

Popular Government

February 1951



Law Enforcing Officers Plan Police School

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

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Cover: Chief of Police L. L. Jarvis of Greensboro, Frank N. Littlejohn, Chief of Police of Charlotte, and John R. Morris, Secretary-Treasurer of the North Carolina Sheriffs' Association met at the Institute of Government along with other law enforcing officers to make plans for police schools. See article on page 1.

Law Enforcing Officers Will Meet February 23 -- 24

Police Officers--Chiefs--Sheriffs--Highway Patrol Officers--SBI
Judges and Solicitors of City and County Courts
Solicitors of the Superior Court

Opening With Registration at the Institute of Government Building in Chapel
Hill Friday Afternoon, February 23, and Continuing Through Noon,
February 24

OPEN LETTER TO LAW ENFORCING OFFICERS

From Albert Coates, Director of the Institute of Government

We want to start one hundred local schools for law enforcing officers in the county seat or the principal town or city of the one hundred counties of North Carolina during the first week in March bringing systematic instruction within reach of everyone of three or four thousand law enforcing officers who is interested in improving his performance on the job.

We want to run these schools on a schedule of two sessions a week, two hours a session, for a period of twelve weeks—beginning on Tuesday, March 6, and ending Thursday, May 29.

We want to hold one of these schools in your city—open to every town and city policeman, township constable, county sheriff and deputy, the rural police, and all state law enforcing officers operating within the territorial limits of your city or county.

We have prepared guidebooks for use in these schools, dealing with: (1) *The Law of Arrest*, (2) *The Law of Search and Seizure*, (3) *The Rules of the Road*—including those parts of the Motor Vehicle Law which every officer needs to know in order to do his part in cutting down the frightful loss of life and property on the streets and highways; and we want to put these guidebooks in the hands of every law enforcing officer in North Carolina attending these schools.

We want you to come to Chapel Hill for a weekend conference beginning in the Institute of Government building at five o'clock Friday afternoon, February 23, and continuing till noon Saturday, February 24.

We want you to bring with you the Judges and Solicitors of Recorders' Courts in your city and county, and the Solicitors of the Superior Court in your Judicial District, to help us plan the instruction in these schools.

Teaching Suggestions For Law And Administration Texts

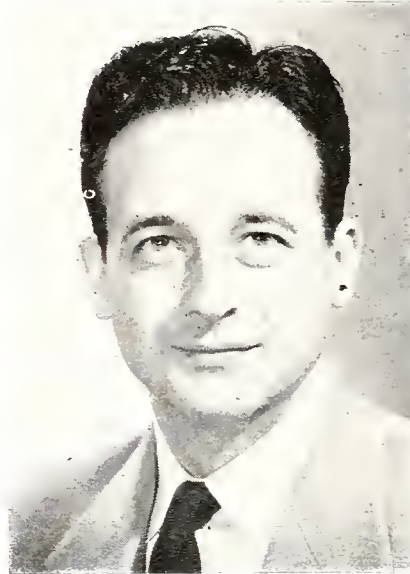
There are undoubtedly a number of different methods and techniques for teaching the law of arrest and search and seizure in law enforcement training schools. Those instructors who have had occasion to teach recruit or in-service training classes in the past have probably developed the method that appeals to them the most or one which they have found more effective than any other. For those who are teaching these subjects for the first time, or those who have not developed a technique satisfactory to them, the following is offered as a suggestion. Of course, schools vary in length of time and classes differ in size and degree of experience of those attending, so that any suggested program and method of teaching may need to be adapted from time to time to the circumstances involved. But this general pattern may serve as a useful guide.

First, *the teaching schedule*. The teaching schedule outlines for these two subjects twelve sessions, based on an assumed six weeks school, 2 hours a session, 2 sessions a week. Under this arrangement, the material in the guidebooks is divided as evenly as possible (approximately 25 pages a session, or 50 pages a week), without dividing topics. The instructor will probably find it desirable to follow the schedule by taking up the subjects in the order presented, as they are arranged in more or less logical order and skipping about usually serves only to confuse the listener. The timing may be varied if necessary as circumstances require.

Second, *questions*. A quantity of questions have also been prepared so that those studying the books may test themselves after each chapter. The questions may also be used to help in getting discussion started whenever the instructor thinks it desirable to encourage class participation.

Third, *the guidebooks*. It is probably best to have all those attending the classes to read the material in the guidebooks in advance of the session in which it is to be discussed. It may also be advisable to have those attending to bring the guidebooks with them to class in case the instructor desires to make reference to particular items during the session. However, constant use of the guidebooks during class except by the instructor distracts the class attention from the discussion or from what the instructor is saying.

Fourth, *the instruction*. Each instructor will have his own manner of



By
ERNEST W. MACHEN, JR.

Assistant Director
Institute of Government
and Author of

The Law of Arrest
The Law of Search and Seizure

going about teaching the material. Most have found that straight lecturing is not appropriate, and it is far more profitable to state fact situations familiar to the listeners and to discuss with them the various things that might legally be done in those situations. If the group is small, the instructor may want to encourage questions from the floor, and in any case, opportunity to ask questions should be given at frequent intervals, preferably following the discussion of each minor subject heading. There are several cautions with regard to questions however. The instructor will have to see that all of his class time is not taken answering questions so that he is unable to cover more important materials allotted to that session; he must limit questions to those dealing with the subject under discussion to keep the sessions from getting mixed up and to avoid confusing the listeners; and he must see that the questions do not cause the session to degenerate from a period of organized instruction into one of general, aimless discussion or argument. If the class is a large one, it may be advisable to have a set time for questions and to limit questions from the floor to that period (possibly the end of each hour, or end of each topic). If this is necessary, he should encourage the class members to jot down questions as they pop into their minds during the instruction

period and during study at home, otherwise they will not remember what questions they wanted to ask. Sometimes the class members may write out questions to be handed in to the instructor at the beginning or end of the session, so he can work them over and select the best ones for answering.

The instructor may want to ask questions of the class. If so, it is probably best not to phrase a general question such as "When may an officer arrest without a warrant," but rather to state a fact situation and then ask if, under those circumstances, the officer could arrest without warrant. The entire body of rules on arrest without warrant (and many other subjects) can often be brought out graphically merely by changing the fact situation to include all the types of things the officers run into. Usually it is best for the instructor's questions to be addressed to the class as a whole (if a small one) to be answered by anyone who feels so inclined. However, in recruit training classes, or classes too large to permit the putting of questions to the entire group, calling on particular individuals may have some advantage.

Fifth, *reviews and examinations*. The suggested teaching schedule has been drawn to allow time for review at the end of each book, and sometimes at the end of a particular chapter. More or less time for review may be arranged by the instructor as necessity requires. Examinations may be made up by the instructor, or questions may be selected from the list provided.

The Staff of the Institute of Government hopes that every instructor will feel free to call on it for any assistance that it can render in the training program. Each instructor is urged to give the Institute the benefit of all his suggestions on how the program can be made better for his group, and the benefit of all his experiences which can be passed on to help other instructors in other localities. If the instructors will assume the responsibility of noting down at each meeting all of the questions to which there seem to be no answers, as well as all the problems that appear to trouble the officers most, and then, if they will send those questions and problems to the Institute of Government, their notations will be of great assistance to us in working out the answers and including them in future training programs for the benefit of all the officers of North Carolina.

Suggested Teaching Schedule

The Law of Arrest

First Session

- Chapter I, §§1-5, pages 1-11 11 pages
 What is an arrest: the purpose of the arrest, how it is made, what constitutes an arrest, distinction between arresting and merely questioning suspects, stopping motorists, the citation in lieu of arrest.
- Chapter II, §§6-9, pages 12-26 15 pages
 Arrest under authority of a warrant: what is a valid warrant of arrest, who may issue a warrant, on what grounds may a warrant be issued, probable cause, facts stated on oath, form and contents of a valid warrant.
 2 hours: 26 pages

Second Session

- Chapter II, §§10-14, pages 26-41 15 pages
 Arrest under authority of a warrant: executing the warrant, liability of the issuing magistrate, liability of the executing officer, time when the warrant may be executed, place where the warrant may be executed; manner of executing the warrant, possession of the warrant at time of arrest, showing or reading the warrant to the arrestee, returning the warrant.
- Chapter III, §§15-19, pages 42-49 8 pages
 Arrest without warrant: general rules on arresting without warrant for felony and misdemeanor, what is a felony, what is a misdemeanor, illustrations of felonies and misdemeanors, statutory extensions of the general rule on misdemeanors; authority to arrest without warrant for felony, reasonable grounds to believe a felony committed.
 2 hours: 23 pages

Third Session

- Chapter III, §§19(a)-23, pages 50-67 18 pages
 Arrest without warrant: authority to arrest without warrant for a felony, what constitutes reasonable grounds to believe that a felony has been committed, that a particular person committed it and is about to escape; arrest for felonies committed in other states, arresting to prevent a felony.
- Chapter III, §§24-25, pages 67-77 10 pages
 Arrest without warrant: authority to arrest without warrant for a misdemeanor, what is a breach of the peace, when is an offense considered "in an officer's presence," authority to arrest without warrant for misdemeanors not breaches of the peace.
 2 hours: 28 pages

Fourth Session

- Chapter III, §§26-30, pages 77-90 13 pages
 Arrest without warrant: limited to misdemeanors in the officer's presence, limited to the immediate time of the offense; arresting in the home without warrant in cases of felony and misdemeanor, when consent of the occupant is necessary.
- Chapter IV, §§31-35, pages 91-104 14 pages
 Making the arrest: manner of making the arrest, giving notice to the arrestee of authority and intention of making the arrest; force used in making the arrest, general rules on force the officer may use in making lawful arrest and force the accused may use in resisting illegal arrest, rule when accused does not resist, rule when accused does resist.
 2 hours: 27 pages

Fifth Session

- Chapter IV, §§36-38(b), pages 105-114 11 pages
 Making the arrest; force that may be used by the officer if the accused flees where arrest is for major felony, minor felony and misdemeanor, where the accused both resists and flees as in a running gun fight, where the arrestee attempts to escape, where arrestee has escaped and is being retaken.
- Chapter IV, §§38(c)-42, pages 115-129 14 pages
 Making the arrest: force that may be used by guard to prevent escape of convict, to retake escaped convict, in cases of major felony, minor felony and misdemeanor; force used to prevent a crime, how it is determined whether force used was excessive, officers summoning private persons to assist, force used to enter a home to make an arrest.
 2 hours: 25 pages

