Popular Government

May 1950

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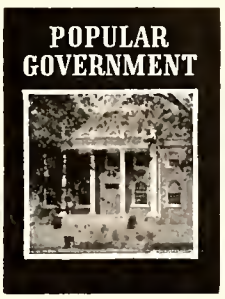
1950 Primary Election Time Table

DATE	WHO	ACTION REQUIRED
18 March (tenth Saturday before Primary)	State Board of Elections	Appoint County Boards of Election upon recommendations of Chairman of Political Parties. G.S. 163-11
Before 12 noon, 18 March (tenth Saturday before Primary)	Candidates for Congress and State Officers	File notice of candidacy with State Board of Elections. G.S. 163-119
Before 22 March (within three days of expiration of filing time)	State Board of Elections	Certify facts as to notices filed to Secretary of State. G.S. 163-124
Before 8 April (seventh Saturday before Primary)	State Board of Elections	Print and furnish to County Boards of Elections sufficient number of blank notices of candidacy. G.S. 163-130
8 April (seventh Saturday before Primary)	County Board of Elections	Select one registrar, two judges, and one alternate judge for each precinct for the ensuing primary and general election. Publish names at courthouse door. G.S. 163-12, 163-15, 163-16
Before 6 p.m., 15 April (sixth Saturday before Primary)	County Board of Elections	Last day on which candidates for General Assembly, county and township offices may file notice of candidacy. G.S. 163-119
On or before 27 April (at least 30 days before Primary)	State Board of Elections	Print and distribute national and state ballots to County Boards of Elections. G.S. 163-151
Before 29 April (by the fourth Saturday before Primary)	Chairman of State Board of Elections	Certify to County Board Chairmen names of candidates for superior court judges and solicitors who have filed notice and are entitled to have names on county ballot. G.S. 163-124
29 April, 6 May, 13 May (fourth, third, and second Saturdays before Primary)	Registrars	Attend polling place to register voters, first taking required oath and securing registration book from Chairman of County Board. G.S. 163-31, 163-123
After sunset, 13 May (close of registration)	Registrars	Certify to Chairman of County Board of Elections number of voters registered in precinct. G.S. 163-31, 163-123
9 a.m. to 3 p.m., 20 May (Saturday before Primary)	Registrars	Attend polling place with books open for inspection and challenge of any elector. Appoint time and place before primary when he and judges will hear challenges. G.S. 163-78
24 May (three days before Primary)	Chairman of County Board of Elections	Deliver proper number of ballots and boxes to registrar of each precinct and obtain receipt. Do the same with poll books and other equipment and supplies furnished by County Board. G.S. 163-60
Before Primary	Registrar and Judges	Hear and decide challenges after notice to challenged electors. G.S. 168-78
Before Primary	Registrar or Judge	Check voting place, booths, ballots, supplies, etc. G.S. 163-164
Morning of 27 May (morning of Primary)	Chairman of County Board of Elections	Deliver to proper precinct copy of list of absent military voters, and all absentee military ballots received. G.S. 163-74, 163-77.4
Primary Day, 27 May (last Saturday in May)	Registrar, Judges and Assistants	Take prescribed oath, open polls, conduct primary. At conclusion tally ballots, make duplicate returns, mailing one copy the same night to County Board and giving other copy to registrar or judge for delivery to board with other supplies at county canvass. G.S. 163-164
11 a.m., 30 May (second day after Primary, excluding Sunday)	County Board, Registrar or Judge	Meet at courthouse to canvass precinct returns; tabulate vote for county as a whole; announce results. Registrar or judge must bring duplicate sets of precinct returns and other supplies. G.S. 163-85
Before 1 June (within five days after Primary)	County Board of Elections	Prepare duplicate abstract for all offices for which State Board is required to canvass returns, sign affidavit as to correctness, and mail to State Board so as to be received within one week after primary. G.S. 163-89
13 June (Tuesday after the third Monday after Primary)	State Board of Elections	Meet in Raleigh for purpose of canvassing votes cast in all counties for state and district offices, preparing abstracts, determining and announcing results officially. G.S. 163-94
After State Canvass	State Board of Elections	File abstracts and original county abstracts with the Secretary of State. G.S. 163-110

Pictured on the cover: l. to r. Senatorial candidates Robert R. Reynolds, Senator Frank P. Graham and Willis Smith, as they appeared at the YDC convention in Asheville on March 25. The other candidate, Olla Ray Boyd, was not present when the picture was taken. Photo copyrighted by the Asheville Citizen-Times

THE CLEARINGHOUSE

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



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

Finance Department

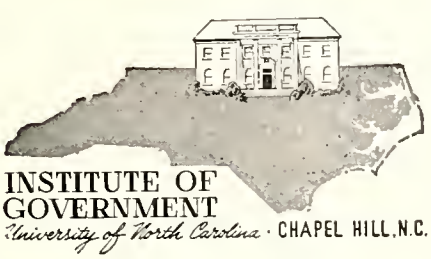
In keeping with the rapid increase in the department's work load, and an accompanying growth in complexity of duties, Winston-Salem's finance department has undergone an internal reorganization which is expected to make for greater efficiency and possible savings of up to $100,000 annually. The major change made was to create, under the Director of Finance and Public Accounts, five new subdepartments, each with a clearly delineated set of duties and responsibilities and each under supervisors having adequate authority. The new departments are: Auditing, Accounting, Treasury, Purchasing, and Budget. The administrative philosophy behind the reorganization was expressed in the city manager's report to the board of aldermen, which read in part: "In a municipal government which is growing, there is sometimes a tendency to slight the intermediate or supervisory level. Or, even if necessary personnel is provided, the duties and authority of the supervisors may not be clearly enough defined to where they can render the greatest possible service. In either case, the usual result is one or the other or both of the following: Too many employees at the operative level; failure to produce results desired.

"The Finance Department has now been organized to accomplish three purposes. First, the grouping of all activities in logical units. Secondly, the providing of adequate supervisory personnel for these units. Thirdly, the clear definition and delineation of the duties, responsibilities and authority of these supervisors."

Almost Human

Two new and complicated gadgets, designed respectively to smooth the flow of city traffic and to put pedestrians on the alert, were tested at major intersections of two cities last month. In High Point, an $8,000 traffic light synchronization system has been installed with the hope that it will succeed in eliminating almost entirely the downtown traffic jam. The traffic lights in the downtown area are synchronized with one another and controlled by an electric "master mind" which virtually counts the automobiles which enter the area and cross rubber trip pads placed in each street. The lights change from red to green and back again not according to the time that has elapsed, but according to the number of cars in the area. When a given number of cars enter the busiest streets leading to the main artery, the lights turn red on the outer fringers and no more cars can enter until some leave. Not only does this help to avoid traffic jams but it also eliminates the annoyance of having to wait for a red light to change while no traffic is going the other way.

The feelings of High Point drivers may be soothed by the local "master mind" but pedestrians in Syracuse, N. Y. might well find their nerve endings getting pretty raw before very long. An "electronic narrator," installed over the traffic light at a busy intersection, issues friendly warnings to them every time the light changes. Such homilies as "Avoid that run-down feeling—be careful," and "Long chances shorten lives—be careful" issue from a tape-recording machine at regular intervals. A somewhat gloomy future for Syracuse pedestrians was indicated in a statement by a spokesman for the General Electric Company, which developed the machine. The tape recorder can, he said, "automatically repeat a number of messages an *infinite* number of times without being rewound or reset." (Italics ours.)



Five Day Week

Durham's city council voted unanimously this month to adopt the five-day work week for most of the city's employees. The police and fire department voted to continue on their present schedules, since the cost of a shorter work week for these departments would be prohibitive. Employees paid on an hourly basis, such as those in

the sanitary and street departments, who formerly worked up to 70 hours a week, will now work only 45 hours except in cases of emergency.

While some employees were given Saturday off within a few weeks after the council's action, the details of the program still to be worked out were left to the city manager's discretion. City Manager Robert Flack told the council that a "gradual approach" would be taken, and that the City Hall would definitely not be closed on Saturday. In most cases, he said, a skeleton staff would be retained, the members of which would be given a compensatory half-day off during the week.

Reports from the various city departments to be affected estimated that the total cost of the new plan would be approximately $26,000 a year. While funds were available to put the plan into effect immediately, the shorter work-week is expected to mean an increase in Durham's tax rate of about two and a half cents.

Attorney General's Conference on Crime

Nationwide crime syndicates which formerly were able to operate across state and regional lines virtually unhampered by local law enforcement agencies, will be meeting a concerted and organized attack in the near future from all three levels of government—local, state, and federal. The Attorney General's Conference on Crime, held in Washington last February, brought together federal, state, and local officials who recognized the need for close intergovernmental cooperation in fighting big-time crime. Out of the conference emerged a permanent organization to direct the effort, headed by an executive continuing committee composed of representatives of the American Municipal Association, Conference of Mayors, National Institute of Municipal Law Officers, National Association of Attorneys General, and International Association of Chiefs of Police.

Also formed was a legislative committee, which will make a report on federal legislative needs later this month. This committee will use as a basis for its study a ten point program recommended by the American Municipal Association and approved by the participants at the February meeting. The proposed program included: 1) Development of a coordinated plan of action with the Attorney General as the coordinator; 2) A Senate investigation to explore the entire problem of interstate gambling rackets and allied operations; 3) Legislation to outlaw dissemination of race results for illegal gambling purposes across state lines by telegraph, telephone or radio; 4) Legislation to prohibit the interstate shipment of slot machines and to require federal registration of all such devices; 5) Require owners of gambling devices to register with the Internal Revenue Bureau; 6) Legislation to permit the FBI to lend needed assistance and information to state and local officials; 7) Permit revocation of citizenship of naturalized citizens who have committed fraud or perjury in their Americanization applications; 8) Complete and continuing tax investigations of racketeers; 9) Permit local, state, and federal law enforcement agencies to inspect income tax records of ex-convicts and other suspicious persons; 10) Establishment of an information exchange through which municipal law enforcement authorities participating in the national fight against crime could be informed immediately of developments beyond their jurisdiction.

A little more than a month after these recommendations were submitted, action on them was beginning to take shape. On March 23 the Senate Rules Committee approved a resolution calling for a "full and complete investigation" of interstate crime by the Senate Judiciary Committee. The measure, still pending, provides that while the inquiry would deal primarily with gambling, the investigating committee would have the authority to check into almost any type of underworld activity carried on in violation of interstate regulations.

