

Popular Government

January 1950

Local Property Assessments

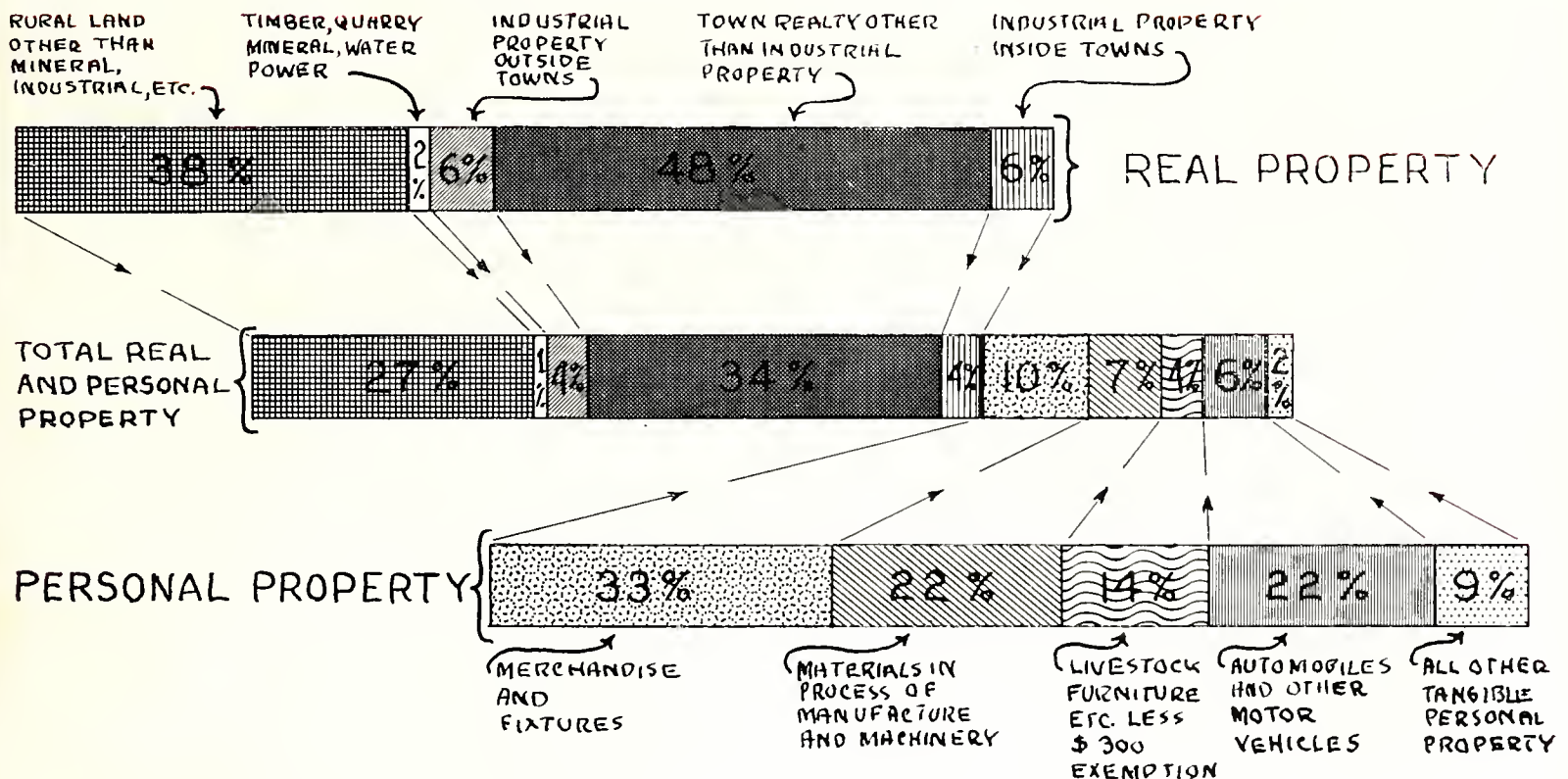


CHART SHOWS DISTRIBUTION OF PROPERTY TAX BURDEN AMONG RECOGNIZED KINDS OF PROPERTY

NOTE: These figures were taken from the 1946 Report of the Department of Tax Research and reflect assessments for 1945. Figures for assessments within the original jurisdiction of the State Board of Assessment are not included.

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Timetable

For Listing and Assessing Property for Local Taxation

December 5, 1949	County commissioners appoint county tax supervisor for one year term.
Not later than December 19, 1949	Tax supervisor selects and appoints list takers for each township. Since appointments must be approved by county commissioners they are usually made on first Monday in December.
December 19, 1949	Tax supervisor convenes list takers for instruction in work of listing and assessing property.
On or before December 22, 1949	Each list taker posts in five or more public places in his township notices of listing required by Machinery Act.
January 2, 1950	List takers start work of listing and assessing property in their townships.
January 16, 1950	Last date allowed warehouses, consignees, brokers, etc., to furnish tax supervisor with lists of owners of property stored with them.
January 31, 1950	Regular listing period ends. County commissioners may extend the listing period until March 2, 1950, if they think advisable.
January 31- March 20, 1950	During this period tax supervisor must examine all abstracts and meet with each list taker to review his abstracts for correction and equalization purposes.
March 10, 1950	Last date for first publication of the three newspaper notices of time of meeting of Board of Equalization and Review.
March 20, 1950	First meeting of Board of Equalization and Review.
April 10, 1950	Date for completion of work of Board of Equalization and Review.
June 9, 1950	Last date for taxpayers to file written notice of appeal from decision of Board of Equalization and Review to State Board of Assessment.

THE CLEARINGHOUSE

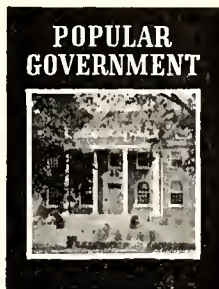
Recent Developments of Interest to Counties, Cities and Towns of North Carolina

Popular Government

Municipal officials in North Carolina have been making a noticeable effort recently to take the exclusiveness out of government and make it a function not only of a handful of elected office holders but of a large and active citizenry. Several cities and towns are using the town meeting technique to thrash out local problems, others have scheduled regular council meetings for the evening hours to enable a larger number of citizens to attend, and at least one city, High Point, has gone so far as to create citizen groups as semi-official branches of the city government. (See POPULAR GOVERNMENT, September-October, 1949).

In Wilson last month the mayor and city council instructed City Manager F. T. Green to find out what kind of program the people of Wilson wanted their city to undertake during the next year. A letter from the city manager was sent to all civic, church and community organizations, asking for suggestions: "Planning is a most important part of any community. Your ideas will be of invaluable assistance to us in the preparation of an overall plan for the future which will make our town a better place for everyone."

From Burlington this month the Institute of Government received a copy of the first issue of "Your Municipal Reporter," published by the city for its citizens. On the first page the editors announce that " 'Your Municipal Reporter' was originated for the one purpose of reviewing for you the activities, plans, and problems of your Community and City Government." The first issue, attractively illustrated with graphs and charts, presents the basic facts on how Burlington's government operates in clear, easily-read form. Included are charts and explanatory material on the structure of council-manager government, a directory of city officials, physical facts about the city, and information on revenues and expenditures.

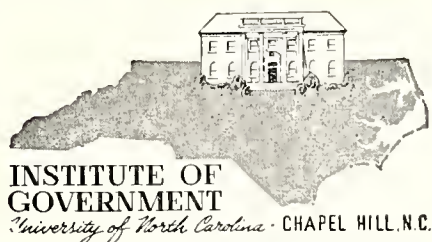


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"Equal Pay For Equal Work"

Municipal administration in Winston-Salem was scheduled for greater efficiency and smoother operation last month following acceptance by the board of aldermen of a classification system for the city's 1200 employees. Establishment of such a system for hiring, promoting, and evaluating the performance of employees has long been on the standing list of recommendations offered by public administration experts for the improvement of administrative efficiency. Nothing new to North Carolina, classification surveys were conducted in Greensboro and High Point before the war and a classification system covering all jobs in the state government is due for completion by next summer.

Job classification essentially calls for the drawing up of detailed descriptions of each set of duties to be performed by an individual worker, grouping all positions involving similar duties and responsibilities together under the same descriptive title, and arranging the groups of positions (or classes) in orderly fashion with respect to each other. Such a system enables a pay plan to be developed on an objective basis, with salary assigned to the job rather than to the individual and increases granted according to standard measures of achievement indicated in the classification chart.

In addition to assuring that personnel will be hired, paid, promoted, and discharged, on the basis of performance only and not political considerations, the greatest advantage cited for the classification system is that it reduces dissatisfaction and consequent turnover in personnel by clarifying promotion and transfer possibilities and by helping to eliminate salary inequities between jobs and between departments. "Equal pay for equal work" has been its selling point to employees, supervisors, and management.

The classification system which went into effect in Winston-Salem on December 1 was the result of months of study and deliberation by city of-

fcials, and extensive technical work performed by job analysts from the Public Administration Service of Chicago. After explaining that it was not their purpose to classify people but to classify jobs, the analysts followed a procedure which included: 1. Asking each city employee to fill out a questionnaire containing detailed questions about the nature of his job and the training and qualifications necessary to do the work properly, 2. Double-checking of each questionnaire by the supervisor of the employee who filled it out, 3. An interview between the analyst and the employee to glean further information that may not have been covered by the questionnaire, 4. Classifications of each job in relation to the others by the analyst, and 5. An opportunity for each employee to indicate his approval or disapproval of the classification of his own particular job, and to ask for a review if dissatisfied. (Only 35 of the 1200 employees asked for review). The city manager will have the authority to change the classification of any position whenever he sees fit, with the approval of the board of aldermen.

When the job classification plan was completed, the PAS analysts devised a salary schedule, acceptable to the board, which not only increased the pay (retroactive to July 1) but also reduced the working hours of 90% of the city's employees. The police department and municipal clerk's office will continue to operate 24 hours a day and skeleton crews will be maintained on Saturday morning at the Revenue and Recreation departments. Service employees and laborers who have been working from 48 to 57 hours a week will now have to be on duty for only 44 hours, and the duty tour for firemen has been cut from 72 to 66 hours. All other municipal employees in Winston-Salem stole a march on state workers this month by quietly slipping on to a 5-day, 40-hour week.