Sixth Session

- Chapter V, §§43-49, pages 130-143 14 pages
 Procedure following arrest: the officer's right to search the person lawfully arrested and to secure him to prevent escape, questioning the arrestee; officer's duty to the arrested person, informing him of the charge, according him fair and safe treatment, presenting him to the magistrate to have warrant drawn and to have bail fixed.
- Chapter V, §§50-51, pages 143-149 7 pages
 Procedures following arrest: officer's duty to permit arrestee to communicate with counsel or friends, no authority to detain for investigation; review.
 2 hours: 21 pages

The Law of Search and Seizure

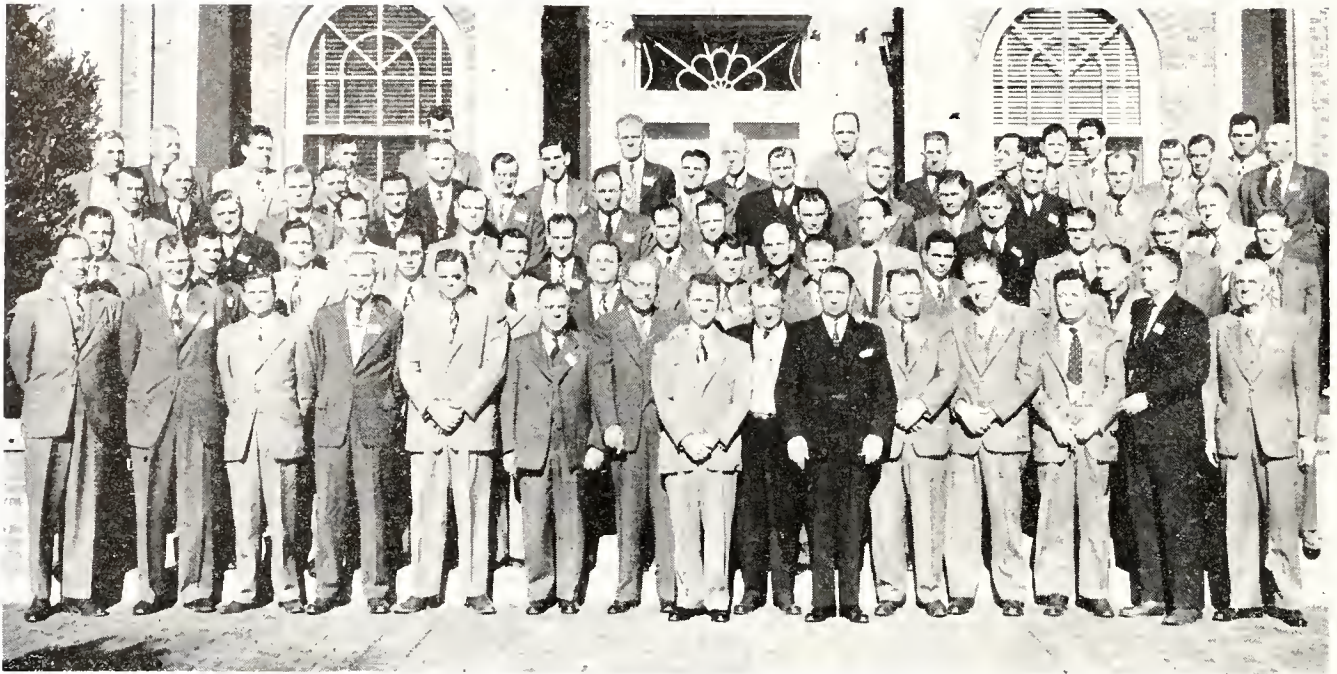
First Session

- Chapter I, §§1-3(c), pages 1-11 10 pages
 Introduction to the problem of what is a lawful search under the Constitution. What is a valid search warrant, who may issue search warrants, objects for which warrants may be issued, requirement of factual showing of probable cause, the information and belief warrant, revealing sources of information.
- Chapter II, §§3(d)-4, pages 11-21 11 pages
 Requirements of a valid search warrant (continued): what facts are sufficient to show probable cause, the oath or affirmation, what is a sufficient oath, contents of the affidavit, the third party affidavit.
 2 hours: 21 pages

Second Session

- Chapter I, §§5-6, pages 21-33 12 pages
 Requirements of a valid warrant (continued): the description contained in the warrant of the place to be searched and the persons or things to be seized. Executing the warrant: liability of the magistrate in improperly issuing a search warrant, officers liability in executing an invalid warrant or improperly searching under valid warrant.
- Chapter I, §§7-11, pages 33-45 13 pages
 Executing the warrant (continued): when must warrant be executed, time limitations, where may it be executed, what places can be searched under the warrant, what things can be seized, showing or reading the warrant before searching, presence of the owner at time of search, return of the warrant.
 2 hours: 25 pages

(Continued on page 12)



Sheriffs take time out from studies to pose for formal picture in front of the Institute of Government.

1951 Sheriffs' School

A school for Sheriffs, both old and newly-elected, was conducted by the Institute of Government at the Institute building in Chapel Hill on January 3, 4, and 5. The school dealt with the powers and duties of the Sheriff in civil matters. The law enforcement duties of the office were excluded from the curriculum because they are reserved for later schools planned by the Institute. Thirty-three sheriffs, thirty-seven deputies, one Chief of Police, and the Secretary-Treasurer of the North Carolina Sheriffs' Association, Mr. John Morris, registered for the school, making a total of seventy-two registrants. Forty-one counties, ranging from Dare on the coast to Ashe on the Tennessee border, were represented. Seventeen of the thirty-eight newly elected sheriffs in North Carolina attended the school.

The school was under the direction of Basil Sherrill, Assistant Director of the Institute of Government.

Those attending were C. H. Moore, Sheriff, and H. F. Simpson, D. L. Williams, W. J. Euliss, and H. Frank Warren, Deputies, of Alamance; T. E. Bebbler, Sheriff, of Alexander; Ben M. Rivers, Sheriff, of Anson; W. R. Roten, Sheriff, of Ashe; William Rumley, Sheriff, Phillip L. Paul, Deputy, of Beaufort; Fons Duckworth, Chief Deputy, of Burke; E. M. Logan, Sheriff, and W. W. White, Deputy, of Cabarrus; G. D. Greer,

Sheriff, and Claud E. Goble, Deputy, of Caldwell; Austin E. Smith, Sheriff, of Catawba; J. W. Emerson, Jr., Sheriff, and J. A. Farrell, Jr., C. A. Simmons, Deputies, of Chatham; H. Hugh Nance, Sheriff, of Columbus; Leon L. Guy, Sheriff, of Cumberland; Frank M. Cahoon, Sheriff, of Dare; G. A. Tucker, Sheriff, of Davie; Ralph J. Jones, Sheriff, and Perry Smith and A. R. Brown, Jr., Deputies, of Duplin; Jack Gough and C. M. Lancaster, Deputies, of Forsyth; C. Willis Perry, Sheriff, of Franklin; Hoyle Efrid, Sheriff, and Polie Stroup, Deputy, of Gaston; John E. Walters, Sheriff, and E. E. Ballinger, Deputy, of Guilford; W. G. McCall, Sheriff, and J. S. Osteen, Deputy, of Henderson; B. A. Henry, Sheriff, and Woodrow Massengill, Deputy, of Johnston; Elwell Turner, Deputy, of Lee; Frank P. Heavner, Sheriff, and Burgin J. Scronce, Deputy, of Lincoln; M. W. Holloman, Sheriff, of Martin; Elwood C. Long, Sheriff, of Montgomery; C. J. McDonald, Sheriff, and A. F. Deer, Deputy, of Moore; G. O. Womble, Sheriff, of Nash; John R. Morris, Secretary-Treasurer of the North Carolina Sheriffs' Association, of New Hanover; M. B. Register, Chief Deputy, Leon C. Williams, Jr., and J. H. Hobbs, Deputies, also of New Hanover; E. Frank Outland, Sheriff, of Northampton; S. T. Latta, Sheriff, and Frank C. Maddry, Deputy, of Orange; C. C. Holeman, Sheriff, and Darrow Gillis, and S. C. Tillman,

Deputies, of Person; Ruel W. Tyson, Sheriff, and Arthur M. Andrews, Deputy, of Pitt; R. W. Goodman, Sheriff, of Richmond; Malcolm A. McLeod, Sheriff, and J. W. Wilkerson, Deputy, of Robeson; Walter R. Sawyer, Chief of Police, Rowan, North Kannapolis, N. C.; Roger P. Ingram, Chief Deputy, of Rowan; B. P. Lytch, Deputy, of Scotland; Robert J. Pleasants, Sheriff, and Harold D. Mann, W. E. Watkins, and M. V. Griffith, Deputies, of Wake; L. R. Cobb, Deputy, of Wayne; Claude Billings, Sheriff, and Hoke Wiley, Deputies, of Wilkes; J. W. Thompson, Sheriff, and W. E. Williams, Deputy, of Wilson.

We have reproduced the program of the school in order that all our interested readers may see the scope of this important school.

PROGRAM OF SCHOOL FOR SHERIFFS

The Sheriff's Office

History; qualifications for office; resignation and removal; filling vacancy; type and amount of bonds required; oath of office; deputies.

Summons and Complaints

Nature and content; time allowed for service; service on corporations, associations, minors, and incompetents; execution and return.

(Continued on page 6)



Representatives of 35 counties attend the Institute of Government's annual School for Clerks of the Superior Court.

Clerk Of Superior Court School

A total of forty people registered for the three-day school for Clerks of Superior Court held at the Institute of Government building in Chapel Hill on January 10, 11, and 12. Of this number 31 were Clerks, six were assistant clerks, and three were deputy clerks. Thirty-five counties were represented, ranging geographically from Currituck and New Hanover on the Atlantic coast to Alleghany and Transylvania in the western mountain area.

The school was under the overall direction of Basil Sherrill, Assistant Director of the Institute of Government, with P. H. Wilson of Wake, J. P. Shore of Guilford, W. S. Babcock of Edgecombe, and M. P. Cooper of Davidson acting as discussion leaders at points on the program.