On April 11 a subcommittee of the Senate Committee on Interstate and Foreign Commerce met with representatives of the Department of Justice, the Federal Bureau of Investigation, and the mayors of several large cities, to "explore thoroughly the legal questions presented by the Crime Conference's recommendations with the purpose of determining whether some type of legislation could be drawn which would meet the problem and at the same time not raise constitutional issues." Hearings to be held during the next few weeks will focus primarily on two of the legislative proposals recommended by the Attorney General's Conference on Crime: prohibition of the interstate shipment of slot machines and the banning of interstate transmission of race track results.

Local Candidates

While no official figures have as yet been compiled of the total number of citizens who filed notice of running for local offices this year, it was evident before the clock struck six on April 15 that voters in almost every county will have a broad field of candidates to choose from when they come to mark their ballots.

The Institute of Government was able to get unofficial lists of local candidates from 78 of the state's 100 counties. In these counties more than 2,000 citizens are seeking public office. Something of a record is believed to have been set in Vance, where 56 have filed, a number greater than in any previous election year in the county's history according to newspaper reports. But Vance's total was topped in at least five other counties. When the books were finally closed, 68 candidates had filed in Iredell, 69 in Rutherford, 70 in Rockingham and Haywood, and 80 in Wayne.

The offices attracting the greatest number of candidates were county commissioner—for which a total of 513 filed, and sheriff—for which 258 filed. Pamlico with 17 and Durham with 16 candidates led the field in the first category, while Catawba and Cumberland, each with 11 candidates for sheriff, led in totals for the second. The number of candidates for the state House of Representatives in the 78 counties tabulated, totaled 174, with 14 running in Wake and 13 in Mecklenburg.

Four of these candidates for the General Assembly are women—two from Wake and one from Caldwell and Chowan. In addition, at least six other women are running for public office in North Carolina this year: for clerk of the superior court in Macon, for the boards of education in Durham, Iredell, and Guilford, and for coroner in Bladen. Mrs. Juanita Cruse of Cabarrus, a candidate for county commissioner, is reported to be the first woman ever to run for the position in North Carolina.

While the number of candidates is large, at least 94 incumbent office holders, other than county commissioners, will face no opposition in the coming elections. Their ranks include 22 clerks of the superior court, 17 coroners, 12 county solicitors, 14 surveyors, 11 judges of county recorder's courts, 7 members of the state House of Representatives, 6 state senators and 3 registers of deeds. In only two counties—Greene and Washington—will the post of sheriff go uncontested to the present incumbent.

Police and Fire Equipment

One of the most modern and efficient fire alarm systems in North Carolina was recently intalled in Albemarle, the only city of its size in the state to have such a system. 131 alarm boxes have been installed all over the city, spaced so that there is little more than a block between any home or business establishment and the nearest box. When a person turns in an alarm (by simply opening a little door and pulling the lever) an elaborate communication system goes into action. A bell rings at the desk in the fire station; the number of the box where the alarm was turned in, and the time, are automatically recorded; the air horn blows the code of the box from which the alarm originated—enabling volunteer firemen to go directly to the fire; and gongs sound in the truckroom and bedroom of each fire station. When an alarm comes in at night a special circuit of lights turns on automatically in the truckroom and bedroom. Equipment still to come includes a portable telephone which a fireman will be able to plug in at any alarm box and thereby talk to the man at the desk in the main fire station.

Modernization of Charlotte's fire alarm system was also underway early this month when engineers began installing a $200,000 "directed alarm" system, believed to be the first of its type in the South. When the installation is completed, Charlotte will have 600 alarm boxes instead of the present 300, all alarms that are telephoned in will be automatically recorded, and all trucks will be equipped with two-way radios. The main advantage of the new system, however, lies in the fact that response to alarms will be quickened considerably. At present when an alarm is turned in, the gong sounds in every fire station and each fire company has to wait to make certain whether or not it is the company being called. In the future when an alarm box is used anywhere in the city, it will sound at central headquarters, where an alarm operator will immediately signal only those fire companies which should respond to the call.

The Southern Pines police force, which last summer had a filing system installed by an FBI representative according to the highest FBI standards, underwent still another stage of modernization this month. At a cost of approximately $1,300 the department became radio-equipped. Station KIB, FM short wave, now furnishes two-way communication day and night between the police station and the roving police car. Testing revealed that the new station can be heard as far as twenty miles away.

Intoximeter

The Winston-Salem police will soon depend upon chemical apparatus rather than the rule of thumb and the chalk line in determining whether or not a driver is under the influence of alcohol. Chief John M. Gold announced the department's decision following a local demonstration of the "Intoximeter" by its inventor, Dr. Glenn C. Forrester. Dr. Forrester described the portable combination of balloon, chemicals and glass tubes as "a machine to test scientifically whether a motorist's judgment and physical responses are affected by the consumption of any amount of alcoholic beverage." The suspected motorists blows into a balloon. His breath is then released on a purple chemical which fades in color if there is any alcohol on his breath. The rate at which the color fades determines roughly the amount of alcohol in the subject's bloodstream.

The courts have generally accepted the results of the intoximeter test as admissible evidence.

Plan For Planning

A long range city planning and zoning program was submitted to Raleigh's city manager last month by the city's newly appointed director, H. W. Stevens. The recommended program consists of thirteen major projects, each considered a necessary step towards achieving a comprehensive plan for the city as a whole. These projects, in the order that Stevens recommends they be undertaken, include: 1) Population survey and predictions —to enable estimates to be made of the extent of residential area needed in the future; 2) Economic survey and predictions—to enable proper planning for the needs of business and industry; 3) Land use survey and development predictions—upon which will be based zoning and the planning of streets and utilities; 4) a major street plan—laid out to serve the future areas as determined by the land use survey; 5) A major utilities plan—to precede subdivision regulations; 6) Major parks and public lands plan—also to precede subdivision regulations so that public lands may be acquired as development takes place; 7) Subdivision standards —to assure that future developments will meet standards set by the city and will fit in with the over-all plan; 8) Zoning ordinances—to keep private property in line with the over-all plan; 9) Detail plans—for slum clearance, redevelopment, etc.; 10) Master plan—pulling all the above elements together; 11) Policy plans—providing for annexation studies, legislation studies, development of policies for capital improvement programs, etc.; 12) Administration—including record keeping, hearing zoning appeal cases, developing smooth interdepartmental relations; 13) Public relations—a program to carry the development plan to the people of the city by means of popular publications, radio, and school programs.

Public Relations

An ordinance adopted recently in Dearborn, Michigan established a public relations bureau as a full fledged city department, with a director appointed by the mayor and compensation for the bureau's personnel fixed by the council. The ordinance defines in detail the major functions of the bureau, which include preparation of material for newspapers and periodicals, maintenance of liaison with the public, arranging receptions for visiting dignitaries, and the compilation of annual municipal reports. The mayor described the city's approach to municipal public relations in a letter to the council: "New thought recognizes that any contact with city officials by the public is a phase of public relations. Our idea of public relations is that it is a means to an end—maximum service to all the people."

The town of Rockville Center, Long Island, has engaged a commercial firm to handle its public relations. A staff man keeps in constant touch with the town government, sits in with the committees dealing with future planning and development and holds bi-weekly press conferences with the mayor and department heads. The public relations representative is also in charge of preparing a monthly publication which goes out to all members of the community.

Sanitation Study

Continuing a campaign that began with the first shock of the 1948 polio epidemic, this month Winston-Salem's City Manager, C. E. Perkins, appointed a special committee to study the city's sanitation problems. When a similar committee in the summer of 1948 revealed that over 600 water closets in substandard housing areas were defective, and recommended that "all outside water-closet installations should be entirely removed," the committee's report also added that thorough-going improvements could not be accomplished in the immediate future due to the housing shortage and scarcity of materials. Substantial progress has been made since in bringing sanitary facilities up to standard, but with the shortage of materials virtually over, and low-cost housing projects under construction, the new committee is expected to plan a sweeping program for the elimination of slum conditions. Scope of the study will include in addition to housing conditions, toilet facilities, water and sewage, drainage and garbage disposal. Membership of the committee includes officials from the health department and water and sewer department, a city building official, the city engineer, and the director of city-county planning. Following their initial report to the board of aldermen, and its approval by the board, the report will be translated into a program of action, with each committee member being responsible for expediting the activities with which his department is specifically concerned.

Uniform Motor Vehicle Laws

A resolution providing for the establishment of a Federal Motor Vehicle Commission has been introduced by Congressman Dean Taylor of New York and is currently being considered by the House Committee on Interstate and Foreign Commerce. The Commission would be appointed by the President for one year, to study "the differences between the laws of the several states pertaining to the ownership, operation, and control of motor vehicles; the effect of such differences upon the safety of all the people of the country; and the best available means by which said laws can be made uniform, if this is found to be desirable."

The Minutes Tell The Story

Boards of county commissioners all over the state underwent a legal transformation at the end of last month when, pursuant to G.S. 105-327, they convened as boards of equalization and review. Of the counties whose minutes were received this month by the Institute of Government, only five included proceedings of the meetings at which taxpayers' complaints were heard. In these five counties, a total of only 26 taxpayers appeared before the boards to request downward adjustments in the valuations placed upon their property. The five boards agreed to reduce valuations for a total of 13 citizens, and postponed judgment on the requests of two of the complainants.

Acting in their usual capacities last month the commissioners heard reports of county officials, approved bills, drew jury lists, and approved road petitions. The Hertford board approved the architect's plans for a new county office building, while in Bertie a plan to build a Farm and Home Agent building for Negro citizens was agreed upon, and bids for construction of the county hospital were studied.

Pitt commissioners appointed a township constable, to serve until after the election, and a veterans service officer. Washington appointed a Game Protector, and Hertford a new member of the board of welfare. The Pitt board granted a six-week leave of absence with pay to the county's Negro Home Demonstration Agent to be spent taking a refresher course at State College this summer.

* * * *

Traffic and parking regulations were still the main topics of discussion at several city council meetings, according to the minutes received this month. And still running a close second on the agenda of most cities as a recurring item of business, was discussion of zoning ordinances. Graham, in accordance with G.S. 160-22 voted to establish a five-member zoning commission authorized "to undertake the necessary studies for the purpose of preparing a comprehensive zonging plan." The Fayetteville and New Bern councils set dates for public hearings on their respective zoning ordinances, while five other cities either amended or discussed the advisability of amending their zoning regulations.