Baby Sitters

Fayetteville parents may now have the assurance, when they go out of an evening, that they are leaving their children in good hands—if their baby sitter is one of the 29 certified graduates of a baby sitting course conducted this month by the city's fire department. Alarmed by reports from across the country of children

being injured in home blazes while under the care of teen-agers, the department cooperated with radio station WFLD in instructing high school girls in the art and science of baby sitting. On the first four evenings of classes Chief George Brinkley outlined basic steps to take both in preventing a fire and in rescuing the child if one should start. The second evening was devoted to child care instruction by a public health nurse, and the third to the etiquette of baby sitting (restraint in the use of the telephone and refrigerator, etc.) The final class reviewed the principles of first aid. Certificates were given by Chief Brinkley and Mayor Joe Talley in formal graduation ceremonies, to those who attended all four classes.

Push-Ups For Policemen

A healthier, perhaps slenderer, police department was in the offing for Wilmington when the majority of policemen in the city indicated their approval of a physical training plan devised by the city council. The 42 policemen who agreed to participate in the program are scheduled for a special physical training course at the YMCA under the supervision of the athletic director. The course will in no sense be compulsory but those who take it will receive special credit on their records.

County-Wide Recreation Program

The commissioners of Nash County took a long step forward toward providing recreation facilities for rural as well as urban residents when they recently created a County Recreation Commission. The ten-man commission, composed of one representative each from the Board of Commissioners, the County Health and Welfare Departments and the Board of Education, plus six members appointed by the commissioners, will have a budget of \$8,000 to work with in organizing a county-wide recreation program. The funds were appropriated from non-tax revenues, mainly profits earned by the county's ABC stores. Governor Scott congratulated the Nash county commissioners when news of their action was announced, for establishing "the first program to be designed county-wide for rural and

Housing Policy

The announcement last month of a new rule governing home financing by the Federal Housing Administration, created a storm of protest throughout the country which quickly subsided once the ruling was explained. The order stated that in the future the FHA will refuse to insure mortgages for homes or apartments which are affected by written covenants barring members of racial or religious minority groups. (Last year the Supreme Court ruled that while individuals were free to impose or comply with such covenants the covenants could not be enforced by state or federal courts.)

Shortly after the new rule was announced spokesmen for the FHA explained that it would not mean the end of segregation in either public or private housing. Landlords will be free as in the past to rent to any tenants they choose. Unwritten agreements between landlords or homeowners barring members of a minority group will not disqualify applicants for loans, nor will the existence of a written covenant, if it was drawn up before the new rule was formulated. Local housing authorities may still decide whether or not to build separate public projects for each race, as long as the number of units constructed is apportioned fairly among the races.

urban areas in North Carolina."

Several factors have heightened the awareness of city and county officials, within the past few years, to the need for coordinated programs for rural residents. Growing concentrations of population in areas adjacent to but outside city limits have placed a too-heavy load on municipal recreation facilities in several towns and cities throughout the state. Consolidation of rural schools has meant the disappearance of the local schoolhouses which in the past served as community centers, and at the same time farmers as well as other working people have found themselves with greater leisure time on their hands. Faced with problems such as these, several other counties, including Guilford and Wake, have already been considering action similar to that taken in Nash.

Street Paving Marathon

Several cities and towns in North Carolina have recently adopted the policy of collecting assessments in advance from property owners who petition for street paving. But probably never before in the history of any town has a paving machine accompanied the bill collector down the street—the machine laying the pavement as the collector pocketed the payments. This actually took place in Winterville last month at the height of a street paving marathon, when almost every street in the town was coated with asphalt in less than two weeks.

The project which left the town with only two or three blocks of streets remaining unpaved, was financed without the levy of special taxes or the issuance of bonds and was largely the product of spontaneous civic mindedness. The whole thing started early in November when paving equipment neared Winterville after completing the first project in Pitt County under the state's bond financed road program. Seeing an opportunity, the mayor and another citizen arranged with the construction workers to have "a couple of blocks" in Winterville paved while the equipment was there. The next day the citizens measured off one or two of the streets

while the mayor knocked on doors and collected \$1 per front foot from willing property owners. According to Mayor Burney Tucker "collecting was so good on the first block that we started measuring again." At the end of that day ten blocks had been laid off for paving, and the other town officials as well as several citizens had joined in the talking, measuring and collecting in behalf of the project. On several occasions while one man measured and another knocked on doors collecting money, the paving machines were moving along right behind them on the same street—making sales talks unnecessary. The property owners were forthcoming with \$20,000 worth of support, enough to keep the equipment in Winterville for two weeks and to pay for 35 blocks of newly paved streets.

Brevard is currently surfacing 13 miles of dirt streets and going about it in just as novel, if not as dramatic a manner as Winterville. Brevard recently purchased a crusher plant located near the town and uses rock quarried and crushed by town employees to cover the streets. By the end of last month 1,000 tons of crushed rock had been produced by the plant.

Rural Garbage Disposal

The problem of rural garbage disposal, which wrinkles brows from Manteo to Monterey, is currently under attack in North Dakota where an experiment will soon be underway which, if successful, might well provide a solution for other communities across the country. The North Dakota plan was devised following a suggestion by the American Municipal Association that state and county highway equipment could be contracted for by local communities for periodic use in the land-fill method of garbage disposal. In North Dakota the State Department of Health will procure a bulldozer from the U. S. Public Health Service to be used in constructing the required trenches where needed near rural communities, in periodically compacting the refuse which has been dumped, and covering it with earth.

Rural Fire Protection

In a report to the city council early this month Jim Reid, chief of the Shelby fire department, recommended that the city's fire fighting services be limited to within three miles of the corporate limits and to sites which could be reached over paved roads. Chief Reid reported that on one long trip recently the cylinder block on one of the fire trucks became overheated and burst en route back to Shelby. A further difficulty involved in answering rural calls was the fact that the city's new fire trucks weigh ten tons and are consequently too heavy a load for many of the country bridges. The council took no action on the chief's report but recommended that the county establish a rural fire-fighting department to be centrally located and supported by the townships it served. At present Shelby's fire department answers calls from

any person who has deposited \$100 as prior guarantee of payment. More than 500 residents in all parts of the county have made such deposits.

Cities Regulate Modern Conveniences

The continuing progress of science and industry toward providing greater comfort and convenience for most Americans has proved something of a mixed blessing to local government officials. In recent months at least two devices—the kitchen garbage grinder and the air conditioning unit—have been subjects for worry and regulation in several cities.

Approximately 352,000 garbage units are now in use across the country, frequently placing a considerable strain on the sewage disposal facilities of the community in which they are located. A few cities have adopted ordinances prohibiting their use entirely. Other municipalities are increasing sewer service charges, levying additional fees (averaging about 25 cents a month) for the privilege of using grinders, and requiring permits for installation. Several cities are already planning extensive improvements and enlargements of their sewage disposal system, accepting as inevitable the widespread use of garbage grinders in the future.

Even more serious problems, involving finances and water supplies as well as sewage disposal, are caused by the increased use of air conditioning units. Studies by local government officials in West Chester, Pennsylvania, showed that a five horsepower unit used approximately 30,000 gallons of water a day during the summer season. A Chicago survey found that the amount of water used by air conditioned premises on a hot day was 165% of the average daily water consumption. This increased use of water not only means increased cost to the city but also the possibility of a severe over-load on the sanitary sewer system. Chicago Sanitary District engineers estimated that air conditioning placed an additional load of 35,000,000 gallons a day on one sewer treatment plant having a daily capacity of 325,000,000 gallons.

According to the Pennsylvania Government Administration Service, several small cities have already passed ordinances regulating the use of such units. West Chester prohibits the use of air conditioning equipment of

more than five horsepower unless the property owner agrees to install a water cooling tower which would be used to recirculate the water used for cooling. Applications to install such equipment must be approved by the water commissioner. In all cases where air conditioning equipment is used a water meter must be installed to register and measure the water consumption. West Reading and Chambersburg have passed ordinances similar to West Chester's, West Reading also stipulating that "no air conditioning or refrigeration equipment using water as a direct cooling medium may be installed, unless a means of water disposal other than discharge into sewers is provided."

Safety Regulations

Ambulances and funeral processions were the subjects of two recent ordinances adopted to protect the public safety by the Wilmington city council. One ordinance limits the speed of ambulances to 35 miles per hour when passing through the business district and to 45 miles per hour in the residential areas. Drivers who exceed these limits will be subject to a \$10 fine. The second ordinance provides that when a funeral procession passes along any street in the city "it shall be unlawful for any person driving any other vehicle to pass, break through or cross such funeral procession . . . provided, however, that the provisions of this ordinance shall not apply to emergency operations of vehicles of the Wilmington Police and Fire Departments or to ambulances." Violators will be subject to a \$10 fine.

Water Survey

Deciding that what happened to New York City must never happen to Warrenton, the town commissioners voted this month to employ an engineering firm to survey the town's water resources with a view toward providing for present and future needs. New York, which has "outgrown its dependable yield of rainfall," faces a serious shortage and must strictly curtail its use of water during the next three years until new reservoir projects are completed. Warrenton too is fast outgrowing its available water supplies but in order

to avoid an emergency will ask the engineers to devise a long-range plan

for the location and construction of new wells as they are needed.

Trash and Grass Fires

Trash and grass fires which seem to have an unavoidable tendency to exceed the limits originally planned for them, are the subject of an ordinance recently adopted in University City, Missouri. The action makes it unlawful for any person to "burn any sweepings, trash, paper, lumber, straw, hay or any other combustible material, except the burning of leaves when properly attended, within the city limits unless such material is

securely confined in a refuse burner constructed of brick, concrete, plate iron, steel or wire, and so constructed as to provide sufficient draft for complete combustion, with all openings in said burner securely covered by a cover of screen wire." The ordinance requires that material be burned between 7 a.m. and 7 p.m. only, and that fires are located at least ten feet from the boundary line of any adjoining property.

