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Solicitors of Superior Court at Institute Meeting

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Cover: Pictured are some of the Solicitors of the Superior Court who attended the Institute's Law Enforcing Officers' Conference on February 23-24. See article on page 4.

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THE CLEARINGHOUSE

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

Fire Protection

Fire protection is one of the major items on the agenda of local governing bodies this spring. For instance, Lenoir County Commissioners recently purchased a new fire truck from the American LaFrance Foamite Corporation. The truck will be owned by the county, but housed and operated by the Kinston Fire Department. The county and city officials have agreed that the truck may be used in the city when it is not engaged in rural calls.

Hazelwood's Volunteer Fire Department has received an $8,500 truck from the town council. And the manufacturer's agent is instructing firemen in its use. The *Waynesville Mountaineer* calls the new purchase "a thing of beauty" and "a piece of equipment designed for efficiency."

Forsyth County has purchased a jeep fire truck and trailer, equipped with radio. It has a tank capacity of 200 gallons and will carry a chemical solution four times as effective as water. Forsyth County's agreement with the City of Winston-Salem is similar to that compact between Lenoir County and the City of Kinston. The Forsyth County jeep will be housed at the city fire station and the county will pay for its maintenance, operation and any additional equipment. At the discretion of the Fire Chief of Winston-Salem the truck may also be used for city calls. Two full time firemen hired and paid by the county but supervised by the city Fire Chief will man the jeep. When county residents telephone a special number the truck will be dispatched from the city fire department to the call. In conjunction with this plan the county governing board hopes to encourage the formation of volunteer fire departments to provide a basic corps of firemen throughout the county. Volunteer departments may obtain loans up to $1,000 annually on a non-interest basis from a $10,000 county fund. In addition, the county plans to allow the volunteer units a standby fee of $300 a year for a maximum of twelve calls beyond a two mile radius from their stations. When a unit has answered more than twelve such calls the county will pay them $25 extra for each additional call. However, the county reserves the right to bill a property owner for fire-fighting services on a cost basis and place the revenue in a fund from which the volunteer units will be paid.

Already there is a new volunteer organization in Forsyth County. The Sedge Garden Civic Club has organized a unit and has purchased from the city a twenty-nine-year-old fire truck.

One more indication of the awareness of Forsyth County and Winston-Salem in fire protection is evident in the city's new Buena Vista Fire Station. The building, costing the city $65,000, houses thirteen men and has facilities for a training program and other gatherings. It is designed in a colonial style to harmonize with the nearby homes.

Rubber Playground Surfaces

Rubber companies have devised a surfacing for playgrounds of asphalt and pelletized rubber that reduces the hazards of falling on playgrounds. The new surface provides resilience and freedom from abrasive action; school children come home with fewer skinned knees and elbows. On an experimental plot which has been exposed to the elements for a year, there is no evidence of damage because of frost, of erosion, or of more than a normal amount of dirt. The pelletized rubber is water resistant and has shown no evidence of powdering or disintegrating. The simple process for resurfacing consists of coating the ground with asphalt emulsion with adhesive, then laying from five to seven pounds per square yard of pelletized rubber, and packing the surface down with rolling equipment. Akron, Ohio installed these playground surfaces and the cost amounted to $2.00 per square yard for sheet asphalt, $1.10 per square yard for stabilized base with sand finish, and $1.60 per square yard for the pelletized rubber resilient surface.

Water Meter School

The North Carolina Section of the American Water Works Association is again sponsoring a school on meter repair and allied activities. This year Charlotte will play host to the school which is aimed at assisting water departments in conserving water, producing greater net revenue from the sale of water and postponing the necessity of making expensive additions to their plants and distribution facilities. Registration will begin on Friday morning, April 13 from 9 to 12 o'clock at the Mecklenburg Hotel and the school will continue until noon of April 14. Among those demonstrations scheduled for the meeting are the test and repair of small water meters in shop, cleaning meters with acid solution, test of a large meter in place, dismantling and reassemblying various sizes of meters, and observation of equipment. Saturday's program consists of informative lectures including "Winston-Salem's Experience with Meter Master," "The Minimum Requirements and Cost to Establish a Planned Meter Repair Program," and "Facts You Should Know When Selecting a Water Meter." Delegates are invited to visit the Charlotte Purification Plant and a barbecue supper will be served them on the shop yard on Friday night.

Anti Hitch-hiking Laws

The Public Administration Clearing House reports that 26 states and the District of Columbia prohibit hitch-hiking. Most of the laws ban soliciting rides, or standing in a roadway for the purpose of soliciting a ride. The State of Washington, however, goes a step further and prohibits drivers from picking up hitch-hikers. States hope that such laws will protect the motorist from suits for injury, from robbery, physical violence, or murder. "Thumbers" also run the danger of being robbed and assaulted by motorists who give them a lift as well as being picked up by

a careless or drunken driver and of being killed or injured in a traffic accident; consequently, the laws are to their advantage too. Twenty-seven states have enacted laws limiting the amount of damage that may be recovered by a highway "guest" after a traffic mishap and specifying the conditions under which damage awards may be allowed.

Parking Meter Checkers

Greensboro is not the only North Carolina city with women on the police force. Last year Charlotte increased its law enforcing staff with the addition of a petticoat patrol. The dozen members of the patrol check parking meter violators in the downtown shopping district. They have no police power other than the issuance of citations; however, they have freed male members of the Traffic Division for other important tasks.

City Manager Cities Increase

When Buena Vista, Virginia adopted the council-manager plan of government on December 5, 1950, it became the one thousandth city under the plan according to Richard S. Childs of the National Municipal League. At present Cincinnati, Ohio is the largest city operating with a city manager. The large cities of Kansas City, Oakland, Rochester, and Toledo have adopted the plan while twenty-four percent of the cities in the United States over 5,000 are council-manager cities. In Maine there are over one hundred city managers and in North Carolina the list is approximately fifty-eight. There are city managers in every state except Indiana and Rhode Island and there are thirty-eight examples of it in Canada, including Quebec.

Scouts Run Government

In connection with Boy Scout Week many city governments temporarily resigned and let the scouts try their hands at running the complex machinery. Among the North Carolina cities doing this were Wilson, Edenton, and Shelby. County offices were also taken over in Cleveland County. Reports from Edenton say that the new policemen did especially good jobs in giving overtime parking tickets. In some cases the boys were standing beside the car waiting for the red signal to appear in order to write a ticket. The activities of localities in introducing government to the scouts in this vivid manner should promote much interest among the youths in the governmental process.

City Official Writes Article

City Manager James R. Townsend of Greensboro has written an article in the February issue of *Public Management* describing one of the major duties of a city manager—selecting and training key personnel. Mr. Townsend suggests training understudies for the major administrative tasks through in-service training programs including intensive training for rank-and-file employees who might become replacements.

Stream Pollution in Georgia

Valdosta, Georgia had no funds to finance a sewage treatment plant that the County Board of Health demanded. But, as Valdosta's City Engineer Carey C. Burnett states, "It simply had to be done." Residents in towns down the river had petitioned the town to cease sending raw sewage downstream. The newspapers carried "Letters to the Editor" about the problem. The town resolved its difficulty by placing a sewer-service charge on every building attached to the city's sewers. The charge was to be 50 per cent of the water bill with a maximum of $1.50 for the residential user and $15 for the industrial user. Agreement between the town authorities and a small nearby cotton mill settled the question of a suitable site for the plant. The mill owners gave the city a deed to the land in return for treating the mill village's sewage at a charge of 5 cents per 1000 gallons of sewage. With the completion of the plant on November 9, 1950, the stream pollution problem on the Withlacoochee River, a problem originating in 1898, was finally solved.

Charlotte Regulates Industrial Wastes

Beginning on July 19, 1951, Charlotte through a city ordinance will regulate industrial wastes. Responsibility for complying with the ordinance rests with the individual person, firm, company, association or corporation. These are also responsible for the expense involved in administering the provisions.

What may not be deposited in the city sewers is specifically spelled out. For example, garbage that has not been properly shredded, liquids or vapors having a temperature higher than 150° F., flammable or explosive liquids, gasses or substances capable of creating a public nuisance are a few of the forbidden deposits. The ordinance also requires certain structures to take care of the waste. It seeks to equalize flows over a 24 hour period by requiring all persons discharging over 40,000 gallons of sewerage in one day to construct and maintain a storage tank. The tank must hold at least 80 per cent of the normal volume of one 24 hour production of waste and must be outfitted with a waterworks type rate controller to control the outlet to the sewer. Every person concerned must construct and maintain a suitable control manhole to allow observation, measurement, and sampling of all wastes from the industry. In cases where the volume is not sufficient to require a storage tank, the manhole must be equipped with a permanent type volume measuring device approved by the Superintendent of the City Water Department.

All who use the city sewers for industrial waste must apply for a permit. The Superintendent of the Water Department will grant his permission only after the applicant submits evidence that he will comply with the ordinance. Provision is made for periodic inspections of the waste and the city manager is given authority to exclude temporarily any industrial waste from the sewers in order to determine the effect of such wastes on the sewers or plants. A system of surcharges is worked out in the ordinance and the amount is determined by the volume and nature of the waste.