The town council of Hamlet discussed but took no action on the question of furnishing fire protection outside the city limits, while in Robbins the board voted to restrict outside calls by the town firemen to those locations which can be reached with the fire hose.

Greensboro amended its building regulations to provide that "Any person, firm or corporation denied the special permit by the Building Inspector or by the City Manager, or by both, shall have the right of appeal to the City Council, and the City Council may authorize the issuance of such permit as it deems wise." Statesville adopted a new schedule of fees for granting building permits.

Action taken by the cities which affected police included Raleigh's decision to permit policemen (and firemen) to live outside the city limits providing they have automobiles and telephones. Raleigh also voted to send a member of the police department to an FBI training school in Washington. Statesville's city council voted to carry out three recommendations made by the city's civil service commission: 1) That patrolmen be permitted to alternate every two weeks between walking the beat and riding in a patrol car; 2) That all outside patrolmen report to headquarters at least once each hour by radio or telephone and that the calls be logged and permanently filed; and 3) That sleeve markings be worn to indicate the rank of each officer in the department. Fayetteville agreed to cooperate with Cumberland county by providing for the examination by city policemen of applicants for taxicab licenses outside the city limits.

Rocky Mount appointed a special committee to study the salary scales of the municipal court officials and to recommend revisions where advisable.

Charlotte's city council adopted a resolution requesting the Administrator of the Housing and Home Finance Agency to earmark $100,000 for Charlotte to be used for preliminary studies under the Federal slum clearance and redevelopment program. New Bern's board approved a cooperation agreement made between the board and the city's public housing authority. High Point set a date for a public hearing on rent de-control while the city council in Wilson voted *not* to recommend removal of rent controls in the city for the present.

Financial activities of the cities last month included Raleigh's approval of an alteration project at the city hall costing $2,000, and purchases by the various cities of police cars, a hospital elevator, oil, black alum, police uniforms, a bulldozer, a motor grader, and a one and a half ton truck.

Crystal Gazing vs. Blanket Bonding

By
PHILIP P. LAING

Crystal gazing, despite occasional cynical charges to the contrary, has never been a recognized practice of governmental administration. If the little crystal ball could authentically portray the future, the multitudinous problems of public officials would vanish. Public administration would be as easy a task as it sometimes appears to be to the uninitiated.

One of the problems a conscientious administrator could airily dismiss would be that of bonding public servants. The crystal ball would, with television clarity, disclose in advance the identity of those officials or employees who would, either through dishonesty or neglect, cause a loss of public funds. Through the simple expedient of removing those potential culprits the losses would be avoided and the public body saved unharmed. Unfortunately no method of pre-screening can foretell the future acts of public employees and therefore the bonding of such employees is necessary.

To a certain degree, however, officials responsible for the safe-keeping of public funds and property have long been placed in the unenviable position of crystal gazers. They not only have had to decide who might cause a loss but also how large such a loss might be. Consequently the bonding of public employees has not always been properly inclusive or sufficient.

County Commissioner's Liability

As an indication of the above statement attention is called to Section 109-13 of the General Statutes of North Carolina, 1943, as amended. This section reads as follows:

"Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond."

In the case of *Moffitt v. Davis*, (205 N. C. 565, 570, 172 S.E. 317), the court stated in connection with Section 109-13 that: "Public officials entrusted in so important a matter as this mandatory statute, are held individually liable to anyone injured by their wilful failure or neglect of duty. To hold otherwise would put a premium on inefficiency and neglect." In deciding this case the court also stated that: "Construing this section and Section 153-9 (which treats with the duties of the county commissioners) together, it is held that the county commissioners may be held individually liable by a person sustaining loss by reason of their failure to perform their ministerial duty of requiring bond of a Clerk of the Supreme Court."

While the statutes of the State of North Carolina require bonds from certain specific officers, and even in some instances indicate the minimum or even maximum amounts of such officials bonds, it should be immediately apparent that in many instances the county commissioners are faced with an almost inhuman task of determining the actual exposure involved in a particular office and, consequently, the amount of coverage which should be required of the officer holding that particular position.

The same problem exists insofar as non-statutory employees in county offices and departments are concerned.

Municipal Officers and Employees

On the city level, the legislators of the State of North Carolina have extended to municipal administrators a very general measure of bond requirements when in Section 160-277 they enacted into law the following:

"Every official, employee, or agent of any city who handles or has custody of more than one hundred dollars of such city's funds at any one time shall, before assuming his duties as such, be required to enter into bond with good sureties, in an amount sufficient to protect such city, payable to such city, and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody or control, which bond shall be approved by the mayor and board of aldermen or other governing body and deposited with the city, except that such bond of any employee or employees may, in the discretion of the mayor and governing body be conditioned only upon a true accounting for funds of the City."

In comparison with the county administrators, municipal administrators at least have the measure of a minimum amount of one hundred dollars of city funds as a guide as to who should be bonded. This section completely overlooks, however, the hazard to a city which exists in the person of an employee who may not handle cash, but who nevertheless has *access to cash*, or who handles other valuable property or has access to other valuable property belonging to the city.

Despite the guides outlined in Section 160-277, a conscientious municipal administrator must still determine the amount of bond to be obtained on any official or employee depending upon the potential hazard existing in his office.

Statutory Officials

In both the county and municipal level the statutes of the State of North Carolina specifically require certain officials to file individual bonds in order to qualify for office. These officials are known as statutory officials, and their bonds must specifically be worded to cover the faithful performance of the duties of their office. No other form of bond is acceptable. Therefore in discussing the subject of the blanket bonding of public employees, no consideration must be given to statutory officials inasmuch as they may not be included under any blanket bond form of protection.

Blanketing Bond of School Employees

New blanket bonding practices borrowed from the world of business and finance are now available to public bodies. They remove, to a great degree, the uncertainty formerly present in the bonding of public employees. The most widespread adaptation of this new method of blanket bonding received its baptism in the State of North Carolina during the past year. As a result of several unexpected and unusual shortages in certain school systems during 1948-49, the North Carolina legislature enacted into law a requirement that all employees handling funds or property of each school system be properly bonded. This law became effective as of July 1, 1949. The only form of surety bond that would accomplish the most complete compliance with the law was the Public Employees Blanket Bond. At the present time at least ninety percent of all personnel in the North Carolina school system are now blanket bonded.

Conventional Bonding Methods

Until the recent promulgation by the Surety Association of America of the Public Employees Blanket Bond, the established method of bonding public officers and employees fell into three

general categories, namely: The Individual Bond, The Name Schedule Bond, The Position Schedule Bond.

The Individual Bond is a surety obligation signed by both the surety and the bonded official or employee. The Individual Bond still meets a definite need insofar as statutory officials are concerned. It is also a proper instrument to protect a public body where specific protection on an individual is desirable. The Individual Bond is written for either a definite term or an indefinite term depending upon the circumstances involved in each instance. The Definite Term Bond is executed to cover an official or employee who has been elected or appointed to a definite term of one, two, three or four years. When the official bonded is a statutory official, the bond usually may not be terminated, and premiums are payable annually, until the official's term of office expires or he otherwise vacates the office. The Indefinite Term of Bond is usually written on an official or employee who is not appointed to a definite term of office but who continues to occupy the bonded position at the pleasure of some superior officer or board. This bond continues in full force and effect on the payment of proper premiums annually unless cancelled by either party under the terms of the bond itself.

The Name Schedule Bond extends protection to a public body on numerous named individuals occupying designated positions in the employ of the public body. Such officials or employees are usually non-statutory officials or employees. Under this form of bond, as an example, all employees in a Treasurer's Office may be bonded by name.

Insofar as non-statutory officials and employees are concerned, the disadvantages to the public body of the Individual or Name Schedule Bonds are as follows: (1) Protection is extended to the public body only on the persons named in the bond. In the event of the personnel turn-over the public body has no protection on the new personnel occupying the formerly bonded positions until either new bonds are executed on the new personnel or, under the Name Schedule Bond, changes are made in the Schedule List by appropriate Change Notices to the surety. In the latter events, minimum premiums are charged on each bonded named employee. This sometimes results in a practical additional expense not contemplated by the public body when it originally completed its budget.

The Position Schedule Bond is much broader than either the Individual or Name Schedule Bond. It extends protection to the obligee (the officer or public body or department to which it runs) by *position* rather than by name. Under the Position Schedule Bond, inasmuch as the position is covered rather than the named individual, changes in personnel in the bonded position may be made by the public body, department or officer to which it runs, without advice to the surety. This means that the obligee can thus transfer personnel from one job to another, or from one location to another, or can discharge personnel and replace the discharged personnel with new ones, without having to pay any additional premium. The Position Schedule Bond is, in a manner of speaking, a modified form of Blanket Bond protection.

While a certain latitude to the public body is permitted within the positions indicated on the list which becomes part of the Position Schedule Bond, it must be pointed out that such latitude is circumscribed by the number of positions bonded. It is also sometimes very difficult for a public body to decide which one or more of a number of similar positions should be bonded, and in that event, how to clarify, for future claim purposes, the difference between the positions bonded and those not bonded. As an example, there may be five clerks in a particular department. The public body wishes to bond two of the clerks because they handle funds or have access to funds whereas the other three clerks perform usual clerical duties. Unless the surety and the public body can agree upon a method of clearly identifying these two clerks by some non-disputable classification, it is difficult to extend to the public body the protection it desires.

Public Employees Blanket Bonds

The most recent and far-reaching development in the public official bonding field in many years has been the advent of the Public Employees Blanket Bond. The need for blanket bonding of public officials and public employees should be self-evident. As stated above, it is almost impossible to select with certainty those public servants who might cause losses either through dishonesty or through the neglect of their duties. The adequate bonding of employees who only occasionally perform duties that might involve a financial loss to the public body is a serious problem. In times of vacation, illnesses, emergencies, or in departments where there is a rather large turnover of personnel, these problems are most prevalent. In these days of tight budgets which must be closely watched and controlled, a deficiency caused by an employee loss can prove to be an acute fiscal hazard. The Surety Association of America, alert to these problems, and following the often repeated requests of public administrators has during the past three years, step by step, attempted to provide to public bodies the most modern, businesslike, and all inclusive forms of blanket bonding protection on public employees.