Smoke Abatement

A comprehensive smoke abatement ordinance was adopted last month to go into effect on January 1, by the Charlotte city council in the absence of a single protesting citizen in the council chamber. The absence of protests was unusual in view of the fact that the ordinance not only sets up strict standards for the operation of fuel burning equipment but also provides strong measures to enforce observance of its regulations. Excessive smoke, noxious gases, fly and ash are prohibited under the ordinance, as well as any open fires, such as leaf or trash burning, within the city limits. Authority is given the Smoke Abatement Engineer to make periodic inspections of all fuel burning equipment and to close down any equipment if the operator refuses to make repairs ordered by the engineer.

A similar ordinance, in effect since last January in Winston-Salem, provides for a five-member Air Pollution Control Board with power to develop rules and regulations necessary to control "the emission into the open air of dusts, gases, fumes, smokes and odors from any structure, process or vehicle." The Board also acts as an advisory body to the Director of Air Pollution Control, from whom, the ordinance states: "A permit shall be secured before any person may construct, install or alter any equipment capable of emitting dusts, gases, smokes and odors into the open air. No permit will be issued until an application including plans and specifications for the construction or alterations of equipment has been filed in duplicate in the office of the Director and has been approved by him." Fines for violations of the ordinance range from \$10 to \$500.

The Minutes Tell The Story

The Christmas spirit affected the nature of business taken up by several of the city councils whose minutes were received this month. Seven cities voted appropriations ranging from \$500 to \$1500 for street decorations during the holiday season, while the coal shortage prompted one city to omit the Christmas lights this year. Statesville's city councilmen requested the city clerk to secure prices on hams, to be distributed as Christmas gifts to all municipal employees. Greensboro authorized a \$5 bonus for its employees. Three cities granted five-day Christmas vacations to their personnel.

Still in keeping with the Christmas spirit one city discussed the possibility of a five-day week for city offices, another gave salary increases to the city clerk and treasurer, and a third considered drawing up a bill for the next legislature authorizing an increase in the salaries of the mayor and councilmen. Greensboro amended its personnel rules to provide 8:30 to 4:30 working hours all year round for municipal workers.

Several cities dealt with various aspects of the housing problem this month. Durham councilmen approved the application of the Housing Authority for a federal loan of \$170,000 to finance preliminary work in connection with the development of a public project, and New Bern approved the Housing Authority's application for a \$90,000 loan. Consideration of a proposed federal housing project for Lexington was deferred by the city council for one year. Wilmington's city council accepted a report of the

city manager following his inspection of substandard dwellings and ordered the demolition of buildings designated as unfit by the city manager. Louisburg ordered a property owner to install sanitary facilities or close his premises, in Charlotte the building inspector was ordered to declare a buliding unfit for human habitation, and Kinston ordered that a hotel be condemned as a fire hazard.

New Bern, this month, established a five-member zoning commission for the city, using the power granted by G.S. 160-177. Louisburg's city council voted to employ the North Carolina League of Municipalities to work with the city attorney in drawing up a zoning ordinance. Three cities amended their zoning ordinances, while four discussed the advisability of doing so.

Appointed by city councilmen this month were a special license clerk, a health officer, a member of the Recreation Commission, one fireman, two policemen, a chief of police and two patrolwomen. In Raleigh the city manager was authorized to appoint a planning director who is not necessarily a graduate engineer.

Christmas shopping by the cities

brought forth a variety of useful gifts for their citizens, including trucks, police uniforms, parking meters, a patrol car, lighting equipment and venetian blinds for the fire station. High Point's city council appointed a committee to investigate the possibility of purchasing voting machines, and Wilmington allocated funds to help finance the purchase of an X-ray machine. Future outlays were also planned by the cities. Albemarle adopted a resolution to issue \$1,442,000 bonds for street improvements, and enlargement of the city water supply system. The city manager and city attorney of Wilmington were directed to prepare an ordinance authorizing a \$325,000 bond issue to finance extension of water and sewer lines, and for equipment. Six cities authorized the construction of new sewer lines. Raleigh's city manager was requested to investigate the availability of federal funds for construction of a new municipal sewage disposal plant.

The ordinances received by the Institute of Government this month covered a wide range of subjects. Sanford made it unlawful to ride horses on the sidewalks of the town, and

Spencer now requires that public dances meet certain standards of policing and chaperoning, and that the sponsors obtain a permit from the town, before the dances can be held. A Raleigh ordinance provides that the city will furnish water and sewer services to housing developments outside the city limits only when such developments provide adequate sewerage facilities for their residential lots and meet other standards set by the city.

In addition to their regular monthly business of hearing reports from county department heads, approving bills, and drawing jury lists, county commissioners in North Carolina prepared this month for tax listing time. Two counties whose minutes were received by the Institute of Government appointed new tax collectors, while all either appointed tax listers or authorized their tax supervisors to do so. One board of commissioners directed the supervisors to appoint tax listers for assignment to the townships in which they live.

Fourteen counties were concerned with year round tax duties; six waived poll taxes in individual cases, and six

(Continued on page 7)

Robert W. Flack Heads City Managers' Association

Robert W. Flack, city manager of Durham, was elected president of the International City Managers' Association at the organization's annual convention on December 7, 1949.

A native of Springfield, Ohio, Mr. Flack attended Denison University and received his Bachelor of Philosophy degree from the University of Chicago in 1913. He also holds the degree of Doctor of Jurisprudence, received from the University of Chicago in 1916.

He interrupted his law practice in Springfield to enlist in the Air Corps during the first world war, and at the time peace was declared was serving as an instructor in flying acrobatics. After the war he held successive positions as prosecuting attorney, city solicitor, and trust officer of a national bank, until becoming city manager of Springfield in 1924. He came to Durham as city manager in 1929 and remained until 1935 when he became city manager of San Diego, California. In 1940 he went to Kansas City as an advisor to the "Forward Kansas City Group" in its campaign for clean government. A year later

he returned to North Carolina as Charlotte's city manager, and in 1946

was again appointed city manager of Durham.



ROBERT W. FLACK

1949 Meeting of Tax Supervisors' Association

The Tax Supervisors' Association of North Carolina met at the Institute of Government for its annual session on December 13th, 14th and 15th. The total attendance was slightly under eighty persons. Forty-three counties had representatives present, representatives of nine more being forced to change their plans at the last moment.

The program of the meeting was focused upon annual listing and assessing. Prior to the sessions, persons planning to attend the meeting notified the Institute of Government of the problems they considered of most significance at this time. The program was planned from these suggestions.

The chart pictured on the cover demonstrates the present status of local property assessments in North Carolina. The heavy burden on real estate is apparent. At the same time tax officials and county commissioners are concerned about the disproportionate share of the tax burden borne by certain kinds of real and personal property. In almost every case this division can be accounted for by the ease or difficulty of locating or valuing the property concerned. The facts demonstrated by this chart governed the general discussions at this year's meeting.

A year ago at the 1948 annual meeting a tentative plan for revaluation of real estate was presented to the supervisors, and shortly thereafter every county in the state was furnished with a copy of the detailed instructions for using this scheme. Scotland County based its 1949 reassessment on this plan, and in order to demonstrate the practicability of the system, Mr. Thomas J. Gill, Scotland County Auditor, this year gave the supervisors a detailed report of how his county had conducted its reappraisal. Elsewhere in this magazine will be found a summary of Mr. Gill's remarks.

For some time counties have experienced difficulty in obtaining reliable lists of automobile registrations against which to check local listings. Miss Foy Ingram, Director, Registration Division, North Carolina Department of Motor Vehicles, appeared before the supervisors at this year's meeting and explained the work of her department and its position with regard to these lists. Mr. Rufus Grier, Tax Supervisor of Mecklenburg Coun-

By HENRY W. LEWIS

Assistant Director

Institute of Government

ty, led the discussion of this matter. A decision was reached under which a committee of the Association will survey the state to determine how many counties would be interested in working out with the Department of Motor Vehicles a scheme for obtaining the required information. The ultimate decision will depend upon the number of counties interested. Whether the solution will be a new kind of list or an additional section on license application forms to be forwarded to the county tax authorities will depend on the Department's facilities.

Another problem faced by county commissioners in every county and by tax listing authorities in many counties is that raised by the 1949 General Assembly's action in restoring the farm census to an annual basis. The Institute of Government asked Mr. L. Y. Ballentine, Commissioner of Agriculture, to discuss this matter with the tax supervisors and county commissioners attending the meeting. Frank discussion between Mr. Ballentine and the local officials present made certain points clear: there is little disagreement about the need for accurate and dependable agricultural statistics. On the other hand, there is sharp disagreement on the method by which such statistics should be gathered. The county commissioners present expressed a strong belief that agricultural census-taking is so unconnected with the normal functions of local government that it should not be handled by any county office. They stated further that the financing of census-taking is a serious problem. Some county attorneys have advised their commissioners that they do not feel that the expense can be classified as a necessary county expense; other attorneys have taken a different position. This division of legal opinion injects a disturbing element of uncertainty in the picture. From the point of view of the tax supervisors, to whose list takers most commissioners have delegated the job of taking these reports, imposition of this additional duty damages their chances for hiring good list takers and damages the reg-

ular listing work by taking up time and by annoying farmers who come to list their property for taxes.

A resolution adopted unanimously at the meeting states the recommendation of the supervisors:

"WHEREAS, The Tax Supervisors' Association of North Carolina has for a number of times in the past gone on record against the Farm Census Survey Reports being taken by the regular Tax Listers and Assessors; and,

"WHEREAS, The State Association of County Commissioners has for a number of years in the past adopted resolutions against those reports being taken by the Tax Listers and Assessors; and,

"WHEREAS, the 1947 General Assembly provided for taking Farm Census Reports every five years; and,

"WHEREAS, a bill endeavoring to restore annual Farm Census Reports was introduced in the 1949 General Assembly near the end of the Session, and after a Calendar Committee had been appointed, and no hearing was held on said bill, which was passed on the last day of the Session; and

"WHEREAS, the taking of Farm Census Reports by Tax Listers and Assessors in the past has cost the counties if the State a large sum in taxes because the Tax List Takers could not get all property subject to taxation properly and correctly listed because of being burdened with the Farm Census Survey Reports, now,

"THEREFORE, Be It Resolved, by the State Association of Tax Supervisors that we recommend to the Boards of County Commissioners of the State that Farm Census Reports NOT be taken by the Tax Listers and Assessors."