Council of State Governments' Resolutions

The Tenth General Assembly of the States, the annual meeting of the Council of State Governments, passed resolutions supporting the adoption of civil defense legislation and advocating that the federal civil defense program be executed through state governments rather than directly with the localities. The representatives urged the adoption of state civil defense legislation as well. And in the interest of the defense effort the Assembly asked the states to develop fiscal programs which will make manpower, materials and money available by deferring or eliminating capital outlay and non-essential expenditures.

The Assembly endorsed the use of interstate compacts as a method of handling interstate problems and commended the Southern states for their use of the compact for regional higher education. Among other considerations the Assembly emphasized the suggestions of the Council of State Governments' study on Highway Safety-Motor Truck Regulations, especially those concerned with the size and weight laws and the speed of commercial motor vehicles. Realizing the loophole in the recently amended Social Security Act the group favored amending the act again to enable states to enter into agreements with the Federal Security Agency for coverage of state and local employees irrespective of pension plans which may be existing in the state.

Revaluation Goes On

Several localities have completed plans for the revaluation of property or have actually concluded their revaluation program. Fifty men and women are working on the reappraisal of taxable property in Charlotte and Mecklenburg County—thirty-five are in the field actually looking over the property, and the remaining members are either transferring the information to maps or consulting deeds and records in the court house.

The new figures arrived at through revaluation were presented to the county commissioners in Hertford in December. This figure represents an increase in a little over $500,000 in real property valuation and was arrived at by adjustments throughout the county rather than an "across the board" increase.

Meanwhile, the question of whether New Hanover County will undertake a property tax revaluation has been submitted to a citizens committee consisting of the presidents of Wilmington business organizations. The committee will decide whether New Hanover will again postpone its revaluation as it did in 1949 through an act of the legislature. The committee is made up of the presidents of the Wilmington Clearinghouse, the Board of Realtors, Merchants Association, Chamber of Commerce, the Tax Supervisor, and the County Auditor. A County Commissioner has pointed out that the county has no funds available to finance the revaluation and if one is held, it will create an additional tax burden.

Chowan Court House Pictured

Chowan County Court House was recently featured on the cover of *The County Officer* magazine, the official publication of the National Association of County Officials. The magazine has pictured a series of famous county court houses on its cover and on the inside pages of the magazine.

Tax Maps

Forsyth County Commissioners have approved a $75,000 project to map all of the unmapped area of the county. The first step involves aerial photographing of the entire area to enable corrections to be made on the current maps. The maps will be used for tax purposes and the entire project will be completed in about two years.

The Minutes Tell the Story

To administer and co-ordinate activities in the field of public safety, the City of *Greensboro* recently created a Department of Public Safety. Both the Fire and Police Departments will be under the direction of the new department. Former Training Officer, W. H. Reeves, has been appointed the first head of the department by City Manager Townsend and his appointment has received the approval of the city council.

Rocky Mount has voted to undertake the operation of a municipal off-street parking lot. The governing body passed an ordinance providing that parking meters be installed on each parking space on a downtown lot leased by the city. Each parking space will be clearly defined through the use of lines. The ordinance contains specific provisions concerning parking violations. According to the new ordinance revenues from the city operated lot will help to provide for the regulation and control of traffic on Rocky Mount's streets and for the cost of supervising the parking lot.

Forsyth County Commissioners and the Alderman of *Winston-Salem* in a joint meeting of the two boards agreed to contribute funds for the establishment and maintenance of a detention home for white children. This project, originating with and planned by the Community Council, represents an extension of the plan initiated in 1946 for a detention home for Negro children. The home will provide the city and county with a place to send juvenile offenders after their arrest and before their trial or during the waiting period between their trial and commitment. No longer would juveniles be placed in the city or county jail for lack of any adequate detention facilities. Following the plan caried out in the Negro home, a couple will be hired on a salary basis to supervise the home, the rent for the home will be provided and each governing board will pay a per diem allowance for each child it assigns to the home. The annual estimated minimum cost for such a home is $5,000.

Winston-Salem recently amended its ordinance forbidding the commercial use of sound trucks and amplifying equipment on vehicles within the city to include the use of such equipment from airplanes, balloons, dirigibles, or any other type of aircraft.

The *High Point* Council is among the most recent to adopt a five day week for city offices.

The Town of *Chapel Hill* has purchased small fire extinguishers for each patrol car. Officials hope the presence of a reliable fire extinguisher in the cars will decrease the number of trips of the fire truck.

With ninety-six per cent of the voters casting their ballots against a proposed 10 cent tax on each one hundred dollars of property valuation

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Police Executives Plan Local Schools

JUSTICE BARNHILL

JUSTICE DENNY

On Friday, February 23, 133 of those officials especially responsible for the quality of law enforcement in North Carolina met at the Institute of Government in Chapel Hill. Attending the conference were forty-one chiefs of police, four captains, five lieutenants, and two sergeants from the cities and towns of North Carolina; the chief of the rural police of one county; sixteen sheriffs; the colonel, the executive officer, and the four captains of the state highway patrol; five representatives of the state bureau of investigation; one member of a county bureau of identification; and one chief county A.B.C. officer. Meeting with them were seven solicitors and two assistant solicitors of the superior court; sixteen judges and twenty-one solicitors of recorders' courts; one director of safety, one mayor; one alderman; one county commissioner; and one attorney.

The purpose of the conference was to arrange a coordinated system of training schools which will bring police instruction within the reach of every law enforcing officer of the state. The schools will be conducted by the local police departments, and the judges and solicitors will participate in an advisory capacity and as members of the teaching staffs. Teaching materials will be furnished by the Institute of Government. Many of the schools will begin early in March and will continue for about twelve weeks. Certificates will be given upon satisfactory completion of the work.

Those participating in the conference arrived at the Institute of Government at 5:00 p.m. After registration and assignment of rooms, an informal supper was served in Lenoir Hall at 6:00. The evening meeting was held in the south room of the Law School, where Henry P. Brandis, Jr., Dean of the school, welcomed the visiting officers and officials and spoke of the historical interest of the school in and its increasing cooperation with the Institute of Government's training program for public officials. Albert Coates, Director of the Institute of Government, spoke on the history of police training in the state and outlined the plan and purpose of the projected schools. Then Ernest Machen, Assistant Director of the Institute of Government, presented the

JUSTICE DEVIN

JUSTICE ERVIN

teaching materials to be used in two of the courses, consisting of two volumes in the *Law and Administration* series recently initiated by the Institute of Government, the first volume being *The Law of Arrest*; the second *The Law of Search and Seizure*. Mr. Machen pointed out the ancient rooting of the law of arrest in the common law and the derivation of much of the law of search and seizure from constitutional and statutory provisions. He outlined the contents of the two volumes, suggested the manner of presentation, and distributed a teaching schedule and a list of questions covering the contents. After a period of questions and discussions the evening meeting adjourned.

The Saturday morning session was held in the ballroom at the Carolina Inn. Robert B. House, Chancellor of

CHIEF JUSTICE STACY

the University of North Carolina at Chapel Hill, brought the greetings of the University, recalling the fact that his father had been a sheriff, and that he had grown up with an early consciousness of the problems and rewards of law enforcement. John Fries Blair, Assistant Director of the Institute of Government, presented a printed analysis of "The Rules of the Road," including those sections of the Motor Vehicle Law, the enforcement of which falls within the province of every police officer. He pointed out several sections of the compilation that were difficult to teach because statutory enactments were largely lacking or because the law had failed to keep pace with highway design and driving practice. Then Albert Coates outlined the way in which the teaching staff of the schools might be developed, with the superior court judges present for occasional lectures, with the solicitors of the superior court assisting in setting up the local schools and acting as connecting links between departments, with the solicitors and judges of the recorders court abandoning the quoif and ermine to become school teachers, and with the

JUSTICE JOHNSON

JUSTICE WINBORNE

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Scenes From Law Enforcing Officers' Conference on Local Schools

Top left: Solicitors of Recorders' Courts review their knowledge of the subjects to be taught. Top right: Sheriffs discuss local schools among themselves. Center: Officers listen to a presentation of "The Rules of the Road." Bottom left: Police chiefs share experiences in administration. Bottom right: Judges and Solicitors of Recorders' Courts contemplate becoming teachers.

members of the bar finding in an invitation to teach, received from a police department, a compliment, not only to their learning, but to the esteem in which they are held by those charged primarily with responsibility for enforcement of the law. At the close of Mr. Coates' remarks overwhelming support was expressed for the establishment of the local schools. Basil Whitener, solicitor of the fourteenth judicial district, suggested methods by which the system of local schools might, in the future, be expanded with the inclusion of other subjects and the use of audio-visual aids. George Fountain, solicitor of the second judicial district, discussed the role which the solicitor might play in helping to set up the schools and pointed out certain aspects of the subjects in the proposed curriculum which he thought deserved particular stress.

Many of the schools are now in progress, having started on March 6. Others will get under way as soon as adequate teaching staffs can be assembled. The enthusiasm of the conference is now translating itself into the sustained endeavor of teaching and learning in the local schools, and North Carolina is well embarked upon a new and different venture in police training. The Chief Justice of the Supreme Court and the Assistant Justices have all consented to assist in the instruction of local schools when they are visiting their districts.