There are two general types of Public Employees Blanket Bond:

(1) Dishonesty Bonds. These bonds limit coverage to any loss incurred by the dishonest acts (theft, embezzlement, forgery, etc.) of the bonded employees, either alone or in collusion with others.

(2) Faithful Performance of Duty Bonds. These bonds, while they include dishonesty coverage, extend their protection to cover losses resulting from the non-faithful, but not necessarily dishonest, performance of duties (malfeasance, misfeasance and nonfeasance) of the bonded employees, either alone or in collusion with others.

Each of these two general types of bonds may be written in one or the other of the following forms:

Aggregate Penalty Form. This form covers, up to the amount of the bond, any act or serious acts culminating in a *single* loss, regardless of the number of people involved. In effect, it covers each bonded employee up to the amount of bond *except* where two or more employees, acting in collusion, cause a loss. In this latter event, the penalty of the bond is the maximum coverage for that particular loss. However, coverage under the bond is automatically reinstated as to any other employee or employees not involved in the original loss.

Multiple Penalty Form. This form covers *each* bonded employee up to the amount of the bond. In other words, total coverage is represented by the amount of the bond *times* the number of employees covered.

The Dishonesty Bond was devised to protect a public body against the acts of non-statutory officials or employees in the performance of duties in those departments or offices where the main hazard is that of dishonesty.

The Faithful Performance of Duty Bond was devised to extend protection where faithful performance of duty is inherent in the nature of the positions to be covered. To illustrate: The laws of most states require money-handling

and law-enforcing officials (treasurers, tax collectors, sheriffs, etc.) to furnish faithful performance of duty bonds. The manner in which these officials conduct their office is carefully defined by law and any breach of these statutory directions may constitute non-faithful performance. Subordinates of these officials may or may not be required to furnish such a bond. However, regardless of whether or not the statutory requirement exists, it is obvious that they, too, *should be bonded* and on a Faithful Performance of Duty Form. The Faithful Performance Blanket Bonds are the answer to this need.

In North Carolina there may be some question as to the form of coverage which may be executed on employees in the county level. A review of the statutes would seem to indicate that the only form of bond which may be written on county employees is one covering Faithful Performance of Duties.

On the municipal level, Section 160-277 provides that: "Bond of any employee or employees may, in the discretion of the mayor and governing body be conditioned only upon a true accounting for funds of the city." No officers of cities in North Carolina may be bonded on other than the Faithful Performance of Duty Bond. Under the conditions shown above, employees of cities may be bonded on a true accounting form of blanket bond. A special True Accountancy form of Public Employees Dishonesty Blanket Bond has been devised for the State of North Carolina to cover employees of a city in those cases where the mayor and governing body, by resolution spread upon the minutes of the city's records, have indicated that a true accounting blanket bond is acceptable. Lacking such action by the mayor and governing body of the city, the only form of blanket bond which may be written on employees in North Carolina cities is that covering faithful performance of duties.

Difference in Costs

The above distinction is most important to any public body when costs are considered. Obviously, the premium on a faithful performance of duty blanket bond is considerably higher than that on a blanket bond limited to dishonesty or true accounting. However every public administrator should also give consideration to the hazards existing in a particular office or particular offices. As an illustration, it would appear only reasonable to assume that the proper form of coverage on employees in Finance Departments (the offices of auditor, comptroller, treasurer or tax collector) should be that of faithful performance of duty. In other Departments of a municipality, generally speaking, the coverage limited to dishonesty may be satisfactory. A combination of both forms of bonds may be written covering all non-statutory employees of a given city.

Blanket Bond Regulations

The Surety Association of America through its member Companies has agreed on a set of regulations to govern the execution of public employees blanket bonds. Under the present regulations it is permissible, but not mandatory, to execute a single blanket bond to cover all eligible officials or employees of any one of the following units:

1. A County, City, Town, Township, Village or Borough.

2. A School, Water, Irrigation, Power, Bridge, Fire or other similar District.

Bond Amounts

Blanket Position Bonds may be issued in a minimum penalty of $2,500 and in larger amounts in multiples of $2,500 up to and including $10,000 *and no higher*. The Blanket Bonds (or aggregate penalty forms) may be issued in a minimum penalty of $10,000 and in larger amounts in multiples of $2,500 up to $25,000 and above in multiples of $5,000. The one exception to the above is the honesty blanket position bond written on local Housing Authorities. This bond is written in a minimum penalty of $2,500 and in any multiples of $2,500 up to $25,000 and thereafter any multiples of $5,000 up to $100,000.

The use of the honesty blanket bond is limited by a rule which prohibits the bonding of any officer or subordinate who is required by law to give bond conditioned for faithful performance of duty. Under the faithful performance of duty blanket bond the only mandatory exclusion is any officer or subordinate who is required by law to furnish *an individual bond to qualify for office*. In general, the blanket bonds must cover all employees of the insured, although, under certain conditions exclusions of certain types of officials or employees may be made. However, when an exclusion is made, usually all other positions of the same designation must also be excluded.

Protection vs. Costs

Naturally, any public administrator is interested in two factors when considering the bonding of public employees, namely: the measure of bonding protection; the cost of the protection.

Obviously, under the old system of bonding of public employees (on an individual, name or position schedule basis), the bonding of *all* employees in a governing body was usually impractical. This was due to the cost factor, because each bond was rated so much per thousand on each bonded position. No difference in rating procedure was permitted if 10 or 100 employees were bonded. However under the blanket bond an entirely different rating procedure has been established, taking into consideration the hazard involved to the Surety Company on three general categories of employees which, for the sake of illustration, could be called high hazard, medium hazard, and low hazard. A comparison of the cost of bonding *all* employees of a public body on the heretofore conventional method, with the bonding of *all* employees *under the blanket bonding method,* would readily disclose the considerable savings in actual dollar expenditure which a public body could realize. What is much more important, however, is the practical application of situations as they exist. Most public bodies have bonded only a certain number of their employees, endeavoring to pre-judge which employees would cause a loss. Experience in North Carolina as well as in neighboring States within the past year or two has clearly demonstrated that no public administrator can prophecy which official or employee under his jurisdiction will go astray. A municipality expending a certain amount of money to bond a limited number of employees would, through blanket bonding of all employees, realize a considerable savings *if the total protection coupled with the cost is considered.*

Perhaps a few illustrations of actual cases may clarify this point. In a New Jersey borough with a population of a little less than 10,000, some 20 employees were bonded in varying amounts from $1,000 to $10,000 at a total annual cost of $295. The borough purchased a $5,000 faithful performance of duty blanket position bond with specific additional protection on two of the positions of $5,000 at a total cost of $399.72, covering *all* of its 82 employees. Each employee is now bonded in the minimum amount of $5,000, whereas previously 9 of the 20 employees had been bonded for $1,000, one for $4,000, and 3 for $5,000.

A California city with a population of 60,000 had always been surety bond conscious. It had bonded, by position

schedule, some 115 employees in amounts ranging from $1,000 to $25,000, at an annual cost of $1,672. Under the blanket bonding program (of a faithful performance of duty blanket bond on departments where that hazard existed, and a dishonesty blanket bond on all other departments), the city has now purchased a $100,000 faithful performance of duty blanket bond at an annual cost of $2,005. Under the blanket bond some 800 employees are now bonded.

In a Connecticut town with a population of 30,000, a blanket position bond in the amount of $10,000 recently was written to replace individual and name schedule bonds under which the Town had bonded some 42 employees at an annual cost of $1,512.50. Under the blanket bond 887 employees are now bonded in the amount of $10,000 at an average annual cost of $2,882.75.

It certainly should not be expected that a blanket bond program under which all employees of a public body are covered as compared with a schedule or individual bond under which only 20% of the public employees have been covered would result in a net savings in dollar premiums to a municipality. Yet, strangely enough, this situation has occurred. A large Connecticut city formerly bonded some 281 employees in varying amounts at an annual cost of approximately $4,000. Under the blanket bond program, some 4,000 of the city employees are now bonded in larger amounts than heretofore, at an average annual cost of $3,900.

These illustrations could be continued to show similar situations in varying degrees in various parts of the country. The above illustrations should be sufficient to illustrate that, when considering the measure of protection extended to the public body together with the actual cost of the protection, the blanket bonding of public employees always results in a sound economical bonding program for the city. It might be well to point out that the blanket bond premium may be paid on an annual or on a three year basis. On the latter basis, the premium is 2½ times the original or annual premium. For budgetary assistance, this premium, with a slight adjustment, can be placed on a budget program whereby the public body pays 50% of the total three year premium the first year, 30% the second year, and 20% the third year.

Banking institutions, commercial houses, and industry have long recognized the need of blanket bonding their employees. In these days of applying to public administration the proven practices of good business, it was inevitable that the proven practice of blanket bonding of employees should also be made available to public officials. The blanket bonding of public employees guards the public body, on an economical basis, against unexpected employee losses. Integrity, honesty, and faithful performance of duties by public officials and employees are prime requisites of good government. Protection to the public against unpredictable defections of its servants by modern bonding methods is a corollary of good governmental administration.

Social Security For North Carolina State, County, and Municipal Employees

By

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Recent reports from Washington indicate that 80,000 North Carolina state, county, and municipal employees may have an opportunity to be included under the Social Security Act in the near future. Rep. Doughton of North Carolina's ninth congressional district, chairman of the House Committee on Ways and Means, introduced H. R. 6000 last August 15 after extensive hearings and study. The House passed the bill by a vote of 333 to 14 on October 5, and the Senate Finance Committee has been conducting hearings on the bill since January of this year. Washington observers now expect the bill to be reported in the next few weeks and passed with only slight amendments before Congress adjourns.

H. R. 6000 has several other important provisions besides the one which will be of special interest to public employees. Briefly the act extends coverage to about 11,000,000 persons in addition to the 35,000,000 now covered. It increases present benefit payments immediately by an average of about 70 per cent and makes it possible for new benefits to be awarded after five years of operation to average approximately twice those now being awarded. Other provisions of the bill provide benefits to workers forced to retire before age 65 on account of total disability, simplify the conditions of eligibility for old-age and survivors benefits, and liberalize the restrictions on employment for persons on retirement.

Although the bill must still travel a long way before it becomes a law, supporters were encouraged by the strong support that the bill received in the House from both Republicans and Democrats. For the first time since the late Senator Wagner originally proposed an extension of Social Security benefits to state and local employees in 1940, the chances are good that some North Carolina employees may be brought under the Social Security Act.