Further resolutions adopted on December 15 indicate the Association's plans for 1950:

"RESOLVED that we hereby express our thanks and appreciation to our officers and all of those appearing on our program for their untiring efforts and fine service; and to Henry W. Lewis and the other Staff Members of the Institute of Government for



THREE PRESIDENTS

Miss Maida Jenkins, newly elected President of the North Carolina Tax Supervisors' Association, poses with her predecessors in the position: M. L. Laughlin (center), President during 1948, and C. E. Gwin, President during 1949. Miss Jenkins is the first woman to be elected to the post by the Association.

their helpfulness and splendid cooperation; and also to the Carolina Inn for good entertainment.

"BE IT FURTHER RESOLVED that our sincere sympathy be expressed to the family of Mr. C. D. Stevenson of Iredell County, who passed away unexpectedly on July 17, 1949. Mr. Stevenson was a faithful and loyal member of our association and will be greatly missed by us (as well as many others) that he was of great help to.

"BE IT FURTHER RESOLVED that a copy of this resolution be sent to his family.

"BE IT FURTHER RESOLVED by this Association that the President of this Association appoint committees to study the matters indicated below and make recommendations to the next

meeting concerning needed administrative and legislative changes:

1. Sections of the Machinery Act dealing with the listing and assessing of real and personal property with particular emphasis on the desirability of repealing or revising obsolete provisions concerning indictments and penalties for willful failure to list property for taxes;

2. The state-wide dog license statute;

3. The present annual farm census statute;

4. The statutes granting exemption of property other than the \$300 exemption and the requiring of certain reports thereon.

"BE IT FURTHER RESOLVED that the President of the Association appoint committees to study and make recommendations for state-wide action on the following matters:

1. A uniform tax abstract to be purchased in bulk by the state;
2. Systems and schedules for use in listing and assessing stocks of merchandise, fixtures, and machinery;
3. Systems and schedules for use in listing and assessing electrical equipment of all kinds;
4. Systems and schedules for use in listing and assessing farm machinery;
5. Systems and schedules for use in listing and assessing loan or rental equipment;
6. Systems and schedules for use in listing and assessing airplanes;
7. Systems and schedules for use in listing and assessing buses and trucks;
8. The development of an improved system for obtaining records of automobiles and other motor vehicles owned in each county on tax day;
9. The assessment of parking lots;
10. The problems created by the designation of the poll tax."

At the final business session Miss Maida Jenkins of Moore County, was elected president of the Association for 1950; Mr. J. C. Haynes of Rowan was named first vice-president, Mr. R. P. Spell of Sampson County, second vice-president, and the Institute of Government was named secretary. Miss Jenkins plans to name the committees provided for in the resolutions within a very short time, so that they can begin their studies as soon as possible.

Clearinghouse

(Continued from page 5)

refunded taxes to a total of eight persons. Two counties charged off as uncollectible unpaid taxes from 1939 and before. Contracts were awarded for audits of accounts by two counties.

Miscellaneous activities by county boards included the appointment of constables by two counties and the purchase of a gas heater and septic tanks for the jail and county home by another. Mecklenburg voted a contribution to the city-county dog pound this month, and Rowan commissioners discussed plans for construction of a public library for the county. Three counties granted five-day Christmas vacations to their employees. Ten counties received a total of 55 road petitions, of which 21 were submitted to the board of commissioners in Pitt.

The Rowan board accepted with regret the resignation of J. D. Carter as chairman of the county commissioners.

1949 Revaluation of Real Property In Scotland County

Planning, carrying out, and completing Scotland County's revaluation of real property took fifteen months of work.

The work was performed by three agencies: a county board of assessors, an advisory appraisal board, and the board of county commissioners sitting as the board of equalization and review.

The preliminary planning of the work was done largely by the county auditor and the county tax supervisor who work together closely in Scotland County.

The Advisory Appraisal Board

§408 of the Machinery Act (G.S. 105-291) empowers the county commissioners to employ experts "to aid and assist . . . in arriving at the true value in money of the property in the county." Under this authority the board of county commissioners appointed a five-man board to serve as advisors in setting base value standards for every kind of real property and every kind of building to be appraised [pp. 13-15]. In choosing the personnel for this board, the commissioners selected (1) a real estate man, (2) a banker, (3) a building contractor, (4) a farmer, and (5) an industrial plant man. The County Auditor acted as secretary to this board.

The work of this board can be summarized under four headings: (1) *Farms*: This board examined the deed records of all sales of farm lands for the past three-year period. [pp. 18-20]. From a study of these they arrived at a per-acre value for each grade of land and class [pp. 133-139], determined what percentages should be added or deducted for location, accessibility, drainage, potential industrial or residential uses, etc. [pp. 139-143]. In setting up classes and grades initially the board received material assistance from a classification of farm lands in the county worked out as early as 1933.

(2) *Urban Land*: The Advisory Appraisal Board set up front foot base values for all residential lots, placing an actual money value per foot on each street in the several towns and villages [pp. 99-105]. These base front foot values were entered on block maps of the towns [pp. 26]. The

By THOMAS J. GILL

County Auditor
Scotland County

NOTE: This is a summary of Mr. Gill's discussion at the annual meeting of the North Carolina Tax Supervisors' Association in Chapel Hill on December 13, 14 and 15.

For the convenience of tax supervisors, page references to the Institute of Government's Manual for the *Assessment of Real Property for Taxation in North Carolina* have been inserted in brackets where pertinent. Study of these references will disclose how Scotland County put into practice the suggestions set out in the Institute manual.

base front foot values were based on a standard lot depth of 150 feet for residential areas and 100 feet for business property. [p. 100]. Depth tables, as recommended by the Institute of Government were used to get percentage of base [p. 111]. Odd-shaped lots were handled by the formulas prepared by the Institute of Government [pp. 116-132].

Here again actual sales were used in setting values. The standard front foot values set up in Scotland County were determined from actual known sales of property [pp. 18-20], and in sections where there had been no sales recently, front foot values were established by comparison with nearest or similar sections where the base had already been determined.

(3) *Business Buildings*: All business buildings were valued on a square foot basis [pp. 40-41]. The base used was in all cases the present replacement cost of the building [pp. 16-18]—less allowances for depreciation, maintenance, etc. Institute of Government tables were used for these adjustments with minor changes [pp. 49-62a]. In arriving at the size, type of construction, etc., of buildings, it was found that maps used by the fire insurance companies are of inestimable value in securing accurate information. Any fire insur-

ance agent can furnish the name of the company which already has a map of your town showing all buildings to scale.

(4) *Residential Buildings*: The plan of valuing residential buildings as set up by the Institute of Government manual provides for the use of tables with values per square foot for each type and class of construction [pp. 164-196]. While this is ideal, we felt that the process would involve an immense amount of work and complete cooperation from the property owners. We therefore simplified this plan as follows:

We adopted the Institute's grades and types—A, B, C, D, and E—and the material specifications for each grade as set up in the Institute manual. We then set up within Grades C, D, and E typical residence specifications: for example: In grade C there were:

1. Grade C, small, 3 rooms, frame
2. Grade C, small, 3 rooms, brick
3. Grade C, small, 4 rooms, frame
4. Grade C, small, 4 rooms, brick
5. Grade C, small, 5 rooms, frame
6. Grade C, small, 5 rooms, brick
7. Grade C, small, 6 rooms, frame
8. Grade C, small, 6 rooms, brick

This was repeated for Grade C, medium, and Grade C, large. Thus, within Grade C there were 24 base or typical dwellings. For each of these, the typical specifications for Grade C were set up on cards identical with those used in appraising all houses. Each of these model cards showed not only the base value of the house specified, but the amount to be added or deducted if the appraised house was above or below specifications in some particular respect, as e.g., differences in plumbing, heating, floors, weatherstripping, etc. etc. The model cards for six-room houses also carried instructions to add 12% of base value for each additional room above six. A complete set of these standard cards was available to each assessor for comparison with the actual dwellings to be appraised. Thus, in a very few minutes a house could be classified as to Grade and Type and appraised as to value.

Grade A and Grade B residences, being few in number, were appraised by the method set out in the Institute of Government manual.

When the Advisory Appraisal Board had set up these standards for valuing land, lots, and buildings, its initial work was completed. The members of this board took no part in the appraisal of individual properties. This work was left to the assessors.

County-wide Board of Assessors

In revaluation years, §404 of the Machinery Act empowers the board of county commissioners to appoint "not more than three qualified assessors to assess all real estate in the county." This is the procedure followed by the Scotland County Commissioners.

To perform the actual work of assessing property, the commissioners appointed the county auditor, the county tax supervisor, and the county tax collector. These three men were made responsible for taking the standards of value measurement established by the Advisory Appraisal Board and making actual appraisals of all land and buildings in the county. To assist them, several clerical assistants were employed full-time.

Their first job was to collect the information needed about each property. With limited personnel it was decided that it was impossible to visit and appraise each separate property at its location. To make up for this, detailed questionnaires were made up and mailed to all property owners asking them to give in detail the information needed in respect to their land and buildings. This process required a great deal of time, repeated reminders in the form of postal cards, and many personal visits. The response, on the whole, was very satisfactory. Many owners came to the courthouse for assistance in filling out these questionnaires, but the general results were good.

Information received from owners was not taken at face value but was checked against previous tax records, and field surveys were always made to determine any point in dispute or any point on which no information had been furnished. The final record on each property gave a complete inventory and a set of firm facts on which to apply the standards of value measurement established by the Advisory Appraisal Board. Once the records had been completed, the actual mathematical application of the standards were applied by the clerical assistants.