Those attending included D. J. Walker, Jr., Clerk, and W. H. Aldridge, Assistant, of Alamance County; Gene R. Irvin, Clerk, of Alleghany; Bryan Marslender, Clerk, of Beaufort; Mrs. Lillie F. Guy, Deputy, of Cumberland; Ralph S. Saunders, Clerk, of Currituck; Matthew Cooper, Clerk, of Davidson; R. V. Wells, Clerk, of Duplin; Nelda F. Marlette, Deputy, of Durham; W. S. Babcock, Clerk, of Edgecombe; John W. King, Clerk, of Franklin; Paul Monroe, Clerk, of Gaston; A. W. Graham, Jr., Clerk, of Granville; J. P. Shore, Clerk, and Norman E. Wells, As-

sistant, of Guilford; George A. Hux, Clerk, of Halifax; Robert B. Morgan, Clerk, of Harnett; A. W. Greene, Clerk, of Hertford; Martha Webster, Assistant, of Lee; J. Lester Wolfe, Clerk, of Mecklenburg; W. L. Wright, Clerk, of Montgomery; C. C. Kennedy, Clerk, of Moore; J. N. Sills, Clerk, and John A. Daughtridge, Assistant, of Nash; Foster Edwards, Clerk, of New Hanover; M. W. Ferebee, Clerk of Pasquotank; J. Alex Bass, Clerk, and Josephine H. Bass, Assistant, of Person; H. L. Lewis, Jr., Assistant, of Pitt; Carl L. King, Clerk, of Randolph; B. F. McMillan, Clerk, of Robeson; John W. Satterfield, Clerk, of Rockingham; Paul A. Swicegood, Clerk, of Rowan; Graham Tart, Clerk, of Sampson; L. Worth Little, Clerk, of Stanley; F. M. McCall, Clerk, of Transylvania; J. Hampton Price, Clerk, of Union; P. H. Wilson, Clerk, of Raleigh; C. L. Derr, Clerk, and Ralph M. Summerlin, Deputy, of Wayne.

The following program describes the curriculum followed in this school.

PROGRAM OF SCHOOL FOR CLERKS OF SUPERIOR COURT

The Office

History; qualifications; term of of-

fice; bond; oath; filling vacancy; removal; assistants; deputies.

Special Proceedings

Exparte; contested; inquisitions of lunacy and inebriety, and restoration; foreclosure sales under mortgages and deeds of trust; decedent's estates; incompetent's estates; minor's estates; debtor's estates; partitions; boundary disputes; cartways; drainage; condemnation; homestead reallocation; legitimacy; adoption; change of name; sale of shares of stock held by life tenant; missing persons' estates.

Probate and Administration

Probate of papers to be recorded in the Register of Deed's office; probate of wills—witnessed, holographic, nuncupative, armed forces; qualification of administrators, executors, guardians, administrators c.t.a., d.b.n.; filing, recordation, and auditing of reports, inventories, and settlements; sale of assets of estates; fees of fiduciaries; closing of estates.

Juvenile Court

Jurisdiction; powers of Juvenile Court Judge; commitments; probation; records maintained.



Typical classroom scene during the clerks' school.

Clerk's Powers and Duties in Civil and Criminal Actions Before Trial

Summons and complaint; service by publication; substituted service; prosecution bonds; answers; demurrers; replies; civil issue and summons dockets; motions; attachment and garnishment; examination of parties; subpoenas; depositions; inspection and production of writings; lis pendens; civil arrest and bail; pre-trial; criminal matters before trial.

Clerk's Powers and Duties in Civil and Criminal Actions During Trial

Jury duties; giving oaths; taking verdicts; minutes of court.

Clerk's Powers and Duties in Civil and Criminal Actions After Trial

Docketing judgments; rendering judgments in certain instances; collection of judgments; collection of fines and court costs; issuance of executions; supplemental proceedings; execution sales; judicial sales; appeals; supersedeas bonds; commitments in criminal actions; recordation and indexing of minutes and judgments.

Other Duties

Books, records, and documents maintained; reports from Clerk to County Commissioners, Secretary of State, State Department of Revenue, Department of Motor Vehicles, Attorney General; miscellaneous duties.

Fees, Fiduciary Duties, and Accounting Procedures

Fee Schedules, investments, escheats, bookkeeping methods.

Sheriffs' School

(Continued from page 4)

Subpoenas and Notices

Nature and content; manner of service; return.

Claim and Delivery

Nature and content; seizure and service; breaking and entering buildings to serve; care of seized property; undertakings by defendant; property claimed by third parties; liability of sheriff; return.

Attachment and Garnishment

Nature and contents of writ; levy on land; levy on personalty; levy on stock in a corporation; levy on goods in warehouses; levy on jointly owned property; care of property attached; perishable property; goods claimed by third parties; summons to garnishees; notice of levy in garnishment; garnishment of a corporation; proce-

dures in disposing of property after judgment; return.

Executions

Nature and content; property subject to execution; personal property exempt from execution; homestead exemptions; levy on realty; levy on personalty; care of goods; third party claimants; liability of sheriff; return.

Execution Sales

Sale of realty—advertisement and posting of notices; notice to debtor; postponements; time and place of sale; report of sale; upset bids; resales; confirmation of sales; disposition of proceeds. Sale of personalty—advertisement and posting of notices; perishable property; postponement of sales; time and place of sales; report of sale; confirmation of sale; disposition of proceeds.

Civil Arrests

Nature and content of orders; service; bail; liability of sheriff; return.

Evictions

Nature and content; service of summons; execution of judgment; sheriff's liability; return.

Widow's Year's Allowance and Dower

Duties of sheriff and nature of proceeding.

Court and Jury Duties

Duty in summoning jurors; venire facias; attendance at Superior Court terms; attendance at County Court.

Law Enforcement Officers Retirement Benefit Fund

Jail Duties

Office Records



Sheriffs listen intently to Director Sherrill's lecture.



First row (left to right): Basil L. Sherrill, T. A. Early, Mrs. I. L. Creel, Mr. I. L. Creel, Mr. John Morris.: Second row: L. R. Cobb, Fred Hensley, W. G. McLeod, W. L. Beddard, K. C. Matthews, R. C. Cox, W. C. Pitts, J. W. Powell, C. S. Fitzgerald, J. R. Pierce. Third row: S. L. Maness, W. W. White, J. A. Holmes, Jeffries, John Dellinger, E. L. Tyson, F. W. Liverman, Joe Wade, W. T. Dodson. Fourth row: P. Q. Cloninger, J. L. Anderson, Mattox, S. T. Laws, B. S. Ball, H. E. Rayfield, S. F. Hensley.

Jail Management School

The third annual Jail Management school was conducted by the Institute of Government in Chapel Hill on January 24, 25 and 26, with the cooperation of the State Board of Public Welfare. All of the problems facing a city or county jailer from the time a prisoner is admitted until his release were studied, with lectures, illustrative posters, models, demonstrations, and movies utilized to show good jail procedures. Thirty registered for the school, representing twenty-two counties, from Pasquotank in the east to Caldwell and McDowell in the west.

After the official welcome by Mr. Albert Cates, Director of the Institute of Government, the technique of jail intake and release procedures was discussed by Mr. John Gold, Director of State Prisons. As a part of the intake procedure illustration, three jailers volunteered to enter a contest to see which could find in five minutes the greater number of contraband articles concealed in a "contraband suit," designed by the Federal Bureau of Prisons, and worn by Mr. Ivan Creel, Federal Jail Inspector. Twenty articles of contraband were concealed in the suit, including knives, files, money, narcotics, and a black jack.

The winner, W. W. White, of Kannapolis, was awarded a steak supper.

Following Mr. Gold on the afternoon of the opening session was Dr. M. T. Foster, Cumberland County Health Officer, who spoke on the medical problems connected with a jail. Dr. Foster spoke from a background of many years experience in handling jail patients, and covered his field thoroughly. The Wednesday evening session was limited to a single lecture in order for everyone to see the building, exhibits and show at the Morehead Planetarium. Mr. Norman Butler, Jailer for Cumberland County, spoke on the feeding problem and then led a discussion on the financial problem involved in adequately feeding jail populations.

The Thursday morning session opened with a motion picture dealing with the approved jail procedure in cleaning a jail and in effecting jail security. Then Mr. Clifton Beckwith, from the office of the Attorney-General in Raleigh, spoke on the legal rights of prisoners to use the telephone to notify friends or seek legal counsel, and the use of the writ of habeas corpus. Mr. Ivan Creel then talked on discipline and security,

training of jail personnel, care of prison equipment, and recreation and exercise.

On Thursday afternoon Mr. Sherwood Brockwell, State Fire Marshal, spoke on Fire Prevention and Control, pointing out that deaths from jail fires in fireproof or fire resistant jails are caused as a rule by suffocation from the burning of inflammable materials, such as mattresses and blankets, and that the only effective way to prevent this is by diligent supervision by jail officials. Mr. W. Murray Linker, Jr., from the State Board of Health, spoke next on jail sanitation problems, and discussed some of the common faults found in a substandard jail as well as recommended means of correcting these faults. Mr. Drury Thompson, staff attorney for the State Board of Public Welfare, then spoke on the responsibility of the Welfare Department for jails, discussing the legal requirements, the problems connected with juvenile detention and mental patients awaiting hospitalization. Another motion picture re-enacted many actual breakouts, pointing out in graphic detail the errors in prison security

(Continued on page 16)

THE CLEARINGHOUSE

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

Community Recreation In School Buildings

Is the school in your community used for recreation outside of regular school hours? In a recent study of 105 communities from 32 states, Clifton Hutchins discovered that facilities in school buildings are widely used for community recreation. In fact, if the recreation departments of the cities had more personnel to conduct school recreation programs there would be even greater use of the schools. Gymnasiums, auditoriums, and attendant service rooms are used more frequently than other facilities although some reports from the 105 cities indicated that classrooms, community rooms, industrial arts shops, music rooms, art rooms, swimming pools and cafeterias are also an integral part of the after school recreation program. Weekday evenings and weekdays after school are the most popular times for recreation use, but there is some demand during school vacation days and on Saturday mornings.