1935 Act Excluded Public Employees

The Social Security Act as passed in 1935, specifically excluded state and local employees as well as several other groups such as farmers, domestic workers, and the self-employed. Although these groups were thought to need retirement allowances and survivors benefits as urgently as their neighbors who were employed by private industry, they were passed over because of difficult questions of constitutional law and of the proper procedure for collecting contributions.

The principal legal barrier resulted from the fact that under our theory of constitutional government the states and the federal government exist side by side, with the federal government having only such powers as are delegated to it under the Constitution of the United States. All other powers not prohibited by the Constitution to the states, are reserved to the several states or the people. The U. S. Supreme Court has repeatedly held that neither the federal nor the state government can impose a tax or burden

upon the other. As Social Security retirement allowances and survivors benefits are paid from a reserve fund financed by a tax levied in equal amounts upon employees and upon employers, it was recognized that Congress could not impose this program upon the states and so the states and their political subdivisions were omitted from the 1935 act.

Voluntary Compacts

H. R. 6000 hurdles this constitutional barrier by providing for the extension of coverage, on a voluntary basis, to state and local governments. This bill provides that a compact must be made between the state and the federal security administrator before any group of state or local employees could be placed under Social Security. The bill provides that the compacts or voluntary agreements shall be made with respect to three types of coverage groups—(1) state employees not covered by a state-wide retirement system; (2) employees of a political subdivision of the state not covered by a state-wide retirement system; and (3) state and local employees covered by a state-wide retirement system. However, the bill specifically provides that members of each existing retirement or pension system must be treated as a separate coverage group, and coverage cannot be extended to them unless the employees and beneficiaries of each system so elect by a two-thirds majority vote in a written referendum.

Although it is not specified in the present bill, it is intended that this election shall be by secret ballot. This referendum assures every employee belonging to a retirement system a voice in determining if he or she will receive Social Security benefits. In order to avoid adverse selection, the bill requires that for any group to be covered, all of the employees in that group (with certain possible exceptions such as elective, part-time, emergency, or employees compensated by fees) would have to be covered.

Benefit Provisions of H.R. 6000

Because of limited space only those benefit provisions of H.R. 6000 will be explained which may be of particular interest to state and local employees. To clarify the provisions of H.R. 6000 let us assume that a North Carolina municipality desires to be covered and that the state signs a compact extending coverage to all full-time employees of the municipality retroactive to January 1, 1950. Let us also assume that the municipality has a policeman by the name of John Smith who is married but has no children and that both he and his wife were 60 years of age on January 1, 1950. Let us assume that Mr. Smith has never been covered by social security prior to January 1, 1950, and that he works for the municipality at a salary of $200 a month until January 1, 1955 when he retires.

Under H.R. 6000, Mr. Smith would be able to retire on or after January 1, 1955 on an old-age retirement allowance of $92 a month as long as both he and his wife lived. If his wife should die, he would receive a retirement allowance of $62 a month as long as he lived. If he should die after retirement, his wife would receive a lump-sum death payment of three times her husband's single monthly retirement allowance or $186, and a survivor's allowance of $46 a month for the rest of her life. If he should die after having been covered for at least one and one-half years, but before he was 65, his wife would receive a survivors' benefit allowance when she became 65 years old.

If Mr. Smith had been over 65 years of age, he would become eligible for an old-age retirement allowance before 1955. For example, if he were 75 years of age or older on January 1, 1950, he would be eligible for an old-age retirement benefit after he had worked for the municipality for one and one-half years or until after July 1, 1951.

Let us now assume that the same municipality has a fireman by the name of Bill Jones who is 35 years of age and is married and has two small children. Let us also assume that Bill Jones is a veteran of World War II having served four years in the armed service. H.R. 6000 provides veterans with wage credits of $160 for each month of military service performed during World War II. Because of his military service credit, Bill Jones would become "insured" immediately and his dependents would be eligible for survivors' benefits if he should die. His four years of military service would also make him eligible after January 1, 1951, for a disability retirement allowance which, in case of total and permanent disability, entitles him to a life-time income. After January 1, 1956, he would permanently acquire a fully insured status and would be guaranteed a pension at age 65.

The method of computing benefit allowances is much simpler than the methods used by many retirement systems. For example, Bill Jones' old-age retirement allowance can be figured from Table I. To simplify calculations let us assume that Bill is not a veteran and that he works steadily as a fireman for 30 years and has an average monthly salary of $200 a month. When he is 65 he will be eligible for a monthly old-age retirement allowance of $69. If his wife were still living and 65 years of age, his pension would be increased by 50 per cent, or a total of $104. If he had one or more unmarried children under 18, each of the children and his wife, regardless of her age, would receive a dependent's benefit of one-half of Bill Jones' allowance, subject to a maximum total family benefit of $150 a month.

If Bill Jones were permanently disabled by either an occupational or non-occupational accident or illness after five years of covered employment, he would receive a monthly disability pension. Dependents benefits would not become payable until he reached 65.

If Bill Jones should die at the end of ten years of covered employment (assume an average monthly salary of $200 a month) leaving a widow and two unmarried, dependent children under 18, the widow would receive $47 a month, the younger child would receive $47 a month and the older child would receives $32 a month, making a total family benefit of $126 per month (Table II). In addition the family would receive a lump-sum death benefit of $189 at the time of Bill Jones' death. The monthly family benefit would be reduced to $94 when his older child reached age 18, and would terminate when the younger reached 18. However, when his widow reached 65 years of age her benefit of $47 a month would be resumed and continued for life, if she remained unmarried.

The Situation in North Carolina

The past decade has witnessed a rapid growth of public retirement systems in North Carolina. Although public opinion has generally approved retirement and disability benefits, some citizens, while acquiescing in the action taken, have decried the weakening of the moral fibre and the absence of will power and determination. Employee groups in supporting retirement and disability benefits have argued that past pay scales have been too low to permit the average fireman, policeman, teacher, or public employee to provide for his old age. This argument was accepted by the North Carolina Supreme Court which held in *Bridges v. Charlotte*, 221 N. C. 472 (1942), that the Local Governmental Employees Retirement System was "based not only upon the principle of justice to poorly paid state employees, but also upon the philosophy that a measure of freedom from apprehension of old age and disability will add to the im-

TABLE I

PROPOSED MONTHLY RETIREMENT BENEFIT SCHEDULE UNDER PROVISIONS OF HR 6000 OLD AGE AND SURVIVORS INSURANCE

(All figures rounded to nearest dollar)

Years of Covered Employment	*Employee's Average Monthly Salary*	*Monthly Social Security Pension*	
		Single Employee	*Married Employee*
5	$150	$56	$85
5	200	62	92
5	250	67	100
5	300	72	108
10	150	58	87
10	200	63	94
10	250	68	102
10	300	74	110
15	150	59	89
15	200	65	97
15	250	70	105
15	300	75	113
20	150	60	91
20	200	66	99
20	250	72	107
20	300	77	116

a With wife 65 or over.

mediate efficiency of those engaged in carrying on a work of first importance to society and the state."

Governing bodies have frequently been less profound in their defense of retirement systems for they know that the performance of their governmental units is sometimes seriously reduced by elderly employees who are "hidden pensioners" as they are no longer able physically to perform their duties satisfactorily. Yet, the governing bodies, as Christian citizens and elected representatives, realize that they cannot discharge their superannuated employees. Under these circumstances the legislature, county boards, and city councils have encouraged North Carolina's 80,000 public employees to join one or more of the 225 retirement or relief funds active in North Carolina, and during the last ten years nearly 70,000 of these employees have joined one of the funds.

Approximately 10,000 of the 80,000 state and local employees in North Carolina do not yet belong to any pension or retirement system. These 10,000 represent approximately half of the total county and municipal employees in the state. Over 6,000 are municipal employees and slightly less than 4,000 are county employees. At least 2,000 additional employees belong to one of the twelve county or municipal non-reserve retirement systems which are not managed according to sound actuarial principles and exist on the hope that future city councilmen or boards of county commissioners will have sufficient funds to pay the pensions promised.

The vast majority of public employees in North Carolina belong to one of the three state-wide actuarially sound retirement systems. These funds are the Teachers and State Employees Retirement System, the Local Governmental Employees Retirement System and the Law Enforcement Officers Benefit and Retirement Fund. The Teachers and State Employees fund was established in 1941 and has over 60,000 members. Over two-thirds of its members are public school teachers. The Local Governmental Employees Retirement System was established in 1945 and has approximately 5,500 active members as 26 counties, 14 cities, 7 towns, and 13 other units are affilliated with it. The Law Enforcement Officers Benefit and Retirement Fund was established in 1940 and has approximately 1,700 members. The only other employees belonging to actuarial retirement systems are the employees of Forsyth County and the City of Winston-Salem.

Firemen and policemen were the first employees to establish pension funds in North Carolina, and all but 9 of the 225 existing relief or retirement funds are for firemen or policemen. One hundred and ninety-two North Carolina towns have firemen's relief funds for firemen suffering occupational injuries. These funds are financed by a state tax on insurance premiums, which has been collected since 1891. Scattered throughout the state there are also thirteen local law enforcement officers relief funds which provide disability or survivors' benefits from receipts from a $1.00 court cost fee assessed in certain criminal cases. Frequently the policemen or firemen who belong to one of these relief funds also belong to a municipal or state-wide retirement system.

Space does not permit a comparison of the different retirement systems in operation in North Carolina. Numerous differences exist in the conditions for retirement, rates of benefit, provisions for dependents, and rates of contribution. Most of the relief funds are not retirement funds but only offer small occupational disability benefits or limited survivors' benefits. A number of the local retirement systems provide substantial benefits, but employee and employer contributions represent considerably less than the ultimate cost of the benefit provisions. The result will be a condition of insolvency involving large actuarial deficiencies. The dark and disappointing history of similar retirement systems in neighboring states show how necessary it is that the liability being assumed by a governmental unit be estimated in a businesslike fashion.

To summarize, in spite of the tremendous progress that has been made in providing some degree of economic security for public employees who are incapacitated because of age or disability, 10,000, or one half of the county and municipal employees in North Carolina, do not yet belong to a public retirement system. In most instances they are the employees of the smaller cities and the less industrial counties. In other cases they are either elderly employees who feared they might be forced to retire if they joined the system or custodial or manual laborers who because of the high cost of living did not believe they could spare the payroll deductions.