Time Needed

When it became apparent that it would be impossible to complete the revaluation within the time limits set by the Machinery Act, the General Assembly passed a special act at its 1949 session giving the Scotland County Board of Equalization and Review until 31 July 1949 in which to complete its duties [Chapter 545, Session Laws of 1949].

The Advisory Appraisal Board was appointed on 6 December 1948. The county-wide board of assessors completed their work on 15 July 1949, and submitted their appraisals to the Advisory Appraisal Board immediately. The Advisory Board met and reviewed the work done and made their report to the Board of County Commissioners stating the gross appraisal value of the real estate in the county on the basis of the appraisals made from the standards set. At the same time the Advisory Board recommended that the Commissioners cut the gross appraisals 30% for tax assessment purposes, thereby, in the board's opinion, leaving a fair basis for taxation in keeping with current value trends. The public was fully informed of all these actions through the press.

On July 28th, the Board of County Commissioners met and, by resolution, accepted the appraisals set by the Advisory Board, adopted the recommendation, and ordered individual properties assessed at 70% of the appraisal value for property tax purposes. The Commissioners then met, and adjourned from day to day until September 8th, for the purpose of hearing complaints as a board of equalization and review. There were approximately 15,000 individual parcels of real estate appraised in the revaluation. Only 352 parcels were brought before the board for adjustment. Of this number only 197 were changed by the board. Of all the complaints received, not one was based on the idea that the property had been improperly appraised in comparison with other property. The only complaints arose from a feeling that 70% was too large a proportion of the appraisal value to take for tax assessment purposes.

I wish to thank the Institute of Government for their work in producing the manual for the Assessment of Real Property for Taxation in North Carolina. This was the handbook used in Scotland County's revaluation throughout the entire pro-

cedure. It had anticipated practically all the problems that arose during this task and had worked out solutions for them. I am sure that it saved us considerable time and money in our county; but best of all it has given us a good job and results that can be defended on a sound and substantial basis.

Books Received

FINANCING LOCAL GOVERNMENT. *By Lawrence Lee Pelletier. Municipal Research Series, Number 12. Bureau for Research in Municipal Government Publications, Bowdoin College. 1948. 190 pages.* A study of the tax revenues available to local government units in the state of Maine, with recommendations for revision of the tax structure to strengthen the financial foundation of the local units.

A MANUAL OF STATE GOVERNMENT IN MICHIGAN. *By the Department of Administration, State of Michigan, and the Bureau of Government, University of Michigan. Ann Arbor: University of Michigan Press. 1949. \$2.50. Pages xiv, 254. Bibliography, Index.* This book is a revision of the manual originally issued in 1940, and brings up to date a detailed description of the workings of the state government in its administrative, legislative and judicial aspects. Included are outlines of the organization and functions of each state department, board, and commission in Michigan.

HOW LARGE ARE OUR PUBLIC HIGH SCHOOLS? *By Walter H. Gaumnitz, Ellsworth Tompkins, Robert C. Story, and Mabel C. Rice. Office of Education, Federal Security Agency. Washington: United States Government Printing Office. 1949. 39 pages. Graphs, tables.* The purpose of this report, according to the authors, "is chiefly to provide the facts, State by State, whereby educators may see definitely what the sizes of the high schools are in each of the several States and how those in one State compare with those of another."

AMERICAN STATE GOVERNMENT AND ADMINISTRATION. *A State by State Bibliography Compiled by W. Brooke Graves, Norman J. Small, and E. Foster Dowell. Chicago: The Council of State Governments. 1949. \$1.00. 79 pages.*

Recent Supreme Court Decisions

The Full Text of *Southern Railway v. Mecklenburg County* (231 N.C. 148) is Reprinted Here Because of Its Importance to County Financing

Civil action to recover *ad valorem* taxes alleged to have been wrongfully levied and collected.

In 1917 the Board of Commissioners of Mecklenburg County, acting under legislative authority, created and organized a rural police force under the general control and direction of the sheriff of the county "to patrol and police the County; to detect and prevent the violation of the criminal laws . . . to make arrests . . . to report his acts in all known or suspected violations of the criminal laws to the Sheriff of the County . . ."

The Legislature, by Chap. 612, P.L.L. 1925, transferred the supervision of this police force from the sheriff to the Board of County Commissioners. Later, supervisory power was vested in a Civil Service Board, the members of which are appointed by the resident judge. Chap. 20, P.L.L. 1933; Chap. 75, P.L.L. 1935.

Until 1947 the rural police force was maintained out of the general fund of the county. In that year, by Chap. 638, Session Laws 1947, the Legislature declared the maintenance of the rural police force "a special purpose" and authorized the Board of County Commissioners "to annually levy, impose and collect special taxes upon all taxable property in said county not to exceed ten cents (10c) upon each one hundred dollars (100.00) of valuation of such property and over and above any taxes allowed by the constitution, for the special purpose of paying the costs and expenses of the maintenance and operation of a rural police force in said county."

Pursuant to this authority the County Board of Commissioners levied for the year 1947 \$.0757 for said "special purpose," the assessment against plaintiff being in the sum of \$3,276.86. Plaintiff paid the assessment made against it under protest and now sues to recover.

In the court below the plaintiff moved for judgment on the pleadings. Upon hearing the motion, the court found and concluded "that the expense of maintaining the rural police force in Mecklenburg County is an annually recurring expense for the general purpose of law enforcement within the said County, and that it is not a special purpose within the meaning of Article V, Section 6 of the Constitu-

tion." It further found that \$.0202 of said levy comes within the total permissible levy for general purposes. Thereupon, judgment was entered for the excess in the sum of \$2,402.45, with interest, and defendant excepted and appealed.

Barnhill, J. That the cost of maintaining a rural police force in Mecklenburg County for the better enforcement of the law and the security of the public safety is a necessary expense of county government is conceded. Is it a "general purpose" or a "special purpose" expense within the meaning of Art. V, sec. 6 of the Constitution? This is the one question posed for decision. The court below answered in favor of plaintiff. In this conclusion we concur.

The creation of counties as subdivisions of the state originated in England even before the organization of the kingdom itself. *Bignell v. Cummins*, 36. A.L.R. 634; 14 A.J. 185. Their existence and their functions in the administration of the law were so well recognized that those who drafted our original Constitution did not deem it necessary to provide for their creation or to define their powers. Instead, they assumed their existence as a constituent part of the state government. N. C. Const. of 1776, sec. 38; N. C. Const., Art. VII, sec. 1.

They are subdivisions of the State, established for the more convenient administration of government and to assure a large measure of local self-government. Their powers which are intrinsically governmental stem from the common law. Legislative acts supplement, modify, or curtail those powers to meet the needs of a changing civilization. Generally speaking they possess such governmental powers as are necessary to be exercised in the enforcement of the law, the maintenance of the peace, and the protection of the people within their boundaries, subject to such limitations as the Legislature may deem it wise to impose, 14 A.J. 185, and are vested by the Constitution with the power to tax for these purposes. N. C. Const., Art. V, sec. 6.

In the absence of legislative direction or limitation, what is needful in the discharge of these intrinsically governmental functions is largely within the discretion of the governing

board of the county, and it may levy taxes, within constitutional limitations, to provide the necessary funds, without legislative intervention.

One of the primary duties of the county, acting through its public officers, is to secure the public safety by enforcing the law, maintaining order, preventing crime, apprehending criminals, protecting its citizens in their persons and property. This is an indispensable function of county government which the county officials have no right to disregard and no authority to abandon.

The sheriff is the chief law enforcement officer of the county. 47 A.J. 839; 57 C.J. 779. Yet it may not be gainsaid that the Legislature has authority to place any group of law enforcement officers in a county under the supervision of some other agency. *Commissioners v. Stedman*, 141 N. C. 448. Even so, the essential nature of their work and the purpose of the expenditures for their maintenance remain the same, whether they are directed by the sheriff, the board of commissioners, or some other agency. Neither the county nor the Legislature can enlarge the taxing power of the county under the provisions of Art. V, sec. 6 of the Constitution by merely making the law enforcement agency of the county independent, in whole or in part, of the sheriff's office.

We come then to this question: Are taxes levied to provide funds for the maintenance of law enforcement officers levied for a general or a special purpose? The answer would seem self-evident.

"Definitions build fences around words." Therefore prudence dictates caution in attempting to give an all-inclusive definition of "general purpose." Suffice it to say that a purpose which involves a regularly recurring expenditure, in the performance of a duty or the exercise of a power which is essential to government and which has been delegated to the county unit of government—such as the enforcement of the law and the administration of justice—is a general rather than a special purpose as the term is used in the Constitution. *Power Co. v. Clay County*, 213 N. C. 698, 197 S.E. 603; *Henderson v. Wilmington*, 191 N. C. 269, 132 S.E. 25.

(Continued on page 16)

The Attorney General Rules

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

Property Taxes

Listing and Assessing by Municipalities. A city has been taking its tax lists and assessed valuations from the county records. It now wishes to secure its own lists from city taxpayers and to assess city property. Does a city have the authority to do so?

To C. P. Hinshaw.

(A.G.) Section 1201 of the Machinery Act (G.S. 105-333) provides that all cities and towns may either obtain their tax lists from the county records without securing lists signed by the taxpayers, or set up their own machinery for securing lists from the taxpayers, in the discretion of the governing body. When they list city property, however, they must accept the valuations fixed by the county authorities and modified by the State Board of Assessment—with one exception. Cities and towns are authorized by Section 1109 of the Machinery Act (G.S. 105-331) to assess as well as list all property which has escaped listing and assessing by the county authorities, i.e. "discovered" property. When that "discovered" property is subsequently picked up by the county authorities, however, I am of the opinion that the county assessment would be binding on the municipality for succeeding years. Thus a city may secure its own tax lists through its own list takers, if it chooses to do so, but its only assessment power is with respect to "discovered" property which the county has *not* listed or assessed.

City Taxes on Property outside City Limits. An airport located outside the city limits is deeded to a city by the Federal Government, subject to certain reservations and restrictions. In connection with the operation of the airport there are businesses operated on the property and personal property is stored in some of the buildings under leases. The city now wants to know (1) if it can levy an ad valorem tax on these businesses and this property and (2) whether the property is subject to the special

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ad valorem tax for the benefit of the city school district. That is, does city ownership of the field render property located on the field but not owned by the city liable to taxation by the city?