Those present at the conference, arranged according to the county of their residence, were the following: Alamance: Eugene A. Gordon, Solicitor of the General County Court; D. D. Matthews, Chief of Police of Burlington; W. M. Euliss, Chief of Police of Graham, Beaufort: William Rumley, Sheriff; Junius D. Grimes, Jr., County Prosecuting Attorney; L. P. Wheeler, Chief of Police of Washington. Bladen: John F. Allen, Sheriff; Sidney D. Britt, Judge of the County Recorder's Court; Edward D. Clark, Solicitor of the County Recorder's Court, Buncombe: E. R. Hall, Chief of Police; William Hampton, Solicitor of the Asheville City Court. Cabarrus: Zeb H. Morris, Solicitor of the 15th Judicial District; E.M. Logan, Sheriff; H. W. Calloway, Jr., Judge of the County Recorder's Court; H. Q. Alexander, Solicitor of the County Recorder's Court; A. L. Murr, Chief of Police of Concord; Ralph O. Waddell, Alderman-at-large of Concord; Henry T. Barnes, Chief of Police of Kannapolis. Caldwell: G. O. Greer, Sheriff. Caswell: Ralph O. Vernon, Judge of County Recorder's Court; Catawba: G. E. Barringer, Lieutenant of Police of Hickory; E. F. Shuford, Judge of Hickory Recorder's Court; W. H. Chamblee, Solicitor of Hickory Recorder's Court; W. W. Hendrix, Chief of Police of Newton. Cleveland: W. K. Harden, Chief of Police of Shelby. Columbus: H. L. Shaw, County Bureau of Identification; Wade L. White.

Cumberland: L. F. Worrell, Chief of Police of Fayetteville; D. T. Faircloth, Captain of Police of Fayetteville. Davidson: C. M. Cook, Police Sergeant of Lexington; Paul M. Shore, Chief of Police of Thomasville; W. H. Steed, Judge of Thomasville Recorder's Court; Durham: W. H. Murdock, Solicitor of the 10th Judicial District; R. B. White, Jr., Assistant Solicitor of the Superior Court; W. J. Brogden, Jr., Solicitor of the County Recorder's Court. Edgecombe: G. M. Fountain, Solicitor of the 2nd Judicial District; T. P. Bardin, Sheriff; C. W. Wickham, Commissioner; W. R. Worsley, Chief of Police of Tarboro; H. H. Taylor, Jr., Judge of County Recorder's Court. Forsyth: W. E. Johnston, Jr., Solicitor of the 11th Judicial District; Jim Waller, Chief of Police of Winston-Salem; J. M. Tucker, Captain of Police of Winston-Salem; C. F. Burns, Solicitor of Winston-Salem Municipal Court. Gaston: B. L. Whitener, Solicitor of the 14th Judicial District; H. T. Efird, Sheriff; M. R. Short, Lieutenant of Police Department of Gastonia; R. C. Robinson, Chief of Police of Mount Holly. Guilford: C. T. Hogan, Jr., Solicitor of the 12th Judicial District; H. R. Kornegay, Assistant Solicitor of the 12th Judicial District; J. E. Walters, Sheriff; E. E. Rives, Judge of Greensboro Municipal Court; W. H. Reeves, Jr., Director of Safety of Greensboro; C. C. Stoker, Chief of Police of High Point; J. R. Teague, Captain of Police Department of High Point. Halifax: H. A. House, Sheriff; T. J. Davis, Chief of Police of Roanoke Rapids; C. R. Daniel, Judge of County Recorder's Court; R. C. Josey, III, Solicitor of County Recorder's Court. Harnett: G. H. Jackson, Chief of Police of Dunn; H. P. Strickland, Judge of Dunn Recorder's Court; J. S. Bryan, Sr., Solicitor of Dunn Recorder's Court. Hertford: W. D. Boone, Judge of County Recorder's Court; J. D. Blythe, Solicitor of County Recorder's Court. Iredell: J. C. Rumple, Sheriff; A. F. Hartness, Chief of Police of Statesville; J. R. Vanderford, Chief of Police of Mooresville. Jackson: E. F. Outland, Sheriff; E. B. Grant, Mayor of Jackson; Eric Norfleet, Judge of County Recorder's Court; B. S. Gay, Solicitor of County Recorder's Court; J. B. Weaver, Attorney, of Rich Square. Johnston: C. D. Allen, Chief of Police of Smithfield. Lee: T. P. Watson, Chief of Police of Sanford; J. G. Edwards, Solicitor of County Criminal Court. McDowell: D. W. Smith, Chief of Police of Marion. Mecklenburg: Stanhope Lineberry, Chief of County Police; J. S. Hord, Captain of Police Department of Charlotte; T. G. Lane, Jr., Solicitor of Charlotte Recorder's Court. Moore: M. G. Boyette, Solicitor of the 13th Judicial District; C. E. Newton, Chief of Police of Southern

(Continued on inside back cover)

Sheriff H. T. Efird of Gaston County, Chief of Rural Police Stanhope Lineberry of Mecklenburg County, and Solicitor Basil Whitener of the 14th Judicial District depart from the conference in Chief Lineberry's plane.

House Passes Stream Pollution Bill

By PHILIP PALMER GREEN, JR.
Assistant Director, Institute of Government

North Carolina's General Assembly first recognized the emerging problem of stream pollution in 1893, when it charged the State Board of Health with "the general oversight and care of all inland waters" and required it to pass upon plans for municipal sewage disposal and water supply systems. In subsequent sessions it continued to show interest in the problem: in 1903 by prohibiting the discharge of untreated sewage into streams used as public water supplies; in 1911 by authorizing the Board of Health to issue rules and regulations to prevent contamination of inland waters; in 1915 by prohibiting the discharge of substances deleterious to fish into waters of the state (an act ruled unconstitutional in 1948 because of a proviso excluding from its terms corporations chartered before 1915); in 1927 by forbidding the discharge of substances poisonous to fish into waters designated as "fish producing".

After a lapse of almost 20 years, this legislative interest in protecting the state's streams (which was chronicled more fully in the January issue of *Popular Government*) was rekindled in 1945. A special commission—the State Stream Sanitation and Conservation Committee—was appointed to survey the pollution problem as a whole and to make recommendations as to the future course to be followed with regard to stream sanitation. After four years of study, that committee in 1949 reported to the legislature and recommended adoption of a comprehensive pollution-control measure. Its bill was given close scrutiny by a House committee, was replaced with a committee substitute, and was finally killed on the House floor.

Committee's Bill Introduced

Against this background, it is not surprising that the 1951 General Assembly has been deeply concerned with the problem. Within two weeks after it convened it received another report from the State Stream Sanitation and Conservation Committee. This report recommended the adoption of a new bill, similar to that which failed in 1949 but reshaped to meet objections raised at that time. On January 16 Representatives J. V. Whitfield of Pender County, Roy A. Taylor of Buncombe County, and Clyde A. Shreve of Guilford County introduced the committee's bill as House Bill 53. It was referred to the House Committee on Conservation and Development, headed by Representative R. Bruce Etheridge of Dare County.

The bill sought important objectives, stated in its "Declaration of Policy" as follows: "It is hereby declared to be the policy of the State that the water resources of the State shall be prudently utilized in the best interest of the people. To achieve this purpose, the government of the State shall assume responsibility for the quality of said water resources. The maintenance of the quality of the water resources requires the creation of an agency charged with this duty, and authorized to establish methods designed to protect the water requirements for health, recreation, fishing, agriculture, industry, and animal life. This agency shall establish and maintain a program adequate for present needs, and designed to care for the future needs of the State." Let us see how the legislature has proceeded in its quest of these objectives.

Provisions of Original Bill

The provisions of the bill as it was introduced were discussed in some detail in the January *Popular Government* article. Briefly stated, it provided for the creation of a permanent seven-member Stream Sanitation Commission to exercise general supervision over waste disposal in waters of the state. The commission would be authorized (1) to conduct surveys of the waters of the state in order to determine their best present and probable future use; (2) to locate, study, and investigate instances of waste disposal which tend to impair the waters' best usage; (3) to collect and analyze data concerning presently installed waste treatment plants; (4) to conduct scientific experiments, research, and investigations to discover economical and practicable corrective measures for waste disposal problems; (5) to establish standards of water quality for the various waters of the state; (6) to adopt rules and regulations concerning the installation and operation of economically and technically feasible methods of protecting those waters; (7) to issue orders requiring discontinuance or modification of waste discharges harmful to the waters' best usage; (8) to make investigations and inspections to see whether its rules, regulations, and orders were being complied with; and (9) to cooperate with the federal government and with other state governments in carrying on its pollution control program.

The bill gave the commission authority to establish its internal procedures, including rules of practice for proceedings before it. It contained detailed provisions concerning the manner and circumstances under which orders could be issued. As safeguards against abuse, it provided that no rules and regulations could be adopted without notice and a hearing for all interested parties; that persons against whom orders were directed were entitled to notice and a hearing; and that appeals could be taken to the Superior Court of the county where the order was effective, with a right to trial by jury and trial *de novo*.

Public Hearing

The Committee on Conservation and Development opened its consideration of the bill with a public hearing on February 6. Proponents of the bill who appeared before the committee included Representatives Richard T. Sanders of Durham County and Wiley L. Ward of Randolph County; J. M. Jarrett, Chief Sanitary Engineer of the State Board of Health and Chairman of the State Stream Sanitation and Conservation Committee; Roland McClamroch, chairman of the State Wildlife Federation; Roy L. Williamson, Rocky Mount city manager, and Fred V. Doutt, chief chemist of the Champion Pulp and Paper Company, both members of the State Stream Sanitation and Conservation Committee; and W. A. Egerton, general counsel of the Enka Corporation, on behalf of the North Carolina Industrial Council (representative of the major industrial associations of the state). Representative Ralph R. Fisher of Transylvania County appeared in opposition to the bill, and Representative Bill Atkins of Yancey County asked that it be

amended to exempt the mica, feldspar, and kaolin (china clay) mining industries of Mitchell, Avery, and Yancey counties.