Many North Carolina retirement systems were designed with only the career employee in mind and therefore require twenty or more years of consecutive service with a single governmental unit to qualify for a pension. This situation tends to tie employees to their jobs and penalizes the public employee who in his lifetime works for more than one municipality, county, state, or in private industry. It also tends to close public employment to capable and experienced men of 45 or even 40 unless there is a provision in the retirement act excluding persons hired after a certain age.

The great majority of those who leave public service before retirement age forfeit any right to the retirement benefits they may have acquired. The magnitude of this shifting of employment is indicated by the fact that the average annual turnover in permanent full-time jobs in North Carolina cities ranges between 5 and 20 per cent. One-third of the persons who have contributed to the state-wide retirement systems are no longer active members and an even larger per cent will never become eligible for retirement.

A number of local retirement systems provide neither non-occupational disability benefits nor survivors benefits. Several editors have criticized the state-wide retirement systems because members cannot, before they retire, elect to use a part of their retirement allowance to provide an annuity for their beneficiary. Less widely known but of greater significance is the fact that approximately 2,000 local employees belong to local funds not on a sound actuarial basis.

Advantages of Old Age and Survivors Insurance

Even the members of Rep. Doughton's committee do not believe that the Social Security act as amended by HR 6000 will be the complete or final answer to all the retirement problems of public employees. They do contend, however, that the average public employee who is covered by a retirement system stands to gain from being included under Social Security almost as much as one who is not covered at all. The committee points out that HR 6000 would permit state and local employees to transfer in and out of public employment without loss of a basic retirement benefit. It would also provide employees disability payments if disabled prior to retirement and survivors benefits for dependent children or aged widows.

The cost of disability, retirement, or survivors' benefit payments would be paid from a payroll tax on the first $3,600 of salary ranging from 1½ per cent in 1950 to 3¼ per cent in 1970. Both the employee and the employer would pay this amount into the federal social security fund. The ultimate cost of the benefits provided by HR 6000 are estimated at a little less than 7 per cent of the payroll. As combined contributions will not equal 6½ per cent until 1970, the fund will not be completely self supporting or on a full reserve actuarial basis. However, the estimated cost of the benefits for the next 50 years, or until the year 2000, will be approximately 6 per cent of the payroll of members, and the trust fund in that year will have accumulated to 96 billion dollars. The administration of such a sizable trust fund will not be a serious problem until that elusive and unpredictable day when the national debt will be paid off. In fact, as the committee points out, such a trust fund is much cheaper and much equitable to future generations than a cash or non-reserve plan.

TABLE II

PROPOSED MONTHLY SURVIVORS BENEFITS UNDER PROVISIONS OF HR 6000 OLD AGE AND SURVIVORS INSURANCE

(All figures rounded to nearest dollar)

Years of Covered Employment	*Average Monthly Salary*	*Aged widow, parent, or 1 Child*	*Widow & 1 Child*	*Widow & 2 Children*	*Widow & 3 Children*
5	$150	$42	$ 85	$113	$120
5	200	46	92	123	150
5	250	50	100	133	150
5	300	54	108	144	150
10	150	43	87	116	120
10	200	47	94	126	150
10	250	51	102	137	150
10	300	55	110	147	150
20	150	45	91	120	120
20	200	50	99	132	150
20	250	54	107	143	150
20	300	58	116	150	150

Effect on Retirement System Members

Public employees now belonging to a retirement system need not fear the extension of social security. If they do not desire to be covered, they will be given an opportunity to vote against being brought under the federal act. If they do desire to be covered, they can have their retirement system amended so that their present retirement system will supplement the basic social security pension and guarantee that the total protection is at least as favorable as at present. Just as thousands of industrial firms have adjusted their pension plans to supplement the Old Age and Survivors provisions of the Social Security act, all the retirement systems in North Carolina could be amended to result in a combined arrangement superior in many respects to the present system.

Let us assume that the state legislature and the members of the Teachers and State Employees retirement system decide that all state employees should be brought under Social Security. From the time the federal-state compact went into effect, the first 1½ per cent (or 2 per cent if after Jan. 1, 1951) of the payroll tax would be matched by the state and diverted to the social security reserve fund. The remainder of the 5 per cent payroll deduction plus what the state contributes would go to the present retirement system which would continue on its present sound actuarial basis. The state retirement system would continue to encourage and reward the continuous employment of career public servants and retirement allowances would be used to supplement the basic social security benefits just as is done by the pension plans of private industry. In 1960 when the employee tax under Social Security is increased to 2½ per cent, a corresponding increase would have to be made in the employee's and state's contribution if the state wished to maintain the same retirement benefit formula.

In most cases the combined retirement allowances will be more generous than present retirement allowances. Actuaries recommend that all retirement systems be amended to provide that "no employee's retirement benefit will be less than the difference between what would have been paid under the old formula and the social security benefit."

As North Carolina teachers and state employees may retire at 60, this provision would permit an employee retiring before 65 to retire under the present formula as though all contributions had gone to the state fund. At 65, or earlier if he or she became eligible for a disability benefit, the retirement allowance would be recalculated under the new formula and the employee would receive the basic social security retirement allowance plus a supplementary payment from the state retirement fund.

Carl H. Chatters, Executive Director of the American Municipal Association, urged all municipalities to support HR 6000 in an editorial appearing in the *Washington News Letter* of February 1. The editorial concludes as follows: "Propaganda is being spread that passage of HR 6000 will ruin the present state and local retirement systems or abolish them. Those statements are a plain untruth. The simple fact is that too many public employees have no retirement benefits under any plan and that every one who wants it should have it available to him as supplementary protection or as his sole guarantee against want in old age. Those who want to exclude any large group of workers from the basic benefits of a OASI will some day look back at this idea as short-sighted."

Enabling Legislation

If HR 6000 should pass Congress in its present form, no North Carolina state or local governmental employee could be brought under Social Security until the General Assembly meets next year. For although Chapter 103, *Session Laws of 1949*, anticipated the extension of Social Security to public employees, it did not amend the state retirement systems to permit coverage or authorize the state to enter into compacts with the federal security administrator to bring county or municipal employees under Social Security.

Books Received

EVALUATION OF CITIZENSHIP TRAINING AND INCENTIVE IN AMERICAN COLLEGES AND UNIVERSITIES. *By Thomas H. Reed and Doris D. Reed. The Citizenship Clearinghouse, New York, 1950. 64 pages.* Going on the assumptions that it is largely up to the schools and colleges to encourage and train students to participate actively in political life after graduation and that such participation is essential to democracy, the authors undertook to inquire into the extent to which American schools are carrying out this responsibility. Questionnaires calling for information concerning courses, instructors, and extracurricular activities, were answered and returned by 218 colleges and universities. On the basis of these answers, Dr. and Mrs. Reed concluded that "There is much too little being done by American colleges and universities in preparing young men and women for actual participation in politics; in other words, in operating our democratic system of government." To remedy this lack the Reeds offer 18 suggestions at the end of the booklet, including greater faculty participation in politics, the encouragement of student political clubs, introduction of field work in government as a prerequisite for a degree, more stimulating courses—and reduction of the voting age to 18.

THE BOOK OF THE STATES 1950-1951. *The Council of State Governments, Chicago, 1950. $7.50 (with supplements $10.00) 839 pages, maps, charts, tables, bibliography, index.* This is the eighth edition of the standard reference work on state governments—their organization, activities and personnel, and the current edition is bigger and even more crowded with facts and statistics than its predecessors. Rosters of state officials, listing the elected and appointed heads of the more important departments and agencies throughout the state governments are included, as are full lists of members of the legislatures. Supplements to be issued in January and July of 1951 will bring those directories up to date. In addition the *Book* includes discussions, by leading authorities, of intergovernmental relations, state constitutions, legislatures and legislation, administrative organization and finance, major state services, and state judicial systems.

DIGEST OF COUNTY MANAGER CHARTERS AND LAWS. *National Municipal League, New York, 1950. Mimeo.* It would be difficult to overestimate the value of this pamphlet for state and local officials, students, and all citizens interested in local government. The method in which the facts are presented—in simple, clear outline form, with a minimum of technical phrases, should exclude no one from its readership.

Divided into four sections the contents include: 1) A brief review of the 17 state constitutions (including North Carolina's) which permit County Manager structures, with two or three lines of type devoted to each state; 2) A digest of the National Municipal League's Model County Charter; 3) Digests of constitutional provisions, and laws and charters permitting effective county manager positions; and 4) Descriptions of the governmental structures of five additional counties (including Robeson) having appointive executives. In section (3) five pages are devoted to North Carolina. Section 13 of Article VII of the Constitution, which permits the General Assembly to "modify, change or abrogate" the structure of county government, is mentioned, and the optional law of 1927 providing for the manager form, is outlined in detail. The governments of Durham and Guilford, which adopted the manager plan in 1930 and 1928 respectively, are also described, and the provisions of their charters are compared with the model county charter. The same treatment is given Robeson in the final section, Robeson's manager plan being based on a mandatory special act of 1929 rather than the optional law of 1927.

The main portion of the pamphlet is prefaced by a particularly apt quote from a speech made by the late President Roosevelt when he was Governor of New York:

"We have a system of local government whose general structure is no more fit for its purpose than an ox cart would be fit for supplying modern transportation . . . There are not one per cent of the counties of the United States but could save great sums of money for the taxpayers if they were reorganized along modern lines."

THE REPORT TO THE GENERAL ASSEMBLY AND GOVERNOR OF CONNECTICUT. *Commission on State Government Organization, 1950. 154 pages.* In March 1949, the Connecticut legislature passed a special act providing for the appointment of a commission to study the state's government and to recommend changes which would, in the commission's own words: "enable the State government to carry out its responsibilities effectively, and so to avoid where possible the concentration of responsibility in Washington..." The commission found that thoroughgoing reorganization was needed and with the help of a small army of technical experts, prepared the plan contained in the report. Ten acts to accomplish the program are also printed in full. Their cumulative

purpose is to strengthen and clarify the authority of the executive branch, the legislature, the courts, and local government.

The commission strongly recommends passage of a constitutional provision granting municipalities the power of home rule, and a constitutional prohibition on special legislation. ("A mere self-denying ordinance of the General Assembly to this effect is not enough.") Dropping like a bombshell amid the recommendations is the statement: "With strong State government and strong municipal government, the county is obsolete in Connecticut. We therefore recommend the abolition of the elective offices of sheriffs, and with them, of the counties as units of government." While the county in Connecticut (as in most New England states) is scarcely as important a unit of government as the North Carolina township, the commission's proposal has already met opposition. But in a well written introduction to the generally readable report the commission had warned: "We cannot make an omelette without breaking some eggs."