To F. P. Parker, Jr.

(A.G.) G.S. 160-56 refers to municipal taxes "on all persons and property within the corporation." G.S. 160-402 permits levy and collection of an ad valorem tax on "all taxable property in the municipality." G.S. 105-332 requires that property be listed in the "county, municipal corporation or taxing district in which it has a taxable situs." Since the property in question is located in, or stored in, buildings which are outside of the corporate limits of the city, I am of the opinion that such property is not subject to ad valorem taxation by the city. The general law permits municipalities in certain instances to own real property outside the corporate limits (See G.S. 160-204 and 205 for example), but the ownership of real property outside of the corporate limits does not extend the corporate limits of the municipality nor does it extend the taxing power of the municipality. The same considerations apply to the levy of the special school tax on the property in question. Such special taxes may be levied only upon property having a taxable situs within the territorial limits of the school district.

Priority of Lien on Personal Property. Personal property was listed for taxation in 1948 and 1949. The owner had mortgaged the property in 1947. In August 1949, the mortgagee took possession of the chattels and foreclosed the chattel mortgage for an amount less than the mortgage indebtedness. The county tax authorities now want to know if the ad valorem taxes on this property can be

collected from the mortgagee since the former owner has no other property out of which the taxes can be satisfied.

To L. C. Allen.

(A.G.) In my opinion the mortgagee is not liable for the 1948 and 1949 taxes assessed against the particular personal property which he has sold under a prior mortgage. Section 1401 of the Machinery Act (G.S. 105-340) provides that taxes, interest, penalties and costs shall be a lien on personal property from and after levy on or garnishment of such property. Section 1704 (G.S. 105-376), subsection (c), provides that the tax lien, when it attaches to personal property, shall, insofar as it represents taxes assessed against the property to which it attaches, be superior to all other liens and rights whether prior or subsequent to the tax lien in point of time. Thus in your case the taxes assessed against the property would have been a prior lien thereon if the property had been levied upon by the county prior to the sale by the mortgagee. Since the sale has taken place, the levy on account of the 1948 taxes cannot be made because of Section 1713 (G.S. 105-385), subsection (c), which prohibits levy on personal property where there has been a bona fide sale for value or where the levy is made over 60 days after any transfer of the property. In this case I am of the opinion that the mortgagee foreclosure sale would be regarded as a bona fide sale for value, and sixty days have elapsed since the foreclosure sale in August. With respect to the taxes for 1949, the tax collector could not have made a levy upon the personal property prior to the mortgage foreclosure sale since Section 1713 (a) provides that the collector shall not proceed against personal property of the taxpayer between the first day of the fiscal year and the date taxes become due (the first Monday in October) "unless there is reasonable ground for believing that the taxpayer is about to remove his property from the State."

Privilege License Taxes

Barber or Beauty Colleges. A city levies a privilege license tax on the privilege of conducting barber or beauty schools or colleges for profit within the corporate limits of the city. One of the schools claims that the tax is not valid because it is an educational institution and exempted from tax. Is the tax valid?

To I. E. Carlyle.

(A.G.) Cities have the general power to levy privilege taxes on "any employment or business embarked into for gain or profit." G.S. 160-56 as interpreted in *Lenoir Drug Company v. Lenoir*, 160 N.C. 571, 76 S.E. 480. I have examined the Revenue Act, G.S. Ch. 86 dealing with barbers, G.S. Ch. 115 dealing with education, and other statutes, and I have been unable to find a provision which restricts or limits the general power of a municipality under G.S. 160-56 to levy a privilege license tax on barber or beauty schools or colleges conducted by private individuals, associations or corporations for profit. I likewise found no constitutional prohibition or limitation upon such taxation. In my opinion the exemptions provided by G.S. 105-296 with respect to the exemption from ad valorem taxation of real property owned by schools, and the provisions of G.S. 105-297 respecting similar personal property, do not apply to privilege license taxation. With respect to this distinction see the holding in *Stedman v. Winston-Salem*, 204 N.C. 203, where the state gasoline tax was found to be an "excise" tax instead of a property tax and was held, therefore, not subject to the exemptions in Article V, Section 5 of the N.C. Constitution. As a result the municipality was held not to be exempt from payment of this tax. In my opinion, then, the tax is valid.

Public Schools

Handling of School Funds. Another question has arisen concerning the proper interpretation of the 1949 amendments to G.S. 115-165 (Ch. 1082, S.L. 1949). Subsection (a) of that statute provides that, "unless otherwise provided by law," the board of trustees of a city administrative unit

shall appoint a treasurer to handle school funds. Now a city points out that its charter provides that the city treasurer shall be the treasurer for all city funds. Can he continue to serve as treasurer for school funds or does G.S. 115-165 (a) require the appointment of another treasurer?

To I. E. Carlyle.

(A.G.) It is my opinion that the clause, "unless otherwise provided by law," was intended to eliminate the application of this subsection to situations such as this. The provisions of the charter are controlling and thus no action is required by the school board of trustees. The statute was intended to eliminate local practices in handling school funds which were not authorized by any legislation.

Sale of School Property. A city wishes to build a street through property owned by the city schools and requests that the land sufficient for a street be donated to the city. Has the city administrative unit the authority to donate the land in the absence of any specific statutory authority?

To Don A. Walser.

(A.G.) I agree with you that in view of G.S. 115-86, which requires the sale of unused school property at public auction, a city administrative unit is without authority to donate to the city any school property, even for the purpose of constructing a public road. Of course if the school unit trustees should find that the construction of a street through the school property would be to the best interest of the school, you might consider merely permitting the city to build a street or road across the property but with the definite understanding that no assessment would be made against the school unit for the construction of a road or street.

Bond Issues

Expenditure of School Bond Proceeds. A county approves a bond issue for the construction of schools in the county. About one-half the amount is to be spent for the construction of a new high school in the city administrative unit. The board of trustees of the city unit wants the county commissioners to turn this amount over



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to them for expenditure. The county wants to hold the proceeds and pay the cost of construction as the bills become due. Which method is correct?

To C. D. Douglas.

(A.G.) G.S. 153-107 provides that the proceeds from the sale of bonds shall be used for the purposes specified in the bond order (with certain exceptions not here pertinent) and makes action by county officers in violation of the provision a felony. This section very pointedly and definitely places on the Board of County Commissioners the legal liability and responsibility of seeing to the application of the proceeds for the purposes for which they were voted. After a contract has been let, I believe the bond funds should be paid out by vouchers drawn on the county treasury by the chairman and secretary of the Board of Trustees for the city administrative unit and countersigned by the county accountant. I believe that it would be the duty of the county, in countersigning such vouchers, to be able to determine that the cost of the proposed building was within the appropriation. The county commissioners would have the right to demand that the vouchers be submitted to them on account of their responsibility, or they could take the certificate of the county accountant as reasonable compliance. I doubt that the county commissioners would be justified in authorizing payment over to the city administrative unit of the entire proceeds of the bonds in one lump sum, leaving it to that unit to see to the application of the proceeds for the purposes intended.

Auxiliary Purposes of Hospital Bonds. A county is authorized to issue \$275,000 worth of bonds for the erection of a public hospital, acquisition of "the land necessary to provide a site for such building or buildings," and acquisition and installation of the necessary equipment. If the bond resolution covers only these items, can any one or more of the following items be financed under this bond issue: 1) roads, walks, curbs and gut-



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General

ters, and a parking area; 2) landscape work including the architect's fee; 3) purchase of a lot adjoining the hospital site to provide an additional outlet to the street; 4) attorney's fee for title examination and other legal duties; 5) county's pro rata share of any joint State or Federal expenditures for a nurses' home, or a health center building, or a training school for nurses—including the equipment for such buildings?

To H. A. Page.

(A.G.) We advise that the first four objectives are, in our opinion, within the purview of the objectives expressed in the bond resolution. As to the expenditure of bond proceeds in conjunction with State or Federal expenditures for building a nurses' home, we are inclined to think that a nurses' home built on the hospital site and connected with the hospital might be permissible. The matter is not free from doubt, and inasmuch as G.S. 153-107 makes it a felony to expend bond proceeds for purposes not expressed in the bond order and fixes the officials with personal liability, we would suggest that you apply to the Court for a declaratory judgment before spending any proceeds for a nurses' home.

As to a health center building or training school for nurses, on the hospital site, we are inclined to think that the funds cannot be expended for such purposes. Ch. 766, S.L. 1949, amends G.S. 153-77, relating to the purposes for which bonds may be issued, so as to specifically state that housing or quarters for public health departments or local public health departments or hospital facilities are definitely purposes for which bonds can be issued. These are not so stated in your bond resolution. Section 2 of this 1949 act also includes nurses' homes and training facilities under the term "hospital facilities" as purposes for which bonds may be issued. I am rather of the opinion, therefore, that since these are separate purposes

for bond issues and since they are not included in your resolution, there is grave doubt if you can expend the bond proceeds for such purposes under your present situation. You can include them in your application for a declaratory judgment.

Pledging Revenue to Retire Bonds
A city wants to build a municipal auditorium. It wants to finance construction through the issue of general obligation bonds, but it still wants to pledge the future revenues from the auditorium to the payment of principal and interest on the bonds. The city council wants to know if it can by resolution pledge the net income from the building to the retirement of bonds issued for the building and whether future councils will be bound by such a bond resolution. It also wants to know if the present city council can provide by resolution that the auditorium facilities can never be made free to users, not even charitable organizations—meaning that every user shall pay at least minimum maintenance costs—and whether this resolution is binding on future councils.

To John Shaw.

(A.G.) Under the Revenue Bond Act (Chapter 1081, S.L. 1949) you can pledge the revenue from the building for the payment of the bonds and the pledge will be valid until the bonds were paid. I assume, however, that you have in mind the issuance of general obligations under the Municipal Finance Act. It seems to me that G.S. 160-397 would be adequate to authorize the municipality to commit by resolution the revenues to be derived from the operation of the auditorium for the payment of principal and interest on the bonds after the deduction of expenses. It would doubtless be binding on any succeeding city administrations and indeed it seems to be so required in the statute. It was applied in *George v. City of Asheville*, 80 F. (2d) 50, 103 ALR 568. If the bonds are valid, then the restrictions on use would seem to be.