Of especial significance was a prepared statement issued by Mr. Egerton. "These industries for which I am authorized to speak recognize the necessity for stream sanitation legislation and they endorse the movement to have legislative enactment on this subject," he declared. After outlining the desirable features of any such legislation, he stated that, "The bill presently before this committee would come within the category outlined as desirable, if it were amended as to the procedure. The substance of the powers and duties of the commission. . . should be retained . . . the board could not function effectively without these. However, the Legislature should itself prescribe the rules of procedure by which these powers are exercised." He pointed out that no hearings were provided until after orders were issued, that orders could be issued before water standards were adopted or published, and that no way was provided by which interested parties could learn of the adoption of standards.

Referred to Subcommittee

As a result of this hearing, the bill was referred to a special subcommittee headed by Representative Kerr Craige Ramsay of Rowan County and including Representatives Whitfield, Harry A. Greene of Hoke County, Frank H. Brown, Jr., of Jackson County, and Sam O. Worthington of Pitt County. The subcommittee was instructed to receive proposed amendments and consider whether there should be more explicit provisions as to procedure, or other limitations on the powers granted the commission.

The subcommittee held a public hearing on the evening of February 10 to receive proposed amendments (which included 16 pages of amendments presented by L. Ben Prince, counsel for the Ecusta Paper Company, on behalf of the Industrial Council), incorporated these amendments into the bill in mimeographed form for study by members of the House, held a second public hearing n February 23 to receive further proposals from interested parties, and reported an amended bill back to the full Committee on Conservation and Development. This amended bill received a favorable report from the committee and was placed on the House calendar for consideration on March 8. Because of unexpectedly heavy business on that day, it was decided to postpone it until March 13, when it was passed by a 98-14 vote and sent to the Senate. There it was referred to the Committee on Conservation and Development, headed by Senator J. Emmett Winslow of Perquimans County.

Required Procedures

The major changes in the proposed bill from that originally introduced are its provisions as to the procedures to be followed by the Stream Sanitation Commission. Where the earlier bill *empowered* the commission to take measures such as studying the waters of the state and establishing standards of water quality for particular areas, the amended bill *requires* that it take those and other measures before it can act against specific sources of pollution. As a first step in each watershed, it must adopt a series of water standards and then apply these standards to each segment of water therein, both actions to be in accordance with criteria set forth in the bill. There must be notice to interested parties and a public hearing prior to each of these actions.

After the waters of a particular watershed have been classified and standards fixed, the bill provides that persons within the watershed must apply for and receive a permit from the commission in order to do any of the following acts: (1) make any new outlets into the waters, (2) construct or operate any new disposal system, (3) alter or change the construction or method of operation of any existing disposal system, (4) increase the quantity of wastes discharged through any existing outlet or system to an extent which would adversely affect the condition of the receiving waters, or (5) change the nature of the wastes discharged through existing outlets or systems in any way adversely affecting the receiving waters. In the event of denial of a permit or dissatisfaction with its terms or conditions, such persons are entitled to a hearing before the commission and then to an appeal to the courts.

Restricts Issuance of Orders

Existing sources of pollution within such a watershed would be dealt with by means of special orders, as under the original bill. However, the amended bill forbids the issuance of such orders where it is demonstrated that it is impossible, or for the time being not feasible, for the person to correct or eliminate the activities causing or contributing to pollution. Such conditions would be deemed to exist (1) where no practical or adequate method of disposal or treatment is known for the particular waste for which the person is responsible, (2) where the cost of any such known method of treatment is unduly burdensome in comparison with the pollution abatement results which can be achieved, (3) where a known method of disposal or treatment cannot be adopted because of financial inability (due to statutory restrictions on borrowing power or otherwise), or (4) "where there is reason to believe that diligent research and experimentation is being carried on to such an extent as to justify postponement of the adoption of relatively inefficient known methods of disposal or treatment until further opportunity is given for the discovery of more effective methods."

Must Act Against All Polluters In Area

In addition to the above limitations on the issuance of orders, the bill provides that the commission must act against *all* persons contributing to a particular pollution problem, and that "where because of operation of law or otherwise, enforcement against any municipality or other political subdivision of the state cannot be had, no special order shall be issued against any other person within the segment of water where abatement of pollution is sought." Doubt has been expressed by some observers as to whether this prohibition, in combination with those set forth above, would not effectively preclude any enforcement action by special order. Although they agree that it is fair and equitable to forbid the singling out of any one source of pollution, these observers feel that such arbitrary discriminiation would be adequately prevented by the requirement that the commission proceed against all sources contributing to the same problem, and that the further prohibition against any action where one town can escape is merely a hobble on action by the commission. However, most proponents of the bill raised no protest at the time this provision was being considered.

The amendments to the original bill amplify the sections relating to approval of voluntary projects, which provide that the commission may ap-

(Continued on page 16)

Recent Supreme Court Decisions

Volume 232 of the North Carolina Reports has recently been completed in advance sheet form. This, therefore, seems an appropriate occasion to review some of the decisions, not previously discussed in this magazine, which have been rendered by the Court during the past year and which are likely to be of interest to public officials.

By
JOHN FRIES BLAIR
Assistant Director
Institute of Government

The Supreme Court of North Carolina has recently:

Held *that the superior court has no jurisdiction to determine, in a civil action, whether a paper writing is or is not the will of the deceased.*

The doctrine is, of course, not new, but the circumstances under which the question was presented in *Brissie v. Craig*, 232 N.C. 701 (filed 29 November 1950), were, to say the least, unusual. The plaintiffs, who were the heirs at law of the deceased, would inherit his land if there was no will. The defendants were devisees of various interests under a paper writing which purported to be a holograph will. There was a controversy between the parties as to whether the will was, or was not, found among the valuable papers of the deceased. The defendants, apparently for tactical reasons, postponed offering the will for probate. The plaintiffs finally started an action to have the unprobated will removed as a cloud on their title. In the superior court the jury found that the paper writing was not found among the valuable papers of the deceased, and the court entered a judgment for the plaintiffs. The defendants appealed to the Supreme Court. There, for the first time, the defendants demurred *ore tenus* to the complaint on the ground that the superior court did not have any jurisdiction of the matter. The Supreme Court sustained the demurrer and dismissed the action, saying that the clerk of the superior court has exclusive and original jurisdiction of proceedings for the probate of wills, that the way to contest a will is by filing a caveat, and that only thereafter can the matter be transferred to the civil issue docket of the superior court for the trial of an issue as to whether or not the writing is the will of the deceased.

As to the dilemma of the plaintiffs, who wanted to get the matter settled but desired to contest rather than propound the will, the court said they might do both. Pointing out that the statute, G.S. 31-13, authorizes any person interested in the estate to make an application for probate after sixty days from the death of the testator, upon ten days' notice to the executor named in the will, it went on to say that "the probate powers of the judiciary afford a complete remedy to a person interested against an alleged will in instances where those interested for the alleged will do not propound it for probate. He may invoke such remedy by the simple expedient of simultaneously applying to the Clerk of the Superior Court having jurisdiction to have the script probated or proved, *i.e.*, tested, and filing a caveat asking that it be declared invalid as a testamentary instrument."

Held *that the Municipal County Court of the City of Greensboro has jurisdiction in a suit to recover a penalty under the Federal Housing and Rent Act of 1947 where the amount claimed is less than $1,000.00, at least in a case where attorney's fees are not demanded.*

In *Williams v. Gibson*, 232 N.C. 133 (filed 24 May 1950), the plaintiffs had a claim for a penalty of $90.00 under the Federal Housing and Rent Act. They brought their action in the Municipal-County Court of the City of Greensboro without demanding the attorney's fees authorized under the act. In previous cases under the Emergency Price Control Act the Supreme Court had held that the superior courts of the state had jurisdiction to entertain suits for penalties under the federal act and to allow attorney's fees (*Hilgreen v. Cleaners & Tailors, Inc.*, 225 N.C. 656 and *Taylor v. Motor Co.*, 227 N.C. 365), but that the court of a justice of the peace did not have such jurisdiction in a case where attorney's fees were demanded. *Hopkins v. Barnhardt*, 223 N.C. 617. The defendant in the present case took the position that the Municipal-County Court of the City of Greensboro was, like the court of a justice of the peace, a tribunal of limited jurisdiction; that it also had no express authority to allow attorney's fees; that the allowance of attorney's fees was an integral part of the remedy prescribed by the act; and that therefore the court was without jurisdiction. The Municipal-County Court assumed jurisdiction, however, and rendered judgment for the plaintiff. This the Supreme Court affirmed, saying that, for jurisdictional purposes, actions for civil penalties are assimilated to actions founded on contract and that, since the Municipal-County Court had jurisdiction up to $1,000.00 in actions founded on contract, the amount demanded in the present action was well within its jurisdictional limit. It also said that the plaintiffs could waive their claim for attorney's fees, and that this was no unjustifiable splitting of causes of action, since there could be no separate action for the attorney's fees alone. Therefore the Municipal-County Court had nothing before it that it could not try. The Court left undecided the question of whether the Municipal-County Court could have allowed attorney's fees if they had been demanded.