Recent Supreme Court Decisions

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

The Supreme Court of North Carolina has recently:

Held *that members of the State Highway Patrol have the authority, under the provisions of G.S. 20-188, to arrest at any time persons accused of highway robbery, bank robbery, murder and other crimes of violence, either on their own motion or at the request of local police authority; that "accused" is used in the statute to mean charged with committing a crime but not charged through judicial procedure. Ruled that use of an airplane by members of the State Highway Patrol in locating a person charged with a crime is not a departure from the terms of their employment.*

In *Galloway and Davis* v. *Department of Motor Vehicles*, 231 N. C. 447 (Filed 1 March 1950) claims had been filed before the Industrial Commission under the Workmen's Compensation Act for compensation for the injury and death of highway patrolmen Galloway and Davis, based on the following facts. A woman had come to Davis and informed him that an escaped convict was hiding in a densely wooded section of Clay and Cherokee counties near her home, that the convict had approached her isolated home armed with a pistol and demanded food, and that he had threatened to kill the members of her family. Davis immediately contacted patrolman Galloway and they decided to go into the area to apprehend the convict. Because the area was mountainous with few roads, they determined to go in by foot under the cover of darkness to avoid being seen, and to reconnoitre their route in the afternoon by flying over the area in a small airplane. Both men were licensed pilots. Accordingly they secured the use of a small airplane, but for some unexplained reason the plane crashed soon after the takeoff and both patrolmen were killed. In the original hearing before a single member of the Commission compensation was allowed, but the full Commission denied the award on the ground that the patrolmen had exceeded the scope of their employment in using the airplane. On appeal to the Superior Court, this judgment was reversed.

In affirming the judgment of the Superior Court, the Supreme Court dismissed the argument that use of the airplane was outside the scope of employment of the patrolmen as being without merit and concentrated its attention on the argument that the patrolmen had no authority to arrest an escaped convict. Necessarily, then, the Court had to interpret the provisions of G.S. 20-188 which authorizes highway patrolmen to arrest, either upon their own motion or on the request of local police authority, "persons accused of highway robbery, bank robbery, murder or other crimes of violence."

Under the facts of this case, the Court ruled that threats to kill while armed in order to secure food amount to a "crime of violence," and thus it is immaterial whether the accused person was an escaped convict or not. All that must be determined is whether this particular convict had been "accused" within the meaning of the statute. This question of interpretation was decided in favor of the more popular meaning of the word—charging the commission of a crime such as the woman informant charged in her report to patrolman Davis—rather than the more technical meaning of charging the commission of a crime through formal judicial procedure. The provisions of G.S. 20-188 were held, then, to provide sufficient authority for the steps taken by the patrolmen to apprehend the convict.

The Attorney General Rules

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

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

Property Taxes

Disabled Veterans Exemption. The Veterans Administration is authorized to assist veterans with a permanent and total service-connected disability from a spinal cord disease or paralysis of the legs and lower part of the body in the construction or purchase of homes with special fixtures and movable facilities. The extent of this assistance can be up to 50% of the cost of purchase, but in no case can it exceed $10,000. Are such specially constructed homes exempt from ad valorem taxation?

To: J. C. Pamplin

(A.G.) G.S. 105-344 exempts pensions and compensations received on account of disabilities received in World Wars I and II from any and all taxes. This office has heretofore expressed the opinion that specially adapted equipment furnished

by the Veterans Administration to disabled veterans is in the nature of compensation for disabilities, and I am of the opinion that the contribution of the Veterans Administration toward the acquisition of specially adapted housing is in the nature of such disability compensation. I am therefore of the opinion that specially adapted housing acquired by disabled veterans with the assistance of the Veterans Administration is entitled to an exemption in the proportion that the contribution bears to the entire cost of the unit. Thus if the Veterans Administration contributed $10,000 towards the construction of a house costing $20,000, one-half the assessed valuation would be exempt from ad valorem taxes. This partial exemption would terminate upon a sale or transfer of the home by the original disabled veteran owner.

Taxation of Club Property. A group of men join together, form a non-profit recreation club, purchase a tract of land and build a lake. The club retains title to the land but permits club members to build cabins on the land under certain restrictions as to sale of the cabin and maintenance of the property. The ownership of the cabins rests in the individual member. Is the club subject to ad valorem taxation, and if so, who is liable for the taxes on the cabins?

To: J. C. Brown

(A.G.) As I understand it, the property in question is used solely for the personal pleasure and recreation of the club members, and is not devoted to education, religious, charitable or other exempt purposes. I am of the opinion that the real property described does not fall within any of the classifications of exempt property provided in Section 600 of the Machinery Act (G.S. 105-296) or any other law exempting property from taxation.

By agreement, land may be owned by one person and improvements thereon, although ordinarily a part of the real estate, may be owned by another person. In such cases Section 701, Subsection (8) of the Machinery Act (G.S. 105-301 (8)), applies. Thus in this case it would permit the cabin to be listed by the individual member and the land in the name of the club, or all of the land and all of the cabins to be listed and assessed in the name of the club. If they are listed separately, however, the taxes levied on the cabin shall be a lien on the land and the land shall be subject to foreclosure for nonpayment of such taxes as if such taxes were levied directly against the land. If separate listings are made, it would seem wise and within the spirit and intent of the law to place a separate valuation on the tract of land assigned to a member for a cabin. Then if the taxes on the cabin are not paid, the lien of such taxes may be enforced by a sale of the tract allotted to the delinquent member for building his cabin.

Release of Interest and Costs. A county has obtained a judgment against certain lands on tax sales certificates issued to the county in prior years. The taxpayer has made some payments on the judgment and has now requested the county commissioners to release him from payment of interests and costs, or a substantial part thereof, and permit him to pay the balance of the principal of the tax owing in full settlement of the balance due on the judgment. G.S. 105-403 provides that the county commissioners do not have the power to release, discharge, remit or commute any portion of the taxes assessed and levied against any person or property in the county for any reason. Are interests and costs within the meaning of "taxes" as used in this section so that the county commissioners may not release the taxpayer from payment of the interest and costs?

To: G. T. Davis

(A.G.) G.S. 105-272(32) defines "tax" or "taxes" to "mean and include any taxes, special assessments, costs, penalties, and/or interest imposed upon property or other subjects of taxation." G.S. 105-376(b) provides that the tax lien shall continue until the taxes "plus interest, penalties and costs as allowed by law have been fully paid." I can find no statutory provision authorizing boards of county commissioners to remit or release interest on tax judgments or costs incurred in securing the judgment, and I am of the opinion that the prohibition against release contained in G.S. 105-403 is applicable to interest and costs accrued in connection with reducing a tax lien to judgment.

Public Contracts

Withdrawal of Bids. A county board of education advertised for bids for the construction of a new school building, and required a deposit of 2% plus a bond for performance of the contract. At the time the bids were opened, in the presence of the architect, the county superintendent, and the bidders, one of the bidders demanded that he be permitted to withdraw his bid after two of the bids had already been opened and announced. The superintendent refused to permit withdrawal and it later developed that this bidder had submitted a bid lower than the others by a substantial amount. The county board of education wishes to award the contract to the lowest bidder, while he stands upon his demand to withdraw his bid before it was opened. Is he entitled to withdraw?

To: G. H. Hastings

(A.G.) A review of the Public Contract Act, Article 8 of G.S. Ch. 143, and in particular G.S. 143-129, shows that there does not exist any authority whatsoever to allow a bidder to withdraw his bid, nor does there exist any authority to allow a county, city or town to permit this to be done. If such action were permitted, it would undermine the strength and protection of the whole act.

Election Laws

Bond Election Expenses. A county held an election for the issuance of school and hospital bonds in which the hospital bonds carried and the school bonds lost. Can the expense of the election, such as ballots, compensation of election officials and attorneys' fees, be paid from the school fund and from the proceeds of the hospital bonds?

To: J. F. Milliken

(A.G.) G.S. 153-107 provides that the proceeds of the sale of bonds shall be used only for the purposes specified in the order authorizing such bonds, and further provides that the cost of preparing, issuing, and marketing bonds shall be deemed one of the purposes for which the bonds are issued. In view of this statute it would seem that the proceeds from the hospital bonds could not be used to pay expenses of the election such as ballots and compensation of officials. Attorneys' fees would seem to be an expenditure which could be considered part of the cost of "preparing, issuing, and marketing" the bonds, and it is my opinion that the proceeds could be used for this purpose. As to payment of part of the expenses from the school fund, the statutes which deal with the payment of election expenses indicate that they should be paid out of the general fund. G.S. 163-19 provides for compensation of election officials from the "county treasury." G. S. 163-149

provides that printing expenses be paid by "the respective counties." Since these statutes direct payment by the county, and there is no statutory authority for payment from any particular fund, it would seem to follow that the legislative intent was for payment to be made from the general fund.

Planning and Zoning

Effect on State-owned Property. A state agency owns a lot in a section of a city which is zoned as residential. It proposes to construct a building on the lot of a type which is prohibited in that zone by the zoning ordinance. The city wants to know if its ordinance is applicable to state property.

To: C. V. Jones

(A.G.) There are only a very few cases concerning the applicability of municipal zoning regulations to federal, state, municipal or other governmental projects. Annotation, 171 A.L.R. 325. Recent decisions have established the proposition that local zoning ordinances do not apply to federal projects. *Tim* v. *Long Branch*, 135 N.J.L. 549, 53 A. (2d) 164; 171 A.L.R. 320. As to municipal projects, municipalities are not bound by zoning ordinances when exercising a governmental function but they are when exercising a proprietary function. *Taber* v. *Benton Harbor*, 280 Mich. 522, 274 N. W. 324; *O'Brien* v. *Greenburgh*, 226 N. Y. Supp. 173, 266 N. Y. 582, 195 N. E. 210; 58 *Am. Jur.*, 1009; Annotation, 117 A.L.R. 1146. Only one case has been located dealing directly with the applicability of municipal zoning laws to the governmental functions of a state, and it held that the laws were not applicable. *Decatur Park District v. Becker*, 368 Ill. 442, 14 N. E. (2d), 490. In the light of these authorities, this office is inclined to agree with their position, and therefore it is our opinion that the residential zoning ordinance of the city is not applicable to the building proposed by the state agency.