Rules of most school boards concerning the use of school property are lenient. "No Smoking" rules in the building occur more often than any other restrictions; in 19 cases the boards require the presence of certain school personnel to open the building and protect the property. Only a few boards demand an early closing hour, restricted use of school equipment and rental fees.

More than one-half of the school authorities share in the cost of recreation programs. One-fourth contribute funds to the recreation department or maintain a recreation appropriation in their budgets; one-fourth of the recreation departments do not make payments for the use of school buildings while others must pay for custodial service, pay a rental fee for the facilities, or carry other use charges.

The greatest hindrance as far as the recreation departments are concerned occurs in trying to use a school which was not designed with recreational facilities. For this reason recreation technicians urge that they be consulted in the planning

stages of new school buildings. School officials, on the other hand, feel the depreciation and possible damage to the structure is the greatest disadvantage to outside use of the school plant.

Co-operation between school boards and the recreation departments is fostered in the various municipalities by membership of a school board member on the Recreation Board, by joint meetings of the two boards or their staff members, by assignment of school personnel to the recreation staff, and by joint employment of administrative personnel. All agree that co-operation is at its best when there exists between the school and recreation officials a mutual desire to co-operate, an understanding of the common objectives of the recreation program, and an effort to cultivate good personal relationships.

Annual Reports

Since the end of the fiscal year 1949-50, three North Carolina cities have published excellent annual reports covering their services. Carolina Beach in a twenty-four page booklet, its first attempt at annual reporting, Durham in a forty-four page pamphlet and Winston-Salem in 35 pages cover every phase of their administrations. All reports are cleverly illustrated with sketches and appropriate photographs. Financial information is made readable through the use of pie charts and bar and line graphs. Winston-Salem concentrates especially on the cost of city government. An organizational chart explains the city manager form of government to uniformed citizens of the communities. Statistics of the workload of each municipal department are interspersed with running commentaries about the department's achievements. A novel and useful feature of the Durham report is found on the inside cover. Entitled "At Your Service," this feature instructs the citizen what department he should call and its telephone number if he wants information on assessments, automobile license tags, bicycle licenses and so forth. Reporting to the citizens is becoming a popular method

of improving public relations. Any North Carolina localities interested in issuing an annual report would profit from examining these.

Salaries of County Employees

From questionnaires sent to county accountants of each of the North Carolina counties the Institute of Government has compiled a list of the salaries and wages of the principal county officials and county employees. Salaries from eighty-eight counties will be included in the study. Copies have been sent to the chairman of the commissioners of each county, the county accountant, and members of the General Assembly. Other readers may obtain copies by requesting them from the Institute of Government, Box 990, Chapel Hill, N. C.

NFPA Inspection Manual

The National Fire Protection Association has just issued a new pocket-size inspection manual for fire prevention inspectors. (National Fire Protection Association, 60 Batterymarch St., Boston 10, Mass., 336 pages, \$3.00.) The new manual replaces *Field Practice*, a standard reference for inspectors since 1914.

For the new inspector, the book contains valuable suggestions as to the steps in an inspection, the methods of recording data and making plans and surveys. For each occupancy the hazards and fire problems most likely to be encountered are listed. There is a selection of material designed to give the experienced inspector those references he most frequently has occasion to consult. Hazards of house-keeping, problems of storage, clearances for heaters, building construction and life safety, tests and inspection of protective equipment, and structural problems are among the subjects covered in the text.

Water Problems

Several localities have been faced with problems of inadequate water facilities. Roxboro, for instance, is considering a new \$500,000 plant to increase her water supply. The present system lacks pumps powerful enough to deliver sufficient water to the filtering plant. City Manager Timberlake has suggested that residents solve the temporary water shortage by reducing their number of daily baths to one. Citizens of Hudson in Caldwell County wanted a water system so badly that they bought \$30,000 worth of bonds from the Local Government Commission with no interest payments.

Lumberton, on the other hand, is closer to solving its current water scarcity. A contract has been let to the A. H. Guion Construction Company of Charlotte for a new \$450,000 filter plant. When completed, the new plant will produce about 2,250,000 gallons daily as compared to the present filter plant's 750,000 gallon capacity.

Meanwhile, Burlington's increased demand for water service is no longer a problem. Late in August, less than a year after construction began, the new Ed Thomas Water Filtration Plant in Burlington was officially dedicated. Mayor Carlisle Isley called the event "a milestone in the history of the city of Burlington." The three-million gallon plant cost the city \$560,516. It was named after the city's water superintendent who has served the city for thirty-five years.

Coin Collection

Ingenuous city officials have developed more useful and efficient methods for collecting coins from parking meters. For instance, in Saskatoon, Saskatchewan, Canada each of the 295 parking meters is numbered, and two cash boxes have the identical number. When collections are made the collector merely takes out one box and replaces it with the empty one bearing the same number as the meter. A map in the treasurer's office shows each meter's location; thus, the city can check the amounts received from meters in various parts of the city.

Kansas City, Missouri is using a locked five-gallon steel hopper mounted on two wheels for efficient collect-

ing. The collector rolls the hopper to each parking meter and empties coins from the box into the hopper. In the treasurer's office the hopper is unlocked. Previously the collector had to substitute an empty coin box for the partially filled one at each meter, a procedure used in Saskatoon. His new method cuts collection time in half.

New Orleans has purchased a time saver for counting coins, particularly those constituting the daily collection from parking meters. A Brandt sorter and counter in the Finance Department of New Orleans sorts and counts coins in one operation. In a few minutes the machine can count the day's collection from New Orleans' 800 automatic parking meters.

Coin Changer Increases City Revenues

The City of White Plains, New York owns six metered parking lots in the business district, accommodating 684 cars altogether. The City Fathers have installed a coin changer on each of the lots making it possible for patrons conveniently to get change in nickels for dimes and quarters. Each machine holds \$26 in change. In the larger lots the nickels must be replaced daily; on others, once every three days is sufficient. The city parking authority reports a substantial increase in the use of these lots by motorists since the coin changers were installed. The City Commissioner of Public Safety testifies that the machine has been important in the successful operation of the city-owned metered lots.

Fire Inspection

Carolina Beach enthusiastically observed the recent Fire Prevention Week. For the first time residents actively participated in the campaign. City Manager Randy Hamilton sent each resident a brochure describing the importance and advantages of home inspection for fire hazards. Enclosed was an addressed post card for the Fire Department which the citizen might return if he desired inspection of his home. On the card he had an opportunity to state exactly what day and hour would be most conven-

ient for the examination. This project represents a significant increase in the duties of the largely volunteer fire department.

One Man Patrol Cars

For quicker attention to calls and for smaller patrol beats, Berkeley, California and Madison, Wisconsin are among those cities using one man patrol cars. Berkeley's plan has been in effect since 1913 and Madison's began in 1937. Chiefs of Police in both municipalities agree on the main obstacle to the program's adoption—the resistance of the police personnel. Both cities recognized the necessity for selling the idea to the force and successfully won over the men by techniques such as manuals of procedure for one man patrol cars and in-service training programs. For instance, they were instructed that one policeman can effectively stop a suspicious car by throwing his spotlight in the driver's eyes while he steps from his car on the lefthand side, circles behind both cars to the right rear fender of the second car, and demands the driver back out of his car with hands clasped around his neck. Policemen become reassured when they realize the system is based on thorough training of police officers, a modern communication system including a two-way radio, and supervisory officers who have had experience in patrol work. The police dispatcher, who has served previously as a patrolman, decides how many cars should investigate each call. His training as well as a departmental manual of policies assist him in making the decision.

Madison now sends only one car for about ninety per cent of all calls. For complete one man patrol car coverage this town of 96,000 owns 20 patrol cars. Seven are used on the 7 A.M. to 3 P.M. shift with each one covering approximately 2½ square miles; half the cars are used for the 3 P.M. to 5 P.M. shift, patrolling 1½ square miles. All the cars work on the 5 P.M. to 1 A.M. shift, with each patrolman responsible for only ¼ of a mile. Half the force is again employed from 1 A.M. to 7 A.M., each with areas of 1½ miles. Each car is fitted with an oscillating red light on top and a special right front fender light with the words "POLICE STOP." In Berkeley, cars cover from 1 to 3/5 square miles on the graveyard and daytime shifts to 7/10 square miles on the evening shift.

Madison's New Rulings

Madison's governing board has adopted a new time saving procedure for reading water meters and for billing water service. Water meters will be read every three months instead of every month; consequently, residents will receive their bills at the first of every third month. On recommendation of the cemetery commission the town of Madison has adopted the following regulations concerning its new cemetery. Madison residents will pay \$40 for a single grave, \$75 for a three grave plot and \$125 for a six grave lot. Non-residents of Madison will pay \$50 more for the two larger sized lots. All receipts from the sale of plots are earmarked for a fund to provide maintenance of the cemetery grounds. The owner of each plot will be allowed to erect one tablet or tombstone on his lot. No other stones or coping will be permitted; therefore, individual graves may be marked only by markers flush with the ground.

Personnel Conference

Ten public employees from North Carolina attended the 1950 Annual Convention on Public Personnel Administration in Atlanta on November 27-30. The convention, which was sponsored by the Civil Service Assembly of the United States and Canada, was attended by 600 personnel specialists from the United States, Canada, and several foreign countries. Among those attending from North Carolina were Mrs. Cowan and Miss Soles from the personnel office of the City of Greensboro, Mr. Joseph F. Snider, Secretary of the High Point Civil Service Commission, Miss Mary Frances Kerr of the State Merit System Council, Miss Isabelle Richardson of the State Board of Health, and representatives of the State Employees Association, the State Personnel Department, and the Institute of Government.

The following are only a few of the ninety-four topics discussed: "What's a Good Day's Work," "Police and Fire Personnel Problems," "Position Classification and Pay," "What Records Are Open for Public Inspection," "Developing Your Own Performance Rating System," "Effective Sick Leave Administration," "Re-

tirement and Social Security Coverage," and "Public Relations."

Public Relations

Milwaukee, Wisconsin extends a gracious welcome to all newcomers to the city through an attractive pamphlet entitled "Milwaukee Is Yours." This publication describes briefly the school program including the adult education service, the public libraries and museums, the police and fire department as well as their telephone numbers, and the services of the health, water and recreation departments. More importantly, the booklet explains what last year's city taxes averaged each citizen and how that cost compares to the cost in cities of a similar size. This clever advertisement accomplishes much in public relations and good will for the municipality.