Held *that the present statutes allowing an adopted child to inherit from the relatives of the adoptive parents have no retroactive effect, and that a child adopted before those statutes went into effect does not so inherit.*

In *Wilson v. Anderson*, 232 N.C. 212 (filed June 9, 1950), the plaintiff was the adopted child for life of Malcolm B. Hunter and his wife. The order of adoption was dated April 25, 1919. Under the laws at that time an adopted child would inherit both real and personal property from its adoptive parents (unless the petition for adoption set out a contrary intention) but would not inherit either real or personal property from the relatives of the adoptive parents. Thereafter the law was

changed to allow the adopted child to inherit from the relatives of the adoptive parents also. In this case Malcolm B. Hunter died. Then his brother died leaving no children, no widow, and no will. A niece, two nephews, and the children of a deceased nephew would inherit both the real and personal property of the brother unless the plaintiff was entitled to a niece's share by reason of the change in the law. The superior court held that the plaintiff was entitled to a niece's share in the real estate but not in the personal property. The Supreme Court reversed and said that she was entitled to nothing. Adoption statutes, it said, were usually prospective in operation and, after an extensive review of the North Carolina statutes in effect at different periods, it came to the conclusion that the legislature had intended our present statutes to operate prospectively only and not to affect the rights of persons adopted under previous statutes. In addition, the order of adoption itself had the effect of a judgment of a court determining the plaintiff's right as of the date of its entry.

A petition for a rehearing was denied (232 N.C. 521-filed 18 October 1950), the second opinion bringing out the additional point that at the time of the death of Malcolm B. Hunter the statutes in force were even more clearly prospective in operation than those in effect at the present time.

Held *that a municipal corporation has the power to prohibit holders of franchises permitting the operation of taxicabs from leasing or renting their vehicles to others who pay a fixed daily rental for the use of the vehicles and are entitled to all or a portion of the proceeds of operation over and above the fixed rental.*

In *Cab Co. v. Shaw*, 232 NC. 138 (filed 24 May 1950), of the seventy-three plaintiffs, some were corporations which owned taxicabs and held franchises for operating them for hire in and around the City of Charlotte; others were individuals in a similar position; still others were individuals who rented their cabs from the corporate plaintiffs at a fixed rental and were entitled by contract to keep any amount which they made over and above the established rental. In the case of the last group, the corporate plaintiffs provided all equipment for the cabs, serviced them, and insured them. The cabs bore the labels of the corporate plaintiffs, who inspected them from time to time to see that all city ordinances were observed. This method of doing business has been in operation for a number of years.

By an ordinance of the City of Charlotte which was to take effect on October 31, 1949 (originally an earlier date) it was provided:

"Operator to Be Owner or Employer Thereof. (a) No taxicab shall be operated except by the owner thereof or by a duly authorized agent and employee of the owner, to whom such owner pays a fixed and definite wage or a fixed commission or percentage of the gross amount received from the operation of such taxicab or a combination wage and commission.

"(b) No owner of any taxicab shall enter into any contract, agreement, or understanding with any driver by the terms of which such driver pays to such owner a fixed or determinable sum per day for the use of such taxicab and is entitled to all, or a portion of the proceeds of operation over and above the fixed or determinable sum. Nothing herein contained shall prevent an owner from paying a fixed fee or other compensation to another owner for furnishing insurance required by this Chapter, for use of terminal facilities and/or for the privilege of operating under the name of such other owner."

The defendants in the action were the mayor, the chief of police, the cab inspector, the city manager, all the councilmen, and the city itself.

The suit was brought before the date the ordinance was to become effective, and the plaintiffs sought to enjoin the defendants from ever enforcing the ordinance.

The plaintiffs got a temporary restraining order, but this order was dissolved at the hearing, and a permanent injunction was denied. On appeal the judgment of the lower court was affirmed. The Supreme Court said that ordinances will not be declared invalid unless they are clearly so, that even the obligations of contracts must yield to a proper exercise of the police power, and that the operation of taxicabs for hire over the streets of a municipality is a privilege which a municipality may withhold or grant on such terms as it sees fit provided it treats alike all who are similarly situated.

Held *that a school committeeman holds office for a definite term of two years and is not removable at the will or caprice of the county board of education which appointed him.*

In *Russ v. Board of Education*, 232 N.C. 128 (filed 24 May 1950), the Board of Education of Brunswick County, on May 4, 1949, appointed the petitioner a member of the school committee for Shallotte School District for a term of two years. Two weeks later, after the petitioner had qualified and entered upon the discharge of his duties, the Board of Education, without notice or hearing, made an order purporting to remove him from office. The petitioner thereupon filed an application asking the superior court to declare the order of removal invalid, to adjudge that he was still a member of the school committee, and to give "such other and further relief in the premises as the nature and equity of this case may require and to this honorable court may seem meet and proper." The Board of Education demurred on the ground that the petition did not state a cause of action and that the superior court was without jurisdiction to review the action of the board in removing the school committeeman. The superior court entered a judgment overruling the demurrer, and this judgment the Supreme Court affirmed. The office of school committeeman, it said, was for a definite term of two years (G.S. 115-354), and removal could be only for cause, after notice and hearing. G.S. 115-74. Although no specific provision was made in the statute for review of a proceeding of ouster on the part of the County Board of Education, since such a proceeding was *quasi*-judicial in nature the proper review was by certiorari, and the petitioner was entitled to this writ, even though he had not asked for it specifically. With respect to the necessity for review of such proceedings before administrative bodies, the Court quoted the words of the Supreme Court of Minnesota: "Criticisms have often been made of the phenomenon which permits an administrative body to serve in the triple capacity of complainant, prosecuter, and judge. . . As a result of this combination of roles, its final adjudication often lacks that stamp of impartiality and of disinterested justice which alone can give it weight and authority. This anomaly in procedure makes it vitally necessary that in reviewing administrative decisions courts zealously examine the record with a view to protecting the fundamental rights of the parties, lest the rule against arbitrariness and oppressiveness become a mere shibboleth. An appeal being denied, a review by *certiorari* or other prerogative writ must not be permitted to degenerate into a mock ceremony.

The least that the courts can do is to hold high the torch of 'fair play' which the highest court of our land has made the guiding light to administrative justice."

Held *that, under a zoning ordinance, when an application is made for a building permit for a conforming use the permit must issue and mandamus will lie to compel its issuance, even though the governing body of the town suspects that the building, when erected, will be converted to a nonconforming use.*

In *Mitchell v. Barfield*, 232 N.C. 325 (filed 9 June 1950), the zoning ordinance of the City of Durham had divided the municipality into nine different classes of districts or zones. The plaintiffs filed an application for a permit to construct a hotel in an "A Residence Zone," in which the construction of hotels was permitted. The building inspector reported that the application complied "with the building and zoning regulations of the City of Durham." Nevertheless the governing body of the city caused the permit to be withheld because it suspected that the building, when erected, would be used for a nursing home, infirmary, or hospital, and not for a hotel. The plaintiffs thereupon applied for a writ of mandamus to compel the issuance of the permit. The superior court ordered the issuance of the permit, and this judgment the Supreme Court affirmed. The plaintiffs, the Court said, had a clear legal right to the permit, and the governing body of the town had no discretionary power to withhold it. The lower court had found that there was no competent evidence to support the conclusion that the building would be put to a nonconforming use. Even if there had been, the Supreme Court said, quoting *American Jurisprudence*: "If the right of the applicant to erect the building for which the permit is sought is otherwise absolute, it is no ground for the denial of the permit or of a mandate to compel its issuance that the applicant intends to put the building when erected to an improper use; the question as to the legality of the alleged intended use must await determination in proper proceedings after such use is attempted to be made of the building."

It seems there was an ordinance of the City of Durham changing the method of review of the refusal to grant a permit. This was of no effect in the face of G.S. 160-178, the Court said, since the legislature had clearly intended that procedures for the enforcement of zoning ordinances should be uniform.

Held *that a city, under a zoning ordinance, is not estopped by a long-time acquiescence in a nonconforming use from, at a later date, enforcing the ordinance.*

In *Raleigh v. Fisher*, 232 N.C. 629 (filed November 22, 1950), the City of Raleigh had, on April 20, 1923, enacted a zoning ordinance dividing the city into a number of different types of districts, prohibiting business in residential districts, requiring a permit for the construction of any new building, and prohibiting the use of any building erected or altered without a certificate of occupancy.

In 1936 one of the defendants bought *from the city of Raleigh* a vacant lot in a residence district under an agreement or understanding that she would erect a residence upon it and that she and the other defendant would be permitted to conduct in the residence a bakery and sandwich business. A building permit was issued, the residence was erected, and the business was instituted. No certificate of occupancy was ever issued. The City of Raleigh went so far in ratifying the agreement with respect to permitting the business to be conducted as to collect a privilege tax on the business for nine years preceding the bringing of this action, by which time the partners had about $75,000 invested in the enterprise.

In 1944 the City of Raleigh repealed its old ordinance and enacted a new one, incorporating, however, in substantially indentical form, all the provisions of the old ordinance which are pertinent to this case. The new ordinance did not exempt nonconforming uses existing at the time of its enactment but did permit the "continuance of any use of land or buildings which now legally exists."

In 1948 the governing body of the City of Raleigh notified the defendants by a formal resolution "to discontinue their business operations within said residential district." This the defendants refused to do.