Building Regulations

Municipal Fire Limits. The governing body of a city wants to extend the city fire limits to include a portion of the city composed in about equal proportions of business buildings and residential buildings. Since the fire district regulations will work a hardship on the owners of residences, the governing body would like to require only the business firms to conform to the requirements of construction in the fire district and permit residential owners to make repairs as if the property were outside the fire district. Would an ordinance to accomplish this purpose be valid?

To: R. B. Lee

(A.G.) In my opinion, an ordinance such as you suggest would be in direct conflict with the provisions of G.S. 160-128 and would, therefore, be invalid.

Outside City Limits. Most North Carolina cities have fire and building regulations applicable to the construction of buildings inside the city limits, and require that prospective builders obtain building permits before proceeding with construction. Questions often arise, however, as to fire regulations in effect outside municipalities and whether or not a permit must be procured from the state in order to construct a building outside a municipality. They were specifically asked of the Attorney General last month.

To: Grainger Pierce

(A.G.) The North Carolina Building Code, Article 9 of G.S. Ch. 143, appears to be broad enough to cover such regulation, but the language of the statute does not include any enforcement provisions. The State Insurance Department, through the State Fire Marshal, acts in an advisory capacity in such matters.

Public Welfare

County Boards. The provisions of G.S. 108-11 prohibit service on a county welfare board for more than two successive terms. Is a member of a board who was first appointed to fill the remaining portion of an unexpired term, and who was immediately reappointed to a full term, now eligible to succeed himself as an appointee for another full term?

To: E. B. Winston

(A.G.) The answer depends upon whether the appointment to fill the unexpired term should be considered as the term of the man who was originally appointed or as the term of the man who was appointed to fill the vacancy. There is not much legal authority on this question, and in view of the situation, I am of the opinion that the amount of the original term served should answer the question. If the original appointee served more than half of the term before vacating the office, then I think it should be considered the term of such original appointee. On the other hand, if the man appointed to fill the vacancy in the original term actually served more than half of this term, then I think it should be considered as his term of office. In this latter event, he would then be ineligible to succeed himself in the situation presented.

HARRY McMULLAN
Attorney General of North Carolina

Criminal Procedure

Breach of Condition of Suspended Sentence. A defendant was convicted for resisting an officer and drunkenness. He was given a suspended sentence of two years on the roads, on condition that he remain away from the city where the offense was committed for a period of two years. However, he returned to the city before the expiration of the period and the recorder's court held that the condition of the sentence had been breached. Can the defendant appeal to the Superior Court from the judgment that the condition of the suspended sentence had been breached and that the sentence should be placed into effect?

To: C. B. Woltz

(A.G.) The answer is that the defendant cannot appeal from such a judgment. If he wishes to have such a judgment reviewed, and if the court is a court of record, he must apply to the Superior Court for a writ of *certiorari* to have the judgment sent up for review. If the court is not a court of record, he must apply to the Superior Court for a writ of *recordari* to obtain such a review. The defendant does not have any appeal to the Superior Court as a matter of right. This question is answered specifically in the case of *State* v. *Peterson*, 228 N. C. 736 and in *State* v. *Miller*, 225 N. C. 13. See also *State* v. *Rhodes*, 208 N. C. 241.

Motor Vehicle Law

Surrender of Driver's License. When a defendant is convicted in a recorder's court of an offense for which revocation of his driver's license is mandatory, does the recorder's court judge have the authority to require the defendant to surrender his license so that the judge can forward it to the Department of Motor Vehicles?

To: H. H. Waddell

(A.G.) Under the provisions of G.S. 20-24 the duty is imposed upon the court in which a defendant is convicted of an offense for which revocation of driver's license is mandatory, to require the surrender to it "of all operators' or chauffeurs' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the department." Under this provision a judge not only has authority to require surrender of the license but is under a duty to demand surrender of the license for forwarding to the department.

Licenses of Non-residents. Does a non-resident service man or his wife acquire domicile in North Carolina for driver's license purposes when (1) the serviceman is stationed at a military reservation in this state and owns no property and maintains no home off the reservation; (2) the serviceman and his wife live in a rented home away from the reservation but intend to remain there only during the time the serviceman is stationed in this state; (3) when the serviceman and his wife purchase a home away from the military reservation and intend to make the place their permanent home?

To: L. C. Rosser

(A.G.) In answer to both (1) and (2), the Soldiers' and Sailors' Civil Relief Act (50 U.S.C.A., App., 584), which is still in effect, provides that the domicile of the serviceman for licenses, fees, excises and other taxes imposed with respect to motor vehicles is the state of residence of the serviceman at the time of his entry into the armed services, if he is present in this state merely in compliance with military orders. In my opinion, this same rule applies to the wife of a service man, because the domicile of a married woman is the domicile of her husband. 17 *Am. Jur.*, Section 38. This is true of women who marry members of the armed service. *Stevens* v. *Allen*, 139 La. 658, 71 So. 936. Under the facts as stated in (2), the serviceman and his wife should be required to prove that they do not intend to acquire domicile in North Carolina.

In answer to (3), it is my opinion that both the serviceman and his wife are subject to the driver's licensing provisions and motor vehicle registration plate provisions of this state. The fact that a home is purchased is usually strong evidence of an intent to make North Carolina a permanent home, but it is possible that a serviceman could own a home off the military reservation and not acquire domicile, since domicile is largely a matter of intent. Each case must be decided on its own facts.

Extradition

Expenses of Witnesses. It frequently happens that when an extradition agent attends hearings on requisition matters in other states, it is necessary for him to carry along a witness to identify the fugitive. Is the state authorized to pay the expenses of such witnesses in addition to the expenses of the extradition agent?

To: W. Kerr Scott

(A.G.) G.S. 15-78, deals with extradition costs and expenses and defines "expenses" as "the actual traveling subsistence costs of the agent of the demanding state, together with such legal fees as were paid to the officers of the state on whose governor the requisition is made." It appears to me that under this statute the only cost and expense allowed is for the extradition agent. I do not find any section that directly, or by implication, authorizes the payment of traveling and subsistence costs of any witness or witnesses.

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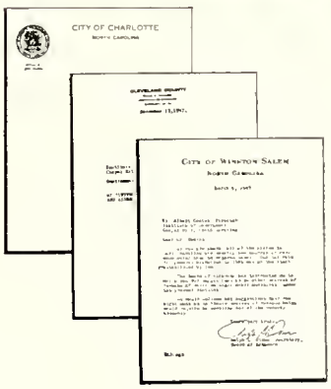

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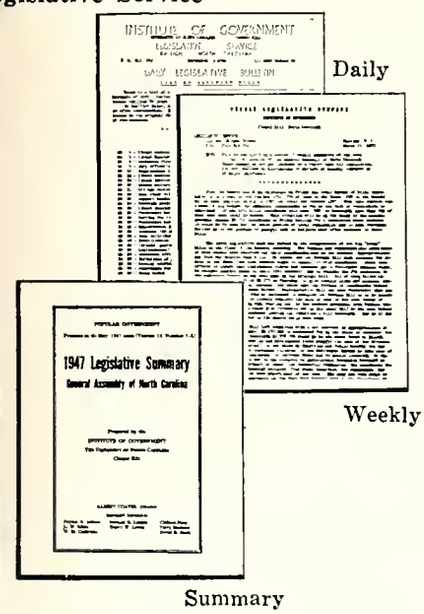

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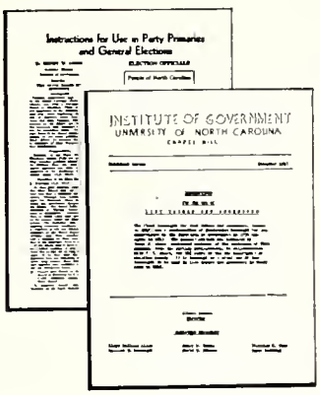
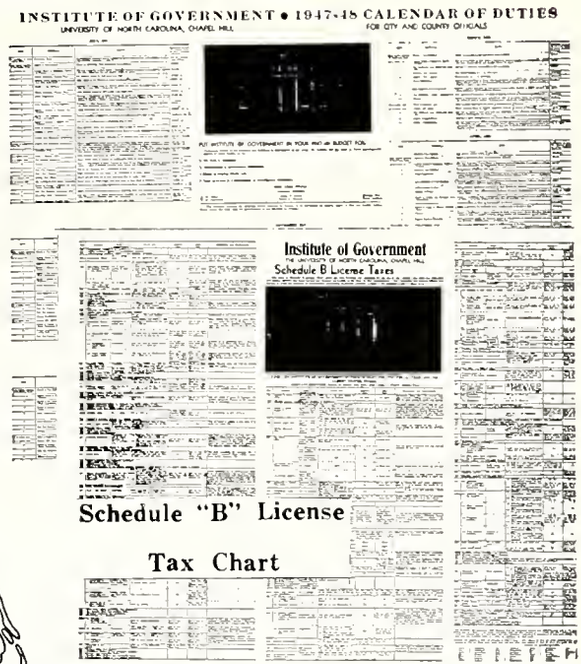
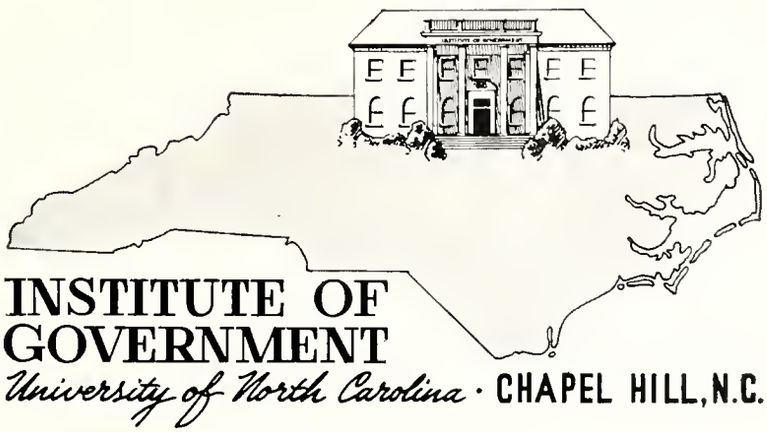


Calendar of Duties



Schedule "B" License Tax Chart



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