School Bonds

Voters of both Perquimans and Craven Counties have approved a bond issue for school building programs. In the former a \$175,000 issue passed by a 344 to 287 vote. The majority of the funds will be used for school additions and the remainder, for equipment. In Craven the majority of the votes for the county's \$2,000,000 issue came from the urban areas.

Building Ordinance

Because of increased building activity at Southern Pines, town officials recently passed an ordinance establishing a sliding scale of building permit fees based on the cost of the building. In the same vein, the town named J. D. Arey as building inspector with instructions to inspect all new construction in progress, giving special attention to compliance with health, safety, and fire regulations. Since the sale and moving of barracks-type buildings at Camp Mackall frequently tied up traffic in Southern Pines, the board ruled that permits must be obtained to move constructed buildings through or into the town. However, once the mover obtains a permit, the town will assist in laying out the route for moving, provide a

police escort, and notify the fire department of the move.

In Praise of Microfilm

If there is any question in the minds of local officials as to the wisdom of adopting the use of microfilm for official records, listen to the testimony of the Clerk of the Eighteenth Judicial District Court in Wichita, Kansas. Mr. L. D. Leland's office turned to microfilm for lack of space in the court offices. Formerly his office staff typed, proof-read and bound all court orders into 14 journals containing 600 pages, 14 by 18 inches in size. The same records are now microfilmed and stored in about 1 per cent of the space of the journals. Microfilming costs the clerk about \$6 for each journal and renting a film-a-record machine costs not more than half the cost of one journal. The yearly cost for journals amounted to about \$9,800 as compared to the present cost of less than \$500 which includes the equipment, rental, film, and processing of the microfilm. Daily filing on microfilm takes ten minutes which means that all papers filed in the court are filmed and filed by 10 o'clock the next day. When a document is requested the Appearance Docket gives the date the paper was filmed; the proper film roll is then placed on the viewer. If information is to be abstracted, it is typed out, proof-read and certified. If a reproduction of a document is necessary, a photostatic copy may be made. The 1950 budget of Mr. Leland's office is not larger than his 1926 budget. But the same office with the same number of deputies and clerical assistants handles twice as much business nowadays. Mr. Leland gives much credit for this accomplishment to the use of microfilm.

School Policewomen

Following a practice popular all over the nation, Greensboro has hired policewomen to act as patrols at the city's school crossings. With no power of arrest, the women's chief duties are to guide students across busy streets in the school areas. These housewives work between 8 and 9 o'clock, at lunch hours, and after 3 P.M. during the school week. Their uniforms are similar to the ones of policemen. Trained members of the Greensboro Police Department instructed the new policewomen in their work.

Municipal Bond Prospectus

By making your locality's bond prospectus an outstanding one, staff members of Dun and Bradstreet, Inc., believe you can attract bidders from all over the country to the issue and bring your city a more favorable interest rate. The bidder needs intelligent information from a prospectus to enable him to place his bid and to use as a selling point if he buys the bonds. Dun and Bradstreet point out that the difficulty lies in selecting the correct material for inclusion in the bond's description. They suggest covering at least six points in the prospectus.

First of all the prospectus should include a copy of the notice of the sale which, incidentally, should be published at least two weeks before the date for receiving bids. Secondly, there should be a summary of any legal features of the issue not fully covered in the notice of sale. For example, if the bonds are payable from limited or unlimited taxes, or serviced from revenues other than general property taxes, the facts should be mentioned. Thirdly, population figures should be stated. It is important for the prospective bidder to know the assessed valuation and tax collection data for at least four years. Valuations not at the full rate should be discussed in detail as well as what the collection figures include. A statement of debt and sinking or redemption fund along with a summary of the city's debt history is valuable. Floating debts and self-supporting bonds should always be reported. The bidder will want to see a schedule of principal maturities by either fiscal or calendar years. If the city is under a debt limit, the limit and the remaining borrowing margin is significant. Bidders particularly are anxious to know if the city has defaulted on a bond issue and the circumstances surrounding it. Finally, a summary of the operating record for the past two or three years assists the bidder. It should include receipts and disbursements of debt-service funds, the operating fund by source of revenue and type of expenditures, and a balance sheet if one is available. Sometimes you might feel it necessary to give the tax rate limits, utility operations, or state shared taxes.

Other suggestions of this New York firm emphasize the importance of a city's announcing its financing

plans early—even before the issue's details are determined. And the prospectus should be ready for distribution as soon as the notice of sale is issued. Furthermore, the firm advocates that a city increase its issue's prestige by bringing out the good points of the city. If industry is especially large, if building has increased tremendously, if new shopping centers are under construction, mention them in the prospectus.

Carnival Ordinance

For the second time in recent years, Harnett County Commissioners have legislated to discourage carnivals in the county. Their latest resolution passed in September describes carnivals as dangerous to the public welfare of the county. The resolution instructs the Tax Collector of the county to refuse a license to any carnival company pursuant to Section 153-10 of the General Statutes. Chairman Tart warns that the ordinance will be strictly enforced.

New Parking Regulations

After February 1, 1950, five dollar fines will be imposed on motorists violating the new parking regulations of the town of Graham. Town commissioners agreed on two hour parking limits in the downtown area. Ten minute limits have been placed on the area in front of the Post Office and near the Fire Department.

Meat Inspection

Chatham County has adopted a meat inspection ordinance similar to those prepared by the State Board of Health and the State Department of Agriculture. This ordinance permits the Chatham County Health Department, as the ordinance's enforcing agency, to hire a licensed veterinarian as inspector. Every person, firm or corporation slaughtering animals for the purpose of selling meat or meat products must have his meat inspected. Fees for inspection range from fifteen cents for hogs, veal, sheep and goats to twenty-five cents for cows. The inspector is paid out of revenues collected as fees. In addition, each person slaughtering must obtain a permit.

New Zoning Ordinance

Waynesville and Graham are following sound advice of city planners in adopting zoning ordinances. Both towns adopted in September ordinances dividing the towns into business, residential, and industrial zones. Town Commissioners appointed five-man Boards of Adjustments to hear grievances under the new law. The Graham ordinance sets a penalty of not more than \$50 or 30 days imprisonment for violation of the new law.

The Minutes Tell the Story

The Charlotte City Council, recognizing the importance of money at Christmas time, thoughtfully voted a salary advance to regular city employees. Instead of receiving his pay on December 31, the employee might elect to receive on December 15 his salary for the period December 15-December 31. The motion for salary advancement was unanimously passed by the council. City employees of Edenton, meanwhile, received \$5.00 Christmas presents from the city.

Winston-Salem's Police Department can quickly point out to drivers any physical defects which might interfere with their efficiency through its recent purchase of a Keystone Telebinocular, a steadiness testing device, a vision testing machine, and a time reaction testing device. By informing a citizen of his deficiency and by urging him to correct it the Police Department is taking an active part in accident prevention. The Telebinocular will determine whether visual axes of the two eyes are in the same horizontal plane, if there is faulty posture of the eyes and poor coordination between them and will test the strength of both eyes at far point, a person's ability to judge distance with accuracy, and color blindness.

The steadiness testing device measures the nervousness of a driver. Safety experts believe if a person is highly nervous, his condition will decrease his thinking ability. The field of vision testing machine discovers whether a driver has vision to his right and left, what degree of vision he has, and whether there are blind spots in his vision. The time reaction testing device determines the length of time a driver requires to move his foot from gas pedal to brake.

Following a policy practiced by so many cities in the state, three counties have adopted a five day week for the county offices. Halifax and

Guilford, after a trial period during the summer and fall months, have voted to continue their five day week. County Commissioners of *Rockingham* County voted to close the Rockingham Courthouse on Saturdays. Similarly, the City of *Wilmington* found a five day week so successful during the summer that all municipal departments except the Tax Department will remain closed on Saturdays. The Tax Department will follow a nine to five o'clock schedule, Monday through Fridays, and a nine to one o'clock day on Saturdays.

Officials of *High Point* voted to change the city's salary schedule for certain positions. All laborers in the Public Works Department will start at \$.75 per hour, \$.10 more than they have been receiving. Switchboard operators will begin work with the city for \$1.00 an hour and skilled mechanics at \$.83 $\frac{3}{4}$ per hour. Policemen in the town of *Spindale* received a ten per cent increase in salary on October 1, 1950 and all county employees of *Scotland* except those under the merit system received a similar increase. All the city employees of *Wilson* were given a five per cent raise. *Wilmington's* city council voted a \$5.00 per month increase for each month an employee had served the city since July 1, 1950, providing that no employee would receive more than a \$30.00 increase. *Wilmington's* coun-

cilmen plan to study further the question of additional raises for municipal employees.

Rocky Mount's governing board has provided for a board of appeals on decisions made under the city's building code. The Mayor with the approval of the Aldermen is to appoint the five man board. It will include the City Engineer, City Fire Chief, one licensed and experienced architect or engineer, one licensed and experienced contractor or builder, and a competent citizen.

Aldermen of *Winston-Salem* have also been occupied with the fields of fire prevention and health. Recently they passed an ordinance establishing a Fire Prevention Bureau in the Fire Department, headed by the Chief. This bureau is empowered to enforce all city laws and ordinances dealing with fire prevention, storage and use of explosives and inflammables, fire alarms and extinguishing systems, fire hazards in the streets, exits in public buildings, and investigations of causes, origins, and circumstances of city fires. And as so many other North Carolina cities have done, *Winston-Salem* has legislated strict controls on the keeping of livestock within the city limits. A recent ordinance forbids the keeping of goats and sheep as well as swine within the city limits. Under a new section of

the Code citizens are forbidden to house horses, mules, donkeys, ponies, or cattle in any building lying within 150 feet of the adjoining property. Finally, fowl may be kept within the city only in buildings or enclosures which are "properly located" according to the zoning ordinance and no number of fowl greater than the zoning ordinance permits may be kept. Thus, in lots in Zone A-1 and A-2 no more than 100 fowl may be raised. Their pen must not be nearer than 100 feet to anyone else's dwelling or closer than 25 feet to anyone else's side yard. In Zone B the maximum number of fowls is reduced to 25 and their coops are restricted to an area at least 50 feet from anyone else's dwelling and 15 feet from anyone else's side yard.