Thereafter the city asked for an injunction to prohibit the defendants from continuing to violate the ordinance.

The injunction was granted by the superior court, and this judgment was affirmed by the Supreme Court. The Court said that the conduct of the business was a violation of the zoning ordinance of 1944 for two reasons (given here in inverse order). First, the use was illegal from the beginning, because it involved carrying on a business in a residential district and because the building had been used continuously without a certificate of occupancy. Therefore it was not a "use of land or buildings which now legally exists" and was not exempted under the second ordinance. Second, since the second ordinance re-enacted in substantially similar form the pertinent provisions of the first ordinance, those provisions should be considered as having a continuous existence, so that rights and liabilities would be continued as they were under the first ordinance.

As to estoppel, the court was of the opinion that zoning was an exercise of the police power in which a city acts as a governmental agency. This power cannot be bartered away by contract nor lost by acquiescence. Therefore a city cannot be estopped by the past conduct of its officials from enforcing the provisions of a zoning ordinance.

Held *that the failure of an officer to give bond does not affect his capacity to execute a search warrant or other judicial process.*

In *Hinson v Britt*, 232 N.C. 379 (filed 30 September 1950), the City of Asheville Board of Alcoholic Control appointed Alfred A. Dowtin and Harry H. Horton as law enforcement officers. Dowtin and Horton entered upon and actually performed the duties of law enforcement officers without giving bond as required by G.S. 128-9. Acting as such officers they entered upon the premises of the plaintiff and searched his home for intoxicating liquors without a warrant and over his active protest. The plaintiff brought an action to recover damages against the members of the board of alcoholic control, against the officers as agents for the board of alcoholic control, and against the officers individually. He alleged that the search was illegal, not only because it was conducted without a warrant but also because the officers, not having given bond, had no authority to conduct the search.

Before answering, the defendants moved to strike out the allegations with respect to the failure of the officers to give bond. This the superior court refused to do. On appeal the Supreme Court said that the allegations should have been struck as irrelevant, but that it would not disturb the judgment since it did not appear that the defendants would suffer any harm by having the allegations remain in the complaint. The omission of Dowtin and Horton

to give bond, the court said, did not affect their capacity to execute a search warrant or other judicial process and was not a condition precedent to their authority to act in the performance of their duties. They were *de facto* officers, and as such their acts were valid in law in respect to the public, whom they represented, and in respect to third persons with whom they dealt officially.

Of course this ruling did not dispose of the case. It merely removed one ground of the alleged illegality of the search.

Held *that where a defendant is indicted for possessing illegal liquor and transporting it in an automobile and pleads want of knowledge that the intoxicating liquor was in the car, it is the duty of the court to instruct the jury that the defendant would not be guilty unless he knew that the liquor was in the car.*

In *State v. Elliot,* 232 N.C. 377 (filed 20 September 1950), the dedendant Troy Elliot was riding in the front seat of his car with his brother Joseph Elliot, who was driving. They saw D'Autrey Riddick walking along the road with a box under his arm and a bag on his back. Troy Elliot told Joseph to stop and pick him up. Riddick got into the back seat and put the bag down on the seat beside him. When the car stopped in town the sheriff approached and found a five-gallon jug containing about four gallons of non-taxpaid liquor partly concealed in the bag on the back seat. All the occupants of the car were indicted, but the case on appeal affects only Troy Elliot. The trial court told the jury that if they were satisfied beyond a reasonable doubt that Troy Elliot, at the time and place in question, was transporting illicit liquor in the quantity of four gallons or thereabouts, they should find him guilty of both possession and transportation. There was a verdict of guilty, from which Elliot appealed. The Supreme Court awarded a new trial. The State, it said, made out a prima facie case when it offered testimony tending to show that there was a jug containing four gallons of liquor in the car then in the possession of and being operated by the defendants. However, when the defendant specifically pleaded want of knowledge of the presence of the liquor in the car and offered evidence tending to support that plea, he raised an issue as to an essential element of the crime charged, and it was the duty of the court to instruct the jury that he would be guilty only in the event he knew that the liquor was in the car.

The Attorney General Rules

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

Prepared by JOHN FRIES BLAIR
Assistant Director, Institute of Government

MUNICIPALITIES

Purchase of water and sewer system outside of municipality. A manufacturing corporation located in an unincorporated community buys water, at wholesale prices, from a neighboring town and maintains a water and sewer system across the lands of the corporation. The corporation is now selling many of the residences at present using the water and sewer system under agreements whereby it agrees to furnish the services to the purchasers at $1.50 a month until the North Carolina Utilities Commission fixes and approves permanent rates and whereby it also agrees to furnish facilities for a volunteer fire department for a limited period. May the town enter into a contract under which it agrees to acquire the water and sewer systems and to perform all the obligations and duties which the corporation is performing and has agreed to perform? If not, will an enabling act be a violation of the provision of the N. C. Constitution which prohibits local legislation for certain purposes?

To: I. R. Williams

(A.G.) G.S. 160-255 authorizes a municipal corporation to own and maintain its own light and waterworks system to furnish water for fire and other purpeses for the benefit of its own citizens and provides that the governing body shall have power to acquire and hold rights of way, water rights, and other property, within and without the city limits.

I would have considerable doubt as to whether or not the municipality under this statute would have the right to maintain a water system for the benefit primarily of citizens located in another unincorporated community and I would also think it very doubtful if, under the existing law, it could assume the obligations under the present contract between the corporation and its purchasers.

Article II, Section 29, of the Constitution prohibits local legislation relating to health, sanitation, and abatement of nuisances. While a water and sewer system does have some rather direct relationship to health and sanitation, I am not sure whether a private act would be considered in conflict with this constitutional provision. It could be written in such a manner as not to be local in character if the legislature is willing to make it applicable to any municipality in the state. In the absence of a controlling decision I, of course, cannot be sure what the court might hold with respect to this.

Without enabling legislation, I should think there would be some danger of conflict with G.S. 143-129, which provides the procedure for letting public contracts. See *Raynor v. Louisburg,* 220 N.C. 348. I cannot be sure about it and therefore would recommend that some enabling legislation be utilized rather than depending on the general laws.

Purchase of electrical equipment from surplus funds and installation by municipal employees. May a city appropriate $200,000 of surplus funds to purchase sub-stations and other materials to rebuild its primary electrical distribution lines and establish sub-stations over the city? On account of current delays it will be necessary to make a contract for future delivery approximately twelve months hence. The city proposes to do the construction work with its own forces.

To: Buren Jurney

(A.G.) It will be necessary to advertise and receive bids on the purchase of this much material in order to comply with the terms of G.S. 143-129 with respect to the purchase of material costing more than $1,000.00, even though the delivery will be at a later date. See also *Raynor v. Louisburg,* 200 N.C. 348. If the proposed construction work does not exceed $5,000.00 the municipality can do it itself, but if it contemplates an expenditure of more than that amount, the work itself is required by G.S. 143-135 to be let to contract.

If the municipality has on hand a surplus as recognized by law, it would have a right to amend its appropriation resolution and appropriate the necessary sum for this material and provide for its installation. The purchase of the material and its installation would be a necessary municipal expense. *Williamson v. High Point,* 213 N.C. 96, and cases cited therein. There would be no question about the right of the municipality to expend money for this purpose if the statutory requirements are complied with.

COUNTIES

Contributions to community buildings located in municipalities. May a county legally contribute to the operation and maintenance of community buildings located in the several municipalities of the county?

To: Fred P. Parker, Jr.

(A.G.) I find no general statute dealing with this subject. If your Board of County Commissioners wishes to make these contributions, I would suggest that, if you do not have a local act authorizing this to be done, you might secure one upon recommendation of your board and the cooperation of your local repre-

sentatives in the General Assembly.

Authority of counties to purchase through the Division of Purchase and Contract. May counties make purchases of material and equipment through the Division of Purchase and Contract? May counties purchase surplus materials from the Division of Purchase and Contract?

To: Lester G. Carter, Jr.

(A.G.) The statute creating the Division of Purchase and Contract does not authorize counties to make their purchases through the division. Counties may purchase surplus materials from the Division of Purchase and Contract. However, in making such purchases, counties are required to bid for the same in the manner required of other persons or corporations in this state.

Issuance of bonds for construction and equipment of non-profit hospital not owned by county. Does a county have the power to issue bonds and levy a tax for the payment of the bonds, after the approval of the qualified voters of the county, for the erection of an addition to a non-profit hospital, and for cost of the equipment and maintenance of it, when title to the hospital property is not vested in the county, and the county does not operate or control the hospital?

To: Thomas A. Banks and Arch T. Allen

(A.G.) G.S. 131-126.42 provides as follows: "The special approval of the general assembly is hereby given to the issuance by counties, cities, and towns of bonds and notes for the special purpose of building, erecting and constructing any publicly owned or non-profit hospital and for the purpose of financing the cost of operation, equipment and maintenance of any such hospital or for the purpose of securing or guaranteeing any operating deficit of any hospital, and the special approval of the general assembly is hereby given to all counties, cities and towns to levy property taxes for the payment of said bonds and notes and interest thereon."

It is my opinion that it is not necessary or appropriate that the county should own the property on which the construction takes place as to a non-profit hospital as distinguished from a publicly owned hospital. The fact that the act authorizes the issuance of the bonds or notes for the construction of a non-profit hospital indicates clearly to me that it was the intent of the legislature that the proceeds from the bonds or notes could be expended for property not owned by the county, city or town.