City Powers

Regulation of Railroads. G.S. 160-200 (18) provides in part that a city shall have the power to "direct the use and regulate the speed of locomotive engines, trains, and cars within the city." A city discovers that railroads running through the city appear to be blocking street crossings for unreasonable periods of time while

cars are switched down the line. Does this general provision authorize an ordinance to prohibit this blocking of the streets?

To W. J. Sherrod.

(A.G.) It is my opinion that, under the authority of the above statute, municipal corporations are authorized to pass ordinances prohibiting trains from blocking this crossing for any unreasonable length of time. That is to say, an ordinance would be valid under this statute which fixed reasonable times beyond which trains would not be permitted to block the crossing.

Regulation of Speed Limits. A town passes an ordinance establishing speed limits in various parts of the town, including streets which are part of a state-maintained highway. Is this ordinance valid?

To J. W. Mason.

(A.G.) The provisions of the ordinance which fix speed limits for streets other than those which are a part of the State Highway System are expressly authorized by G.S. 20-141 (f). The portion of the ordinance which purports to fix the speed limit on those streets within the corporate city limits which are a part of the State Highway System is void. See G.S. 20-169; *State v. Freshwater*, 183 N.C. 762; *N. C. Digest*, "Municipal Corporations," Sec. 592 (2).

Cemeteries

The extent of governmental responsibility for the care and maintenance of cemeteries is the subject of two rulings by the Attorney-General in November.

Public Funds for Beautifying Private Cemeteries. The first question arises where a privately-owned cemetery, located outside the corporate limits, adjoins the municipally-owned cemetery. The town wishes to spend some money to beautify the private cemetery in the same way that it maintains its own cemetery. Has it the power to do so?



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General

(A.G.) I know of no statutory authority for a town to appropriate public funds for the purpose of beautifying or maintaining a privately-owned cemetery outside the corporate limits of the town.

Elimination of Public Health Hazard. A somewhat different problem is presented where a privately-owned cemetery located just outside the corporate limits of a town proves to be a menace to the public health because of poor drainage on the site. The county health officer and sanitarian determine that several hundred feet of ditching and pipe are needed to remedy the situation. Does either the city or the county have the responsibility to assume maintenance of the cemetery and/or eliminate the public health hazard?

(A.G.) There is no law fixing responsibility on a county merely because the cemetery is located inside the county. If you cannot find anyone claiming responsibility for care of the cemetery, then the county commissioners can act under the authority of G.S. 65-3 requiring county commissioners to take possession and control of all abandoned public cemeteries in their county and preserve them from encroachment. They could then do whatever is necessary to put the cemetery in a proper state of preservation including elimination of the drainage problem. If someone is found who does have responsibility for the cemetery, the county can then proceed under G.S. 130-25 and 26 which authorize the county physician or health officer to notify the parties responsible to abate the nuisance. If the parties responsible cannot afford the expense involved, then the city or county may finance the work up to a cost of \$1,000. I know of no law that automatically vests the care and control of cemeteries in the municipal government merely because such cemeteries happen to be located within the boundaries of the city or town.

City And County Contracts

Advertising for Bids in Newspaper. A city wants to advertise for bids for the construction of a new public building. It advertises in a daily newspaper published outside the county but having a general circulation inside the

county. There happens to be a newspaper in the city having a larger circulation in the county. Does advertisement in the newspaper published outside the county meet the requirements for publication of the bids?

To C. S. Morgan, Jr.

(A.G.) I am of the opinion that the advertising for bids and letting of the contract is insufficient because of faulty publication. The requirements of G.S. 143-129 make the publication seem sufficient, but G.S. 1-597, enacted after G.S. 143-129, requires that the newspaper advertised in shall have been admitted to the United States mails as second-class matter in the county or political subdivision where such publication, advertisement or notice is required to be published. It is, therefore, an additional requirement to be met.

Clerk of Superior Court

Deposition of Non-resident Witness to Will. In probating a will the clerk may be asked to take the deposition or accept the affidavit of a subscribing witness to a will who resides outside of his county. On examination of the statutes, G.S. 31-24 seems to permit him to accept the affidavit or deposition, but G.S. 31-25 presents an apparent conflict by requiring that the witness appear in person before the clerk if he lives less than 75 miles from the county courthouse and is not so infirm as to be unable to travel that distance. What, then, does the clerk do when a physically able witness living in a nearby county less than 75 miles away wants to submit his testimony in the form of an affidavit? Can he accept the affidavit or must he require that the witness appear in person?

To W. S. Babcock.

(A.G.) I am of the opinion that under G.S. 31-24 you may accept the affidavit or deposition of a subscribing witness who lives outside your county, even though the residence of the witness is less than 75 miles distant from your office. The 1933 amendment to G.S. 31-24 directly authorizes such procedure. The requirement in G.S. 31-25 appears to apply to holographic wills as well as attested wills, while G.S. 31-24 applies to attested wills, inasmuch as it authorizes the

taking of affidavits or depositions of "subscribing" witnesses, whereas G.S. 31-25 speaks only of "witnesses". G.S. 31-25 is a much older statute than G.S. 31-24 and I am of the opinion that G.S. 31-24 provides an alternative procedure in order to facilitate and render more convenient the probate of wills when the attesting witnesses reside out of the county or State.

Guardians for Minor Heirs. A father dies leaving part of his estate to his minor children. The clerk of court can appoint a guardian to receive the funds belonging to these minor heirs, under the authority of G.S. 33-1. The question arises as to whether this procedure is necessary in view of the fact that the mother, under G.S. 33-3, is the natural guardian and that the clerk of court, by G.S. 28-166, may supervise these funds on petition by the administrator for settlement.

To D. K. Edwards.

(A.G.) G.S. 33-1 gives the clerk of court power to appoint guardians and G.S. 33-3 does not abridge this power. Although the statutes do not expressly do so, I am of the opinion that there is implicit in the statutes a distinction between guardians of the person of infants and guardians of their estates. It is generally held, except in states whose codes are based on civil law, that natural guardians are guardians only of the person of the infant and, in the absence of appointment by the court as guardians of the estates of their wards, have no control or authority of such estates. See 39 *Corpus Juris Secundum*, "Guardian and Ward," Section 74; 25 *American Jurisprudence*, "Guardian and Ward," Section 10. See also G.S. 28-166. In view of the fact that a natural guardian has no control over the estate of his ward, I am of the opinion that if an administrator pays assets belonging to a minor over to such natural guardian and the natural guardian misapplies the assets, the administrator may be liable upon his bond to the minor. I am likewise of the opinion that if the assets are paid into the court and then paid out of the court to a natural guardian who has not been appointed as a guardian of the estate of the ward, the court might likewise be liable. That is to say, there would appear to be no direct requirement that a guardian be appointed for the estate of a minor who has a natural guardian, but that persons who deal with the natural guardian with respect to the estate of the ward do so at their peril.

Juvenile Court

As a general rule a child is determined by a juvenile court to be abandoned within several days after the actual abandonment and is then put in a foster home. Suppose he stays in that foster home for more than six months. Does that residence of six or more months in the foster home count as the six months willful abandonment required by G.S. 48-2 for determination of an "abandoned child" so that adoption may proceed without the parents being made parties and without it becoming necessary for the clerk of court to determine that the child is abandoned? G.S. 48-5 and Chapter 300, S.L. 1949.

To N. S. Crews.

(A.G.) G.S. 48-2(3) requires willful abandonment for six months immediately preceding institution of an action to declare the child to be an abandoned child. Unless this condition appears, the child is not an abandoned child in the meaning of the adoption law, despite time spent in a foster home. *Truelove v. Parker*, 191 N.C. 430, raises some doubts, but the principles laid down in *In re Morris*, 224 N.C. 487, must be met. The best practice is for the clerk of court to make an adjudication of abandonment under G.S. 48-4(b).

Register of Deeds

Discretionary Power to Refuse Registration. The county register of deeds often is able to determine whether or not an instrument presented for recording has been properly drawn. This raises the question of whether he can refuse to record an instrument which he knows has not been properly drawn.

To P. W. Padgett.

(A.G.) A register of deeds does not have any supervisory power over the



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form or correctness of the instrument, deed or deed of trust to be registered. If the clerk passes upon the acknowledgement and makes the necessary fiat or order of registration, then we think it is the duty of the register of deeds to record the instrument, no matter how incorrect or how poorly drafted the instrument may be. No doubt there have been many instruments recorded which are absolutely void and invalid if tested in court, but we do not feel that the statute has vested authority in the register of deeds to pass upon these particular qualities of the instrument.

Enforcing The Liquor Laws

The number of requests reaching the Attorney-General during the month of November concerning interpretation of the prohibition laws and the legality of methods used to stop the liquor traffic indicate some positive reaction to the Governor's conference on enforcement of the prohibition laws.

Transportation from Wet to Dry County. The first item of information requested was a definition of the amount of whiskey that can legally be transported from a wet to a dry county.

To I. N. Ramsey.

(A.G.) G.S. 18-49 limits G.S. 18-2 so that a person is permitted to transport not in excess of one gallon of alcoholic beverages from a wet to a dry county, if the beverages are not transported for resale and the cap or seal on the container is not broken. If two or more people travel in the same car, each having less than one gallon but the liquor in their possession amounting to more than one gallon altogether, this office has rendered numerous opinions to the effect that the operator of the car is guilty of violating the prohibition laws. The same is true in the case of taxis, since the driver is charged with knowing that his passengers in aggregate have in their possession in excess of one gallon of alcoholic beverages.

Transportation by Public Carrier.

In some areas of the state the law is being evaded by a number of persons who travel into a dry county, each buy eight pints of whiskey from county ABC stores, and then travel



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back into the dry county by public carrier, such as a bus. It is suspected that they are engaged in bootlegging. What can be done to stop this practice?

To J. B. Allen.