Greensboro's position classification and pay plan has undergone revision to bring it up to date. The revised plan covers about 134 different types of positions and sets up 45 different salaries. Each salary grade includes five within grade pay raises. All department heads, training officers, judges of the city courts and the city manager continue to receive salaries fixed by the city council. Any unskilled or skilled jobs not covered by the pay plan will receive the prevailing wage of the locality as determined by the city manager.

Suggested Teaching Schedule for the Law of Search and Seizure

(Continued from page 3)

Third Session

Chapter II, §12, pages 46-62 16 pages
Search without warrant in exceptional circumstances, automobiles and other movable vehicles, the federal and North Carolina rules.

Chapter II, §13-13(c) (2), pages 62-73 12 pages
Search without warrant incident to lawful arrest, the rule and its scope, search of the person without warrant following his arrest, searching beyond the person incident to arrest of a person in his automobile, in his yard.

2 hours: 28 pages

Fourth Session

Chapter II, §13(c) (3)-13(c) (4), pages 73-89 16 pages
Search without warrant beyond the person incident to arrest (continued): where the arrest is made in a place of business, where arrest is made in the dwelling house—permissible scope of search beyond the person.

Chapter III, §§14-15, pages 90-104 14 pages
Situations that do not fall within the constitutional clauses on search and seizure, seizure where no search or trespass takes place, areas not considered "houses" or personal effects, open fields, what are "houses," garages, what is within the curtilage, places of business.

2 hours: 30 pages

Fifth Session

Chapter III, §16, pages 104-117 13 pages
Situations not covered by the Constitution (continued): removal of constitutional immunity by waiver, voluntary consent to search without warrant, what constitutes a valid consent, when is a consent voluntary, when will consent to search given by one person waive the rights of another, scope of the search by consent.

Chapter III, §§17-18, pages 117-132 14 pages

Where the search is made by a person who was not the agent of the prosecuting government, searches by private persons, searches by officers of another government, federal participation in state searches, cooperation versus collusion, standing agreements, where the search violates rights not belonging to the person objecting to the search.

2 hours: 27 pages

Sixth Session

Chapter IV, §§19-20, pages 133-154 21 pages
Observing the constitutional provisions on search and seizure, methods of controlling illegal searches, civil and criminal action against enforcement officers, exclusion of illegally seized evidence, criticism of the various methods and conclusion.

Chapters I through III. Review—examinations.

The Attorney General Rules

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

Prepared by J. Shepard Bryan, Jr. and William Poe
Assistant Directors
Institute of Government

PROPERTY TAXES

Taxable Situs of Personal Property. A traveling salesman with no established residence maintains a mailing address in County A. Would he be liable for ad valorem tax in County A on an automobile registered in North Carolina?

To: F. P. Parker, Jr.

(A.G.) If the salesman has no established residence in County A at all, and has no office which he uses in connection with his business and in connection with which his automobile is used, and does not customarily store the automobile in County A when not in use, it is difficult to see how the automobile could have a taxable situs in County A. However, if the person makes his headquarters in County A, returns there when not traveling, leaves there his personal effects which are not taken with him on trips, it would seem that County A is his residence within the meaning of section 800 of the Machinery Act (G.S. 105-302). The mere maintenance of the mailing address, however, I do not believe would give rise to a taxable situs of the personal property of such person.

PRIVILEGE LICENSE TAXES

Dealers in Fresh Meats. A town levies a privilege license tax on dealers in fresh meats. May the town collect the tax from persons operating slaughterhouses outside of the corporate limits but selling their products to retail merchants in the town through salesmen who deliver such products from trucks and collect the money therefor?

To: D. D. Topping.

(A.G.) G.S. 160-56 authorizes the several municipalities of the state to "annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law." Section 135 of the Revenue Act (G.S. 105-70) levies a state tax upon meat packing houses and upon wholesale dealers in meat packing house products who own or operate a cold storage room or warehouse in connection with such business. The section provides that counties shall not levy any tax on the business taxed under that section, but it does not prohibit nor restrict municipal taxation of such businesses. I am, therefore, of the opinion that if the processing plants in question, although located outside of the town, are doing business within the town

by selling and delivering meats therein, they could be made subject to a municipal license tax levied under authority contained in G.S. 160-56.

Persons Engaged in More Than One Taxable Activity. A town levies a privilege license tax of \$5.00 upon plumbing and heating contractors and also a tax of \$10.00 on merchantile establishments not otherwise classified. A plumbing and heating contractor maintains a stock of bathroom fixtures, hot water heaters and similar equipment, which equipment is either installed pursuant to contract or sold to individual purchasers. If the plumbing and heating contractor pays his regular license tax, is he required to pay in addition the general mercantile privilege license tax levied by the town?

To: J. W. Copeland.

(A.G.) It is the general rule that where a number of trades, occupations, professions or activities are made the subject of license taxation and one person engages in more than one of such pursuits or activities, he is liable for the tax upon each activity in which he engages even in the absence of an express ordinance to that effect. The plumbing and heating contractor referred to is engaged in two businesses; one, the business of a plumbing and heating contractor; the other, a dealer in plumbing fixtures and supplies. Since he is operating a mercantile establishment for the sale of plumbing and heating equipment in addition to his contracting business and since the tax ordinance levies a tax upon the business of plumbing and heating contracting and also a tax upon mercantile establishments, I am of the opinion that the person in question would be liable for both taxes.

If the contractor sells an item of inventory only occasionally and not in the regular course of business, then I do not believe such sales would render him liable for the tax on mercantile establishments.

DOG TAXES

Use in Reimbursing Property Damage by Dogs. G.S. 115-382 provides that it shall be unlawful for any of the proceeds of dog taxes to be used for other than school purposes and makes it a misdemeanor for the official responsible for such funds to divert them to any other purpose. A group of citizens present a claim to a board of county commissioners for damages on account of sheep being

killed by dogs. The claim is made under G.S. 67-13 which provides a procedure for establishing the merits of the claim and orders the county commissioners to pay the amount determined out of moneys arising from the tax on dogs. Is there a conflict in the provisions of these two sections?

To: I. T. Johnston.

(A.G.) G.S. 67-13 originally appears in our laws as Chapter 116 of the Public Laws of 1919. The whole section has been held to be constitutional and valid. The proceeds which may not be diverted to purposes other than education are not the entire amounts received by virtue of the dog tax, but only the proceeds minus the amounts of such dog taxes which are applied to injuries to person and property. As applied to dog taxes, you will not find the language that such taxes are to be exclusively applied to educational purposes. On the contrary, the word "proceeds" signifies that the funds are subject to any other distribution which the General Assembly wishes to make. We think, therefore, that the two statutes should be construed together and that there is no conflict.

CLERK OF SUPERIOR COURT

Escheat of Unclaimed Witness Fees.
To: A. W. Graham, Jr.

(A.G.) The opinion of the Attorney General digested in the July-August 1950 issue of *Popular Government* and dealing with the escheat of unclaimed witness fees was addressed to Mr. Preston Bray, clerk of the Thomasville Recorder's Court. It was not applicable to unclaimed witness fees held by a clerk of the superior court.

Under both G.S. 2-50 and G.S. 115-183 unclaimed witness fees in the hands of a clerk of superior court on the first day of January after publication of the third annual report of the superior court clerk showing the unclaimed fees are to be turned over to the county treasurer for the use of the county school fund.

Approval of Clerk's Order of Sale by Judge. An administrator brings a proceeding to sell real estate of his intestate to get assets to pay the debts of the decedent. Some of the defendants in the proceeding are minors and are represented by Guardians Ad Litem. Is it necessary for the judge of the district to approve the order of sale made by the clerk in such a proceeding?

To: L. W. Little.

(A.G.) Even though the provisions of G.S. 1-402 (requiring the approval of the judge resident or holding court in the district of any final order or judgment of the clerk affecting the merits of the case and capable of being prejudicial to the infant who is the petitioner or is represented by a guardian as petitioner) apparently apply only in those cases where the petitioner in a special proceeding is an infant, I am inclined to the view that the better practice would be to have the superior court judge approve the order of sale of land under the circumstances outlined.

ENFORCING THE LIQUOR LAW

Authority of Local Officers to Act in Other Counties. G.S. 18-45(o) provides that any law enforcement officer appointed by a county A.B.C. Board "is hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition law therein . . ." Is an Alcohol Tax Unit (federal) officer, stationed in an adjoining county, a "lawful officer in any other county"?

To: David Graham, Jr.

(A.G.) It is my opinion that the request for the assistance of county A.B.C. enforcement officers should come from the sheriff or other local enforcement officer in and of an adjoining county and not from a federal officer.

Driving Horse-Drawn Vehicle While Intoxicated. A person was arrested while operating a horse-drawn vehicle when he was under the influence of intoxicating liquor. Does this constitute a violation of G.S. 20-138 which makes it unlawful to operate any vehicle on the state highways while under the influence of intoxicating liquor?

To: J. S. Bryan.

(A.G.) In my opinion, the operation of a horse-drawn vehicle while under the influence of intoxicating liquor constitutes a violation of G.S. 20-138. G.S. 20-171 provides that every person riding an animal or driving any animal drawing a vehicle upon a highway shall be subject to the provisions of the motor vehicle statutes except those provisions which, by their nature, can have no application. This section seems to cover the case about which you inquire.

SCHOOLS

Public Meetings of School Board.

Is a city school board required by law to conduct open meetings? If such a board is required to hold open meetings, may it nevertheless hold "executive meetings" from which the public is excluded?

To: S. T. Emory.

(A.G.) There are statutes which require certain boards and commissions to hold open sessions which any person may attend, but I do not find any statute which prohibits a county board of education or local school board from holding executive sessions.

In view of the fact that the state and county school boards are given wide authority as to the rules of procedure which they may adopt and follow, it is legal for such boards to hold executive sessions unless regulations have been adopted to the contrary. It occurs to me that executive sessions should not be resorted to except in unusual cases, as school boards deal with public questions in which the general public is vitally interested.

Enlargement of Special Tax District. A city administrative unit, which is a special tax district, petitions the county board of education to enlarge its area under G.S. 115-192. The area to be included in the enlarged district is at present in another school district which is also a local tax district. Can one local tax district legally enlarge itself by taking a portion of another local tax district? If so, does a taxpayer in the area covered by the enlargement pay taxes in both districts?