SCHOOLS

Authority of county board of education to purchase liability insurance for school busses. Does a county board of education have the legal authority to purchase liability insurance for school busses operated in the county for the transportation of children to and from school, as well as for school activity busses which are purchased by the high schools in the county from school activity funds and are used in transporting children to athletic events?

To: Nat S. Crews

(A.G.) I am of the opinion that a county board of education is without legal authority to purchase liability insurance for these busses. I believe that G.S. 115-374, 115-376 clearly places the responsibility, control, and management of the transportation of public school children in the State Board of Education and that the drivers of school busses are state employees. Of course the state may not be held liable for torts committed in the performance of its governmental function unless it has consented to liability. The only liability consented to by the State of North Carolina in regard to torts arising from the operation of its school busses is G.S. 115-345, which provides for the payment of certain specified medical or funeral expenses to parents or custodians of children who are injured or killed while riding on a school bus to and from school. It does not appear to me that this statute could be construed as a waiver of governmental immunity and therefore the rule of the recent case of *Stephenson v. Raleigh*, 232 N.C. 42, would be applicable to the subject situation.

Legislation with respect to unclaimed teacher's salary. Would a statute be constitutional which would authorize the Board of Education to pay from the unclaimed salary of a teacher who has disappeared and left the county the unpaid accounts to merchants and others which the teacher left?

To: J. V. Whitfield

(A.G.) Article I, Section 17, of the Constitution reads as follows: "No person ought to be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the law of the land." Our Supreme Court has held, in the case of *State v. Collins*, 169 N.C. 323, that the term "law of the land" is equivalent to "due process of law." In my opinion, the proposed law would violate the above section of the Constitution, and the proper remedy for the creditors of this teacher would be by way of appropriate action in the courts to collect their claims against this unclaimed salary.

Teachers and Principals; Dismissal. Does a teacher or principal who has been arrested and confined in jail and has been found guilty of public drunkenness thereby automatically forfeit his position as a teacher or principal?

To: H. E. Williams

(A.G.) The only way in which a teacher or principal can be dismissed is provided by law which you will find in G.S. 115-77. Under this section, the County Board of Education or the Board of Trustees of the City Administrative Unit are given the power to investigate and pass upon the moral character of any teacher or school official in such unit and dismiss such teacher or official if found to be of bad moral character after notice and hearing. The fact that a teacher or principal had been guilty of the conduct to which you refer would be important evidence which could be considered in passing upon the question as to his moral character.

Right to build on site not owned by school unit. May a board of education build a school in a national forest?

To: Clyde A. Erwin

(A.G.) G.S. 115-88 provides that the county Board of Education or the board of trustees of a city administrative unit shall make no contract for the erection or repair of any school building unless the site on which it is located is owned by the said board. You were, therefore, in my opinion, correct in advising the Board of Education of the county concerned that they could not legally construct a school building on property not owned by them which is located in a national forest.

Use of school buildings. Does a school board have the authority to rent a school building to a religious denomination for the purpose of holding church services for a limited period?

To: J. R. Davis

(A.G.) G.S. 115-95 reads as follows: "It shall be the duty of the county boards of education, as to county administrative units, and the boards of trustees, as to city administrative units, to encourage the use of the school buildings for civic or community meetings of all kinds that may be beneficial to the members of the community. The state board of education, and the county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other than school purposes." I think it is clear from the reading of this section that your school board may permit the use of one of its school buildings for religious purposes so long as such use does not interfere with the proper operation of the schools. If your board permits such use, I think there should be a clear understanding that it could be terminated at any time by the school board.

ELECTIONS

Local modification of registration laws. Would a legislative act which provided for certain local modifications of the present election laws, particularly the general laws concerning registration, be valid?

To: Raymond C. Maxwell

(A.G.) There is some authority to the effect that in the absence of constitutional inhibition, the legislature may pass election and registration laws of a local character if they merely regulate in a reasonable and uniform manner the election process and do not infringe upon the right to vote. It is reasoned that there may well be need for greater precaution in legislation for densely populated areas than for smaller towns, villages, or county districts. See 18 *Am. Jur.* 235; 29 *C.J.S.* 35; 91 *A.L.R.* 369; *Mason v. Missouri*, 179 U.S. 328, 45 L.Ed. 214; *Com. v. McClelland*, 83 Ky. 686; *People* ex rel *Johnson v. Earl*, 94 Pac. 294 (Colo.); *People v. Hoffman*, 5 N.E. 596 (Ill.); *Lankford v. County Comm'rs.*, 20 Atl.

1017 (Md.). However, cases from other jurisdictions are of little help in answering your inquiry.

With respect to the North Carolina Constitution, I call your attention to Article VI, which provides that "the General Assembly of North Carolina shall enact *general* registration laws. . . ." (Emphasis supplied.) I have found no North Carolina cases specifically construing that language in regard to legislation such as that suggested. I do call your attention to *Kornegay v. Goldsboro*, 180 N.C. 144, in which the Court held that the use of the term "general laws" in Sections 1 and 4 of Article VIII does not prohibit the enactment of legislation applicable to only one county in regard to the sale of bonds by political subdivisions therein. Of course, the factual distinction from the subject proposal is apparent, inasmuch as any local modification of the general election laws would affect general state elections as well as local elections in the county coming under the modification. The only cases concerning local modification of the registration laws concern special county elections, *R.R. v. Com'rs.*, 116 N.C. 563; *Whitehurst v. R.R.*, 146 N.C. 588, and so far as I know, no local modification that would affect general elections has been attempted before. In view of the many uncertainties I am hesitant to express an opinion, for, to my mind, the constitutional validity of such legislation is in doubt.

Necessity of petition before calling bond election. Is it necessary to file a petition with the Board of County Commissioners before passing a resolution to call an election on the question of aproving hospital bonds?

To: Dr. John A. Ferrell

(A.G.) So far as this state is concerned, the question of issuing hospital bonds is considered under G.S. Chapter 131, Article 13B (Cumulative Supplement of 1949). An examination of this article, and especially G.S. 131-126.23, convinces me that there is no necessity of having a petition filed by the people before the Board of County Commissioners orders such an election. It is true that this act refers to the County Finance Acts as to the method of holding the election, that is, for the election machinery, but I find nothing that includes the necessity of a petition which is required in certain instances under the County Finance Act. G.S. 153-91 provides that if a petition demanding that a bond order be submitted to the voters is filed, etc., then the bond order must be submitted to the voters. This deals manifestly with bonds that are issued to provide funds for necessary expenses and which otherwise would not be approved by the voters unless the petition is filed.

I think that it would be all right as a matter of policy if the commissioners wish to require a petition signed by a certain number of citizens, but I don't think the petition is necessary or that the legality of the ordinance or bond election would be in any wise affected if such a petition is not filed at all.

Expense for holding election on extension of corporate limits. A city holds an election for the purpose of extending its corporate limits as approved by G.S. 160-445 (Cummulative Supplement of 1949). The election is held under the supervision of the County Board of Elections. Does the city have any discretionary power to pay an additional amount over and above the amount of $7.00 for the services of the Chairman of the Board of Elections?

To: Zollicoffer and Zollicoffer

(A.G.) G.S. 163-12 provides that the chairman of a County Board of Elections "shall receive for his services, when actually engaged in the discharge of his duties, the sum of seven dollars ($7.00) per day." G.S. 169-448(f), among other things, provides: "All costs of holding such election shall be paid by the city or town." We think that the city would be liable to the County Board of Elections for the actual expense of the election, such as pertain to furnishing ballots and the various fees of officers for holding the election. We think the chairman of the Board of Elections is limited to $7.00 a day for the days in which he has actually been engaged in the discharge of his official duties in conducting the election.

PUBLIC WELFARE

Unexpended appropriations. May appropriations made by Article VI of Chapter 1249 of the Session Laws of 1949 entitled "State Aid and Obligations" to the Board of Public Welfare, which were unexpended at the end of the first year of the biennium, be carried over and expended during the second year of the biennium?

To: Dr. Ellen B. Winston

(A.G.) In my opinion such appropriations may, with the approval of the Director of the Budget, be carried over and expended during the second year of the biennium for the objectives and purposes for which the appropriations were made.

Under our Executive Budget Act, Article I, Chapter 143 of the General Statutes, unexpended balances in maintenance appropriations at the end of the biennium revert to the State Treasury to the credit of the General Fund or special funds from which the appropriation is made. See G.S. 143-18. There is no provision lapsing the appropriations at the end of the first year of the biennium, either in the Appropriation Act of 1949, Chapter 1248, or any other statute.

SANITARY DISTRICTS

Annexation of part of a sanitary district by a municipality. May an election be held to extend the limits of a city to include part of an adjacent sanitary district? If so, and if the result is in favor of annexation, what is the effect of the election on the district and on the outstanding bonds of the district?