(A.G.) It is doubted that a public bus driver could be held guilty since public carriers are required by law to accept any passenger who offers to pay his fare. However, if it could be shown that the persons who are bringing the liquor into the county are acting in concert and own or possess the whiskey together, they might be indicted for the joint possession and transportation of intoxicating beverages in excess of one gallon, and for aiding and abetting each other in such possession and transportation. See *State v. Myers*, 190 N.C. 239, at 242:

"Possession usually implies detention or control, or the right thereto. The possession may be in one person for another, or in one for several, or in several for another, or for themselves, and others not actually present, or however distant from the whiskey itself. Possession is the retention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name." (Emphasis supplied).

Thus, if two buy for the use of one, and this can be proved, there is illegal possession.

Controlling Transportation by Taxi.

A town in a dry county is experiencing difficulty with taxicabs hauling in whiskey from outside the county. It seeks to control this whiskey traffic by passing an ordinance subjecting the taxi license to revocation if the cab is found carrying any amount of liquor or if the taxi driver refuses to permit an officer to search the cab. The question has arisen whether revocation of a license under these circumstances is valid where there is no violation of the law.

To M. L. Page.

(A.G.) The question is governed by G.S. 160-200, subsection 36(a). This section sets forth the different violations of the law upon which a taxi driver's license can be revoked and it seems to me that these violations govern the whole field. Therefore, I do not think that the contemplated ordinance would be valid.

Extradition Costs

A county sheriff receives notice that a man wanted in his county for commission of a misdemeanor has been apprehended in another state. He will probably make arrangements for transfer of the prisoner back to the county for trial. In so doing he undergoes some expense. The question has arisen as to who is responsible for payment of extradition costs in all cases—the State or the county?

To F. D. Dalton.

(A.G.) G.S. 15-78 provides that when the crime for which the prisoner is wanted is a felony, the expenses will be paid by the State of North Carolina. However, the sheriff must get requisition papers through the Governor's office and return the prisoner subject to a warrant issued by the Governor on the Governor of the other state, before the State will pay the expenses. The expenses of the agent sent to accompany the prisoner and the fees paid to the proper law enforcement officers of the other state must be itemized and presented to the Governor before reimbursement can be made. If the prisoner is wanted for a misdemeanor or if the prisoner wanted for a felony waives requisition, the State will not pay the expenses of the sheriff or his agent and it is the duty of the county to do so.

County Boards of Public Welfare

Case Workers' Traveling Expenses. The work of the county superintendent of public welfare and of the case workers requires the constant use of automobiles. It is generally under-

stood that public employees are reimbursed for expenses incurred in operating a private car for public purposes, but the Attorney-General has been asked whether or not the county has to pay mileage and depreciation on cars owned and used by the county superintendent of public welfare and the case workers.

To J. C. Grayson.

(A.G.) Refer to G.S. 108-36, 37, 38, under which the Board of Allotments and Appeal determines the amount to be raised by taxation in each county to supplement state and federal funds. The county must raise the necessary funds for administration if it wants to continue to participate in the program. Payment of car expenses is essential to the administration of the welfare program and it would seem necessary that they be paid. I am not sure that automobile depreciation is mandatory upon you, but it may be a necessary element of administration also. If the state and federal agencies demand that depreciation be included in administration expenses, I see no reason why it would not be a necessary element.

Double Office Holding

Census jobs. With the taking of the census scheduled again for 1950, part-time public officials who want to take jobs with the Census Bureau must consider whether they can take that job and still hold public office under the N. C. Constitution. Those officials who are public officers within the meaning of Article XIV, Section 7, of the Constitution will be interested in the following opinion of the Attorney-General on whether a district supervisor of census is also a public office within the meaning of the cited section of the Constitution.

(A.G.) I am unable to answer authoritatively whether or not a district supervisor of census is a public officer within the meaning of Article XIV, Section 7, of the Constitution, for the reason that I have been unable to find a court decision on the matter. In view of the fact that the taking of the census is required by the Constitution of the United States, and the duties of the district supervisor are specifically set out in Section 29 of Title 15 of United States Code

Annotated, these duties being rather broad in their scope, and in further view of the fact that the supervisor is required to take an oath of office under the law, I would strongly advise against accepting this position for the reason that there is a possibility the Court would hold this position to be a public office. Should the Court so hold, you would, of course, subject yourself not only to the penalties prescribed for double office-holding but you would automatically vacate the office which you now hold.



Supreme Court

(Continued from page 10)

The rural police force of Mecklenburg County was organized and is being maintained to secure the public safety. This is emphasized by allegations in the answer. Members of the force in 1947 made 4,984 arrests for traffic violations and 2,955 arrests for other causes. They made 1,226 major investigations, recovered stolen property of the value of \$59,684.70, and procured convictions which netted \$105,860.89 in fines and forfeitures and \$18,011.70 in court costs. The funds for its maintenance must be raised by a tax levied from year to year and expended from month to month. The expense is continuing and is in furtherance of an indispensable function of county government. Necessarily then, the tax is levied for a general rather than a special purpose.

The defendants have made a laudable and seemingly successful effort to create and maintain a law enforcement agency entirely removed from the realm of politics. In so doing, however, they did not convert a "general purpose" service into a "special purpose" activity and thereby increase the taxing power of the county.

The judgment of the court below is Affirmed.

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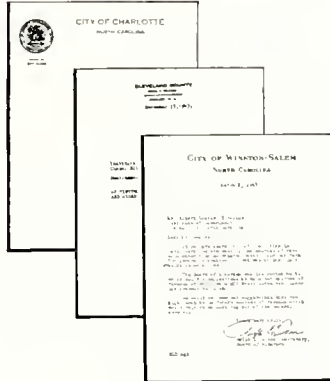
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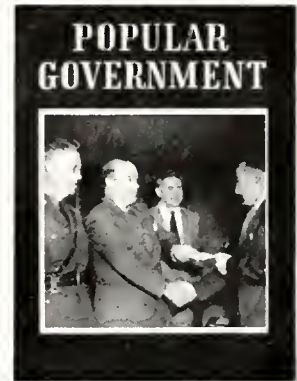
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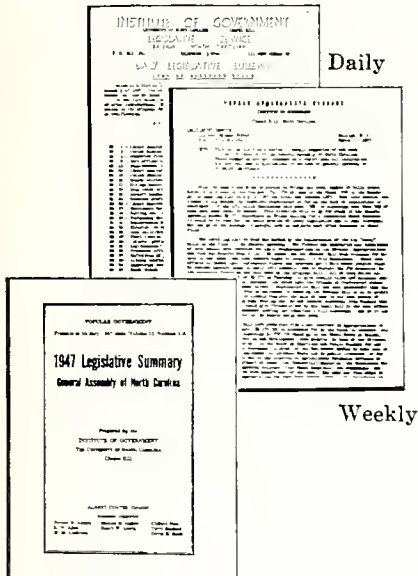


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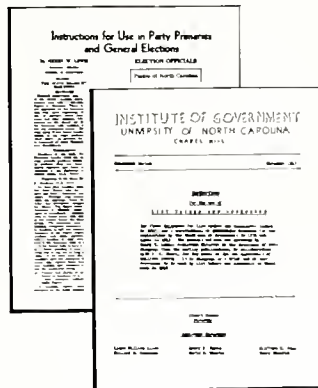


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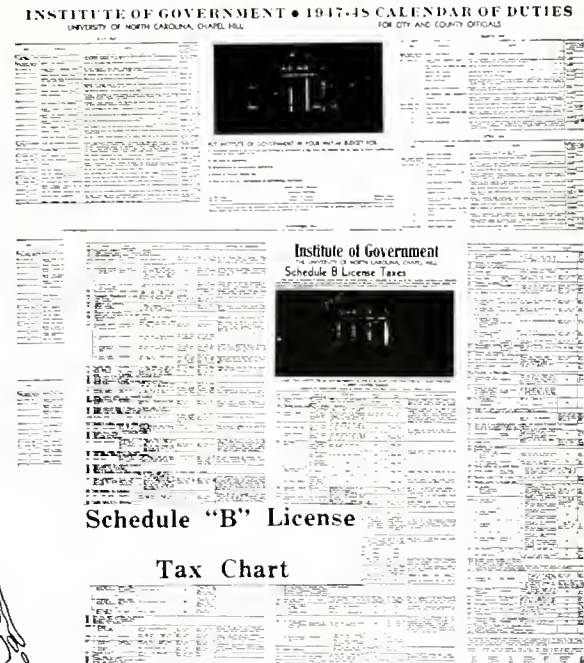
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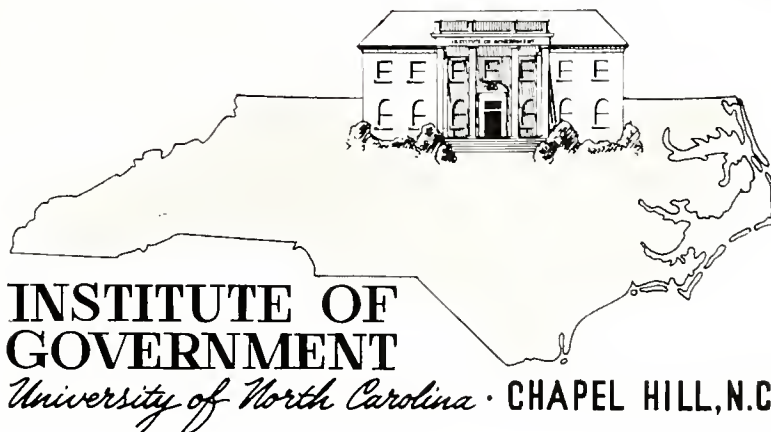


Calendar of Duties



Schedule "B" License

Tax Chart



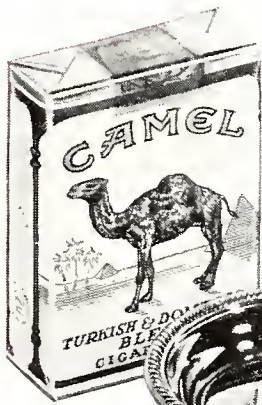
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