paid for, the local housing authority will no longer need Federal assistance in operating the project, as its annual income from rents will be sufficient to take care of its normal operating obligations, once the annual debt service load had been removed.

If any part of the permanent financing cannot be taken care of through long-term bonds sold to private investors, the PHA makes permanent loans to cover such part of the financing.

It is important to note that none of the financing connected with the local housing project—neither the preliminary loan, nor the short and long term notes and bonds—become obligations of the municipal government. They are altogether obligations of the local housing authority which, as has been pointed out, is made by state statute a public body politic and corporate. This is important because it means that a city in North Carolina can enter into a public housing program, through the local housing authority it can create, without regard to constitutional and statutory debt and tax limitations. Except for the fact that the Federal government stands ready to make the annual contribution outlined above, the local housing project is a self-liquidating proposition, and its obligations in no sense rest upon the faith and credit of the municipal government itself.

It is also important to note that a local housing project is in no sense the property of the Federal government. Title to it, from the beginning, will be in the local housing authority, subject to the claims of the private bondholders until the capital debt is paid off. Thereafter it is owned free and clear by the local housing authority, which must, however, continue to restrict it to low-income tenants.

Selection of Tenants

Only families of low income are eligible for admission to local housing projects, but there is in the law no set figure for maximum income. Instead, the local authority sets the maximum income which a family may have and gain admission. The law does provide, however, that the net income a family may have at admission cannot exceed five times the annual rent to be charged, including utilities (less a $100 exemption for each minor member of the family). The top rent must be at least 20% below the rents at which private enterprise is providing locally a substantial supply of available standard housing. Rents and income limits are set subject to PHA approval, and the local authority must re-examine the incomes of all tenant families periodically to make sure they are within the limits set. Those whose incomes have risen above the maximum allowable must be evicted. Maximum income limits for continued occupancy, according to the PHA, are generally set 20 to 25 per cent above the admission limit on income, so as to allow some increase in family income without the necessity of immediate eviction. The PHA reports that in the 200,000 existing low-rent housing units, built since the 1937 act was enacted, the maximum income limits for admission of average-sized families average $1,947, and that the average actual income of families admitted during the first half of 1948 was only $1,481.

Setting the Rents

Maximum and minimum rents to be charged are set by the local housing authority, subject to the approval of the PHA, and within the limitations mentioned in the preceding section. The PHA regards three major factors as essential for consideration in setting the rents:

(1) the level of rents within reach of low-income families from slums;

(2) the cost of operating and paying for the project; and

(3) the amount of contributions available from the Federal government and from the municipal government to reduce rents (i.e., exemption from all ad valorem taxes, on real and personal property belonging to the project, is the local contribution; the PHA anticipates that the local tax exemption contribution, less in-lieu-of-taxes payments to be made by the local authority to the local government, will average about 50 per cent of the actual Federal contributions over the life of the project).

Operating the Project

Under the North Carolina statute, the actual management of the local housing project will be in the hands of an executive director who, along with any other personnel necessary to the operation, will be employed by the local housing authority, and who will act under supervision of the authority. Full control over the project remains in the local housing authority, subject to the Federal requirements already mentioned.