To: T. C. Hoyle.

(A.G.) Neither G.S. 115-192 (providing for the enlargement of local tax districts) nor G.S. 115-361 (providing for local supplements) makes it clear as to whether or not the enlarged district can take in another taxing district. Nothing is said about the character of the area to be taken in, whether it could be a local taxing district or not. In the superior court judgment in the case of *Blue v. Trustees*, 187 N.C. 431, Judge Shaw indicates his belief that in voting for the consolidation of their school district (also a special tax district) with other districts to form a larger school and special tax district, the constituents of the Lakeview School District repealed the local tax theretofore voted in their district. If Judge Shaw is correct (the point not having been discussed by the Supreme Court), it would seem that one local taxing district might legally be enlarged to take in the portion of another taxing district and the enlargement to include the other taxing district would result in implied repeal of the special tax in the district so included.

If the whole of the special tax district is included in the annexation, I think the question would be more clearly presented as to the implied repeal of the special tax now existing in that area arising from a favorable vote for annexation. I find no other cases which throw any light on the subject. In view of this situation, I could not express any opinion about the matter which I could be sure was correct. I am inclined to the view, however, that upon being voted into another special taxing area and becoming subject to local taxes in that area, there may be an implied repeal of the existing tax in the area so voted in, and that the boundaries might be extended to include such area.

MUNICIPALITIES

Vacancy in Office of Mayor. G.S. 160-12 provides that in the event of the Mayor's "absence or sickness" the Mayor *pro tempore* may "exercise his duties." In the event that the regular Mayor resigns his office, can the Mayor *pro tem* and present Board of Aldermen conduct the town's affairs until the next municipal election?

To: A. W. Sawyer.

(A.G.) In construing G.S. 160-12 the Supreme Court of North Carolina has indicated that it considers the Mayor *pro tem* as merely a temporary officer who serves until the regular Mayor, who is temporarily absent, can resume his duties. *State v. Thomas*, 141 N.C. 791 (1906). If the regular Mayor has resigned and the Mayor *pro tem* continues to serve for the full unexpired term, then the Mayor *pro tem* becomes, not a "temporary" officer but the regular Mayor. This is not his function. Legislative recognition of this principle appears in G.S. 160-10, which provides that in the case of a "vacancy" in the office of Mayor, the town commissioners may fill the same by appointment.

In a recent situation quite similar to yours this office advised that the proper procedure would be for the commissioners to appoint a regular Mayor for the unexpired term. If in your situation the Mayor serves as a member of the Board of Aldermen, the remaining members of the Board should first appoint some qualified person to fill the vacancy on the Board, and then choose one from their completed number to fill out the former Mayor's term.

Validity of ordinance prohibiting peddling upon streets. A municipality desires to pass an ordinance prohibiting peddling upon the streets, alleys and sidewalks of the city, and solicitation in private residences without an invitation. Does a municipality have the power, under state law, to pass such an ordinance?

To: W. B. Allsbrook.

(A.G.) Even though such an ordinance was held valid in the case of *Town of Green River v. Brush Company*, 65 F. (2d) 112, (C.C.A. 10th, 1933), it would probably be held invalid by the Supreme Court of North Carolina. The State, as you know, licenses peddlers under Section 121 of the Revenue Act (G.S. 105-53). Thus, the occupation of peddling is recognized by the State as a legitimate pursuit. Our Supreme Court has held that a municipality may not adopt an ordinance which is in conflict with the policy of the State as expressed in the general acts of the legislature.

Authority to Enact an Ordinance Requiring a Permit for Magazine Solicitations. Is a town ordinance valid if it requires an individual to secure a permit before he can solicit magazine subscriptions?

To: Evelyn H. Pleasants.

(A.G.) The Supreme Court of North Carolina has apparently not passed directly upon the question asked, but the case of *State v. Hundley*, 195 N.C. 377, does have some features that are substantially similar. In this case the City of Charlotte, by ordinance, made it unlawful for a person to engage in the business of begging charity for a livelihood or for any charitable purpose on the streets of the city or in any public place within the corporate limits without securing a permit. The person desiring the permit had to file certain data in regard to identification, pur-

pose of solicitation, etc., with the governing body of the city. This ordinance was attacked as being unconstitutional because it was unreasonable and conferred arbitrary power upon the enforcement agent, but the Supreme Court of North Carolina held that the ordinance was valid. The ordinance that is proposed has some features that are similar to this, and I think this case is a good authority to support it.

Cities and towns outside this state have dealt with the question and have passed ordinances in regard to this matter. An ordinance regulating the solicitation of magazine subscriptions enacted by the City of Sacramento was upheld by the California Court as a valid exercise of police power, and especially for the reason that many skillful criminals had been going from place to place and from house to house in the City of Sacramento posing as magazine agents, when, in reality, such persons were obtaining information as to houses and buildings that they thereafter desired to rob. For this and many other reasons, I think such an ordinance has a fair chance of being sustained as valid.

Extraterritorial Effect of Ordinances. A special act empowers city policemen to make arrests for violations of the criminal law occurring within a radius of one mile of the corporate limits of the city. Does such an act also authorize the governing body of the town to enact an ordinance requiring a store situated outside the corporate limits to close on Sundays?

To: H. H. Walston.

(A.G.) It is my opinion that a special act empowering city policemen to make arrests within a one mile radius of the corporate limits of the town does not authorize the governing body of the town to enact ordinances which would be effective outside the actual corporate limits.

Delay in taxing newly annexed area. A town extends its corporate limits and desires to levy the same tax in the new territory as in the old without first providing equal utilities, protection, sewerage disposal, water, etc., as is available in the old territory. Is such a tax permissible?

To: R. J. Hester, Jr.

(A.G.) The newly annexed territory must bear the same tax rate and be subject to the same taxation as the old area. This opinion is based upon the case of *Banks v. City of Raleigh*, 220 N.C. 35, which held as unconstitutional a clause in a municipal extension act, which provided "that if after two years from the effective date of the extension, any part or parts of the annexed territory have not been extended the same privileges, benefits and facilities afforded comparable parts of the city now within the city limits, taxes will not be levied and collected on such part or parts not enjoying such privileges, benefits and facilities until the same are extended to such part or parts of the annexed territory."

I also call your attention to G.S. 160-445 (1949 Supplement), which provides that if extension is carried out under the 1947 act, the newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. Taxation would seem to be required whether or not all municipal services may be extended to the newly annexed area by the beginning of, or even during, the fiscal year next succeeding the annexation.

Duty of Municipalities to Furnish Water. Is a municipality required to furnish water to all citizens residing within its corporate limits when financially unable to do so?

To: H. M. Currin.

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

Sale of Water to Non-residents Residing in Another State. A town, located very close to the border of the state, desires to sell water to a few people who live nearby but in the adjoining state. Does the town have this power?

To: R. B. Mallard.

(A.G.) Municipal corporations are created by the legislature and have only such powers as are given to them by legislative acts. The General Assembly has no authority to grant municipal corporations powers which extend beyond the boundaries of the state. In view thereof, it is my opinion that the governing board of your town has no authority to provide water facilities to people who live outside the city limits and beyond the state line.

Duty to Open Streets. In 1917 a town drew up a paving map, showing a certain street thereon. Prior to that time the town had dug a canal on what is shown on the map as the western half of the street. At no time, before or since 1917, has what is shown on the map as a street been used as a street, but the canal at all times remained open. One of the abutting property owners demands that the town close up the canal and open the street, despite the fact that there are no buildings facing the property designated as a street and that the only apparent purpose to be served is that of giving the demanding citizen a driveway at the back of his property. Is the town under a duty to open the street?

To: Robert Booth.

(A.G.) It is a general rule that a municipality has no duty to open or improve all streets which have been platted within the boundaries thereof. While I know of no North Carolina cases directly in point, the principle has been applied in this jurisdiction as to sidewalks. *Crotts v. Winston-Salem*, 170 N.C. 24, and it is my opinion that the general rule

as to the opening of streets would prevail here.

Municipal corporation in North Carolina are usually given express power by their charters to lay out and open streets. Even if such is not true of every charter, sufficient statutory authority therefor is conferred by G.S. 160-200(1). Thus impowered, the proper municipal authorities are the sole judges of the necessity, expediency, or desirability of exercising that power. *Parsons v. Wright*, 223 N.C. 520. They are deemed to have a wide discretion in the matter, the exercise of which the courts will not interfere with in the absence of arbitrary and unjust action or a showing of bad faith or fraud. Therefore, it is my opinion that if the town commissioners, after fair and impartial consideration, have reached the conclusion that there is no public necessity to open as a street the property described, no cause of action would lie to compel the town to do so.

Payment of Public Funds to Widow of City Employee. The board of aldermen of a city is considering paying to the widow of a former street superintendent, who recently died, a sum amounting to a year's salary, in recognition of his long and faithful service to the city. Is such a payment permissible under the law?

To: E. C. Ipock.

(A.G.) Such payment may not be made from public funds since the payment of the same would amount to a gratuity.

JUVENILE COURTS

Jurisdiction of City Juvenile Courts and County Juvenile Courts. The clerk of the superior court has jurisdiction as judge of the juvenile court of the county in the hearing of cases in which the "children concerned reside in or are at the time within such county." G.S. 110-22 and 110-21. G.S. 110-44 provides that every city in North Carolina with a population of 10,000 or more may maintain a juvenile court within its territorial boundaries and that any town with a population of 5,000, which is not a county seat but in which there is a recorder's court, may maintain a juvenile court within the territorial jurisdiction of its recorder's court. An interesting problem of jurisdiction arises if an offense is committed within a city and thus within the territorial jurisdiction of the municipal court yet the child resides outside of the city limits in some other part of the county where the clerk of the superior court as juvenile judge would ordinarily have jurisdiction. In such a case would the proper jurisdiction be before the judge of the municipal court or before the clerk of the superior court?

To: P. E. Monroe

(A.G.) The jurisdiction features of Article 2 of Chapter 110 of the General Statutes, which provides for juvenile courts, are troublesome. We have decided that the best rule to follow is

for that judge in whose territory the alleged delinquency or offense is committed to take jurisdiction. I would advise, therefore, that the city judge should consider those cases committed within the city limits even though the child resides outside the city limits and that the judge of the juvenile court with county jurisdiction should consider and pass upon those cases that take place outside the city limits.

REGISTER OF DEEDS

Recording Improperly Filled-Out Marriage Licenses. A register of deeds issued a marriage license to a couple who were married outside of the county in which the license was issued. When the license was returned, it disclosed only the names of the witnesses and the person who performed the ceremony. The blanks provided for the names of the parties who were married and the title of the person performing the ceremony were not filled in. Was the marriage valid? What record should the register of deeds make of this marriage?

To: Sadie H. Collins

(A.G.) I am of the opinion that although G.S. 51-6 provides that no officer or minister shall perform a marriage ceremony between two persons except in the county in which the license is issued, a marriage so celebrated is valid and binding upon the contracting parties. In fact, our Supreme Court has held that the failure to procure a license to marry will not invalidate a marriage which is otherwise good. *State v. Parker*, 106 N.C. 711; *Muggett v. Roberts*, 112 N.C. 71.

G.S. 51-18 provides for the recording of licenses and their returns. G.S. 51-19 provides that if any register of deeds shall fail to record the substance of any marriage license issued by him, or fails to record the substance of any return made thereon, he shall suffer the penalties therein prescribed. I suggest that you record the return to this marriage license just as it was received by you.

SERVICE OF PROCESS

Power of Town Constable. Does a town constable have the power to serve a criminal or civil process outside the limits of his town where there are no charter provisions or special acts defining his powers?

To: W. H. Price

(A.G.) If there is no provision covering town constables in the private laws applicable to the town, I think the town constable is governed by section 160-18 of the General Statutes which provides that a town constable can serve process, civil and criminal, issued by any court in the county if this process is directed to him. I do not think it sufficient that the process be directed to the sheriff or any lawful officer, but it should be directed to the town constable, stating his name and giving his title as constable of the specifically named town. If he undertakes to serve process outside of his

town, then the town constable has to give the same bond for the performance of his duties as is required of township constables who execute civil process.

Power of Town Policeman. A civil process is directed in the usual form as follows: "To any constable or other lawful officer of said county." Does the police officer of a town have the authority to serve this process within the corporate limits?

To: L. C. Eatman.

(A.G.) A town policeman has the authority to serve civil process within the limits of the town which he serves if the process is specifically addressed to him in his official capacity. "To any constable or other lawful officer of said county" is not sufficient for this purpose. The process should be directed specifically to the police officer by the title of his office; that is, it should be directed as follows: "To John Jones, Policeman of the city of —."

JUSTICE OF THE PEACE

Suspending Judgment on Condition; Power to Issue Capias. Does a justice of the peace have authority to suspend judgment upon conditions or to continue prayer for judgment? When a defendant has been found guilty does a justice of the peace have authority to issue a capias to bring him back before the court?

To: J. R. Jenkins, Jr.

(A.G.) Under the decisions of the Supreme Court of North Carolina (*State v. Tripp*, 168 N.C. 150, and cases therein cited), we have ruled several times in this office that a justice of the peace does have a right to suspend judgment upon conditions or to continue prayer for judgment for those offenses that are within his jurisdiction. This is an inherent power of any court in this state which has jurisdiction. See the cases of *State v. Everett*, 164 N.C. 399; *State v. Hilton*, 151 N.C. 687; and *State v. Crook*, 115 N.C. 760. In the case of *State v. Griffin*, 117 N.C. 709, the Supreme Court of North Carolina by implication recognizes the right of a justice of the peace to suspend judgment but decides that if the defendant does not consent and immediately enters an appeal, he is entitled to his appeal to the superior court.

As for capiases, we think that a justice of the peace has as much inherent power to issue the necessary orders to render his judgment effective as any other court. We think a justice of the peace can issue a capias in a case in which a defendant has been found guilty but in which the justice has not pronounced judgment. Also after the defendant has been found guilty and the judgment has been pronounced and the defendant for some reason has left the court before paying a fine or being committed to jail, we think that the justice is entitled to issue a capias to put his sentence into effect. His warrant upon which the defendant was tried and his

commitment should be attached to such capiases.

LAW ENFORCEMENT

Arrest by Non-Resident Police Officer. An arrest is made by a town's chief of police who is not a resident of the municipality. Is the arrest valid?

To: J. B. Stone.

(A.G.) A police officer is a municipal officer and must be a qualified voter of the town which employs him. G.S. 160-25 requires that such officer be a qualified voter. However, it is my opinion that a police officer, though not a qualified voter of a municipality, when once appointed by the proper authorities, is at least a *de facto* officer and his acts are just as effective as if he were a resident and qualified voter of the municipality. Such police officer's title to office cannot be challenged collaterally but only through a *quo warranto* proceeding brought for that purpose.

Jail Management School

(Continued from page 7)

measures which permitted the escapes.

Mr. T. A. Early, Jail Inspector with the State Board of Public Welfare, opened the Thursday evening session with a discussion of recommended jail standards, illustrating by actual cases in North Carolina the need to attain these standards. At the conclusion of Mr. Early's speech, Mr. John Morris, Secretary-Treasurer of the North Carolina Sheriffs' Association, discussed the salary and fee systems for jailers in North Carolina, and called attention to pending legislation which would eliminate the fee system all over the state for jailers. Mr. Morris urged the jailers to support this legislation.

On Friday morning Mr. Eugene Fender, Administrative Supervisor, State Bureau of Investigation, spoke on opportunities for cooperation among jail, law enforcement, judicial and welfare officers. Mr. Fender urged those present to realize the responsibility placed on a jailer entrusted with the care of human lives. Dr. Ellen Winston, Commissioner of Public Welfare for North Carolina, was the closing speaker at the school. Dr. Winston outlined the progress made in improving jails and jail management in recent years, and the steps being taken for future improvement, until all jails in North Carolina meet a set of good minimum standards.

Mr. Albert Coates presented certificates to those in attendance throughout the school, and presided over the closing exercises.

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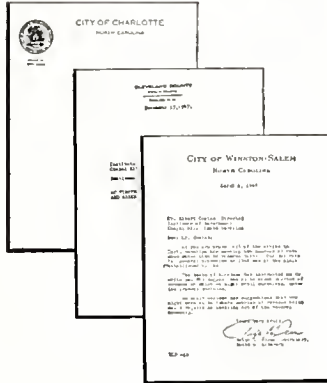
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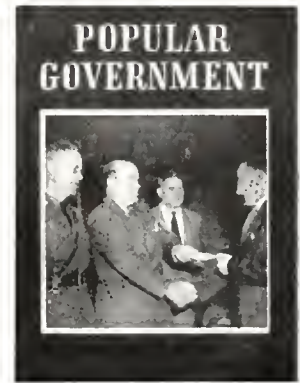
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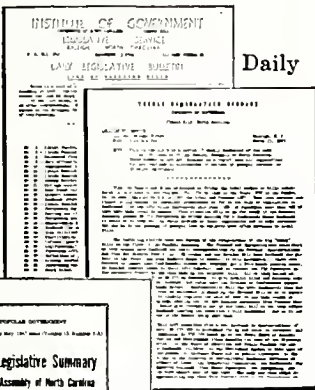


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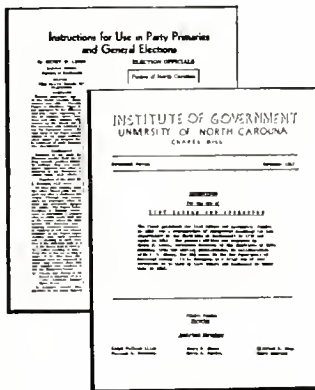
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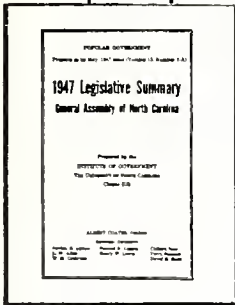
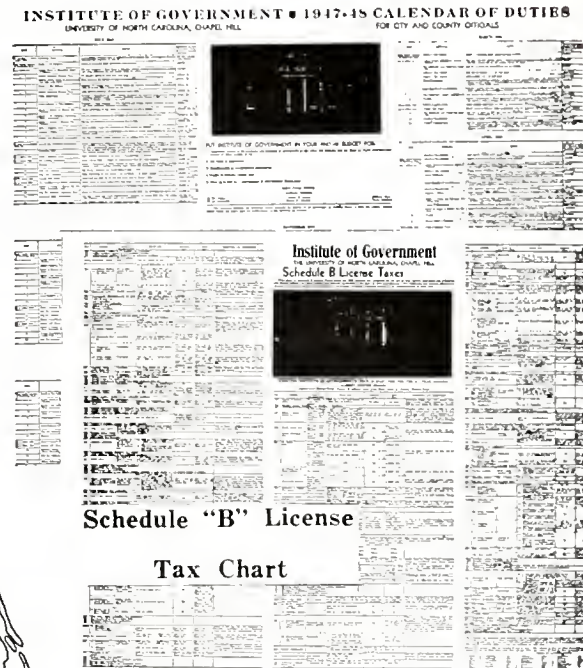
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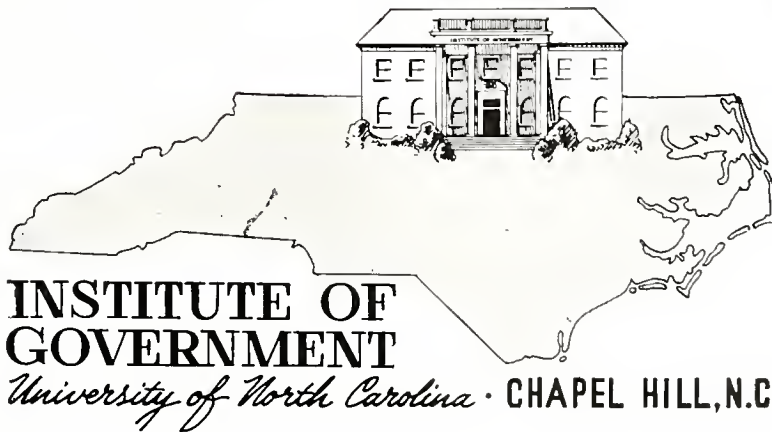
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