To: Claude F. Seila

(A.G.) I assume that the election to extend the city limits is being held under the general law, G.S. 160-445, *et seq.*, rather than under a local act. This section provides that, after giving proper notice, "the governing body of any municipality is authorized and empowered to adopt an ordinance extending its corporate limits by annexing thereto any contiguous land or tracts of land not embraced within the corporate limits of some other municipality." A municipality is generally defined as a municipal corporation, but the authorities are divided as to whether a sanitary district is a municipal corporation. In *People v. Nelson*, 133 Ill. 565, for instance, the court said it is. In *In re Werner*, on the other hand, it was said that such districts, although in the nature of public corporations, "are not municipal corporations in the proper sense of that term." In view of the lack of agreement among the authorities, it cannot be said unqualifiedly that our Court, which has not passed upon the question, will hold one way or the other, but it is my opinion that sanitary districts were not within the definition of municipalities as it was used in G.S. 160-445, although the Supreme Court of this state has referred to a sanitary district as a quasi-municipal corporation. *Paper Co. v. Sanitary District*, 232 N.C. 421. You will note that the term "municipalities" is used throughout G.S. 160-445, *et seq.*, interchangeably with "city or town." See also G.S. 130-33. It should also be noted that the latter statute in effect permits the overlapping of sanitary districts and municipal corporations. For these reasons, I find no objection to extending the city limits to include a part of a sanitary district.

As to the effect on the district and on the retirement of bonds issued by it, the annexation of a part of the sanitary district would have no effect upon its existence or upon the bonds. It would continue to exist, even though a part of it is included within the boundaries of the city, until it is dissolved as provided by G.S. 130-57.1 or in some other manner as provided by law.

Sanitary districts as political subdivisions. Is a sanitary district an instrumentality of the State of North Carolina or is it a separate legal entity or political subdivision?

To: Edwin Gill

(A.G.) The General Sanitary District Law is Article 6 of Chapter 130 of the General Statutes. G.S. 130-39, in dealing with these districts, states: "Provided, the sanitary district board selected under the provisions of this article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary districts." These districts can perform sovereign functions of government, such as condemn lands, levy taxes on property and various other things of a governmental nature. You are advised that it is the opinion of this office that these districts are political subdivisions.

JUSTICES OF THE PEACE

Authority of justice of the peace to assign prisoner to work under State Highway and Public Works Commission. Has a justice of the peace authority to impose a sentence and assign a defendant to work under

the supervision of the State Highway and Public Works Commission?

To: John Paul Jones

(A.G.) G.S. 148-30 provides that the State Highway and Public Works Commission does not have to accept prisoners unless the sentence is for at least a minimum period of thirty days. This has been construed by this office to mean that a justice of the peace can assign a prisoner to work under the supervision of the State Highway and Public Works Commission if the sentence is as much as thirty days.

CLERK OF RECORDER'S COURT

Issuance of warrant by a deputy clerk of a recorder's court who is also on duty as a policeman. Is a warrant valid which is issued by a deputy clerk of a recorder's court who is also on active duty as a policeman or other law enforcement officer?

To: J. P. Bunn

(A.G.) It has been held by a number of courts that a clerk of a court, if given statutory authority to issue warrants, may validly perform this function. *State v. Dibble*, 59 Conn. 168; *State v. Van Brockley*, 217 N.W. 277; *Kreulhaus v. City of Birmingham*, 51 So. 297; *In re Durant*, 60 Vt. 176.

In view of the language of the court in *State v. Turner*, 170 N.C. 701, it is my opinion that either a clerk of a court or a police officer may lawfully issue warrants if he has the statutory authority to do so.

I might point out, however, that this office has consistently ruled that both a deputy clerk of a recorder's court and a town policeman hold offices of "trust or profit" within the meaning of Article XIV, Section 7, of the Constitution of North Carolina and one person may not hold both of these offices at the same time.

MARRIAGE LICENSES

Refusal of witnesses to marriage ceremony to sign the license. A couple was married after the issuance of a proper marriage license. For some reason the officiating minister did not have the witnesses sign the license at the time of the marriage. Subsequently the witnesses refused to sign, and the minister has signed and returned the license with a letter to that effect. Is the marriage valid and legal?

To: Margaret B. Moore

(A.G.) The Supreme Court of North Carolina has held many times that a regularly ordained minister, justice of the peace, or other proper officer can legally marry people without any license at all. In this case a license was procured, but the witnesses have refused to sign the license. In our opinion this does not make any difference at all, nor does it affect the legality of the marriage. A register of deeds, under these circumstances, should file the license, together with the minister's letter of explanation that the witnesses refused to sign.

LICENSE TAXES

Outdoor theatre located partly within and partly without city limits. If an outdoor theatre is so located that a part of its grounds and equipment is within and a part outside the city limits, is the operator subject to a city ordinance levying a license tax on outdoor theatres?

To: R. A. Collier

(A.G.) In my opinion the operator of the outdoor theatre is, under the facts outlined above, engaged in that business within the city. It is true that a portion of that business is carried on without the city limits, but that does not convert the activity carried on within the city limits into some type of business activity other than a theatre business. I know of no rule of law which requires that any given percentage of a taxpayer's business must be carried on or conducted within a taxing jurisdiction to subject him to the license taxes of said taxing jurisdiction.

PROPERTY TAXES

In whose name certain property should be listed. Certain hatcheries furnish chicks and feed to various persons in the same county who act as "growers." When the chicks are ten to twelve weeks old they are put on the market and when sold the hatcheries pay the "growers" an agreed amount for raising them. In whose name should the chicks be listed for taxes?

To: J. C. Grayson

(A.G.) If I rightly understand the facts presented, it appears that the hatchery continues to be the owner of the chicks while they are being brought to a marketable size and that the "grower" is simply the custodian who is working for the hatchery under an agreement for compensation. I am, therefore, of the opinion that the chicks should be listed by the hatcheries as provided by subsection (1) of Section 802 of the Machinery Act (G.S. 105-304).

Farm products owned by nonresident. A foreign corporation, or a nonresident, owns quick frozen foods which were grown by him during the preceding year. These foods are on storage in a city in this state. Are they subject to ad valorem taxation?

To: C. D. Taliaferro

(A.G.) Subsection (12) of G.S. 105-297, being subsection (12) of section 601 of the Machinery Act, provides: "All cotton, tobacco or other farm products owned by the original producer, or held by the original producer in any public warehouse and represented by warehouse receipts, or held by the original producer for any cooperative marketing or grower's association, shall be exempt from taxation for the year following the year in which grown, but not for any year thereafter." The Supreme Court seems not to have passed upon the question as to whether this exemption would apply to nonresidents or foreign corporations. In view of the doubt as to whether the property is entitled to exemption and in view of the rule that exemptions from taxation are to be strictly construed against exemption and in favor of taxation, *Latta v. Jenkins*, 200 N.C. 255, 156 S.E. 857, I feel that you would be justified in listing the property for taxation and leaving it to the taxpayer to raise the question of the right to exemption, since if exemption is allowed the question will not be definitely settled.

Where certain property should be listed. Residents of a town own certain construction and grading equipment, which they use throughout the county in which the town is situated and adjoining counties. They have no regular office or storage space outside the town. Part of the equipment is occasionally used in the town, and part of it is occasionally parked near the homes of the owners. However, for the most part, the equipment is left out on the job. Is the property subject to taxation by the town?

To: Lafayette Williams

(A.G.) I am of the opinion that, under the facts stated, the property is subject to taxation by the town.

POLL TAXES

Members of the National Guard. Are members of the National Guard exempt from payment of poll tax under G.S. 105-341(4).

To: John H. McMurray

(A.G.) It is my understanding that the National Guard when not on active duty as a result of being called out by the United States Army is a reserve component of the Army of the United States. I am of the opinion that members of the National Guard when on active duty with the Army are members of the Armed Forces of the United States and are exempt from payment of poll taxes under the provisions of the cited section. I do not believe, however, that the section applies to the members of the National Guard unless and until they are called up for active duty.

COUNTY FINANCES

Expense of mapping county for tax purposes. Does the Board of Commissioners of a county have the legal authority to enter into a contract for the mapping of all the unmapped land in a county without special legislative enactment? If so, may it enter into a contract therefor on a basis which it considers fair and reasonable, or must it advertise for bids on proposals?

To: Nat S. Crews

(A.G.) The expense of listing and assessing property for taxation is a necessary expense, and I am of the opinion that the expense of preparing tax maps, which are of great assistance in carrying on this work, is likewise a necessary expense. I am, therefore, of the opinion that this expense may be borne within the fifteen-cent general fund constitutional limitation without special legislative authority therefor, or beyond the fifteen-cent constitutional limitation with special legislative authority.

Subject to research which might throw additional light on the question, I am of the opinion that the contract for tax mapping property within your county would be a contract for services and not a contract for "repair work, or purchase of apparatus, supplies, materials, or equipment" and therefore not subject to the provisions of G.S. 143-129.

BAIL BONDS

Forfeiture of bond caused by military orders. Where a soldier on active duty in the military service is under bond to appear in a recorder's court for an alleged violation of the law and pending the time for his appearance he is transferred to another post outside of North Carolina, is his bondsman liable under a *sci. fa.* for his appearance in court?

To: Neill McK. Ross

(A.G.) I call your attention to section 513 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 *U.S.C.A.* 513(3): "Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their obligation the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail."

The statute makes no distinction as to whether the principal was already in the service at the time the bond was given or was involuntarily inducted afterwards. The cases decided under the statute appear to have concerned the latter situation, and under such circumstances the surety is exonerated, since involuntary induction is a contingency which could not be prevented or provided against. On the other hand, where the principal is already in military service, it would appear that the surety must necessarily assume the risk that the principal would be transferred by the federal government to some point beyond the jurisdiction of the court, and having thus assumed such a risk, could not plead exoneration by an act of law within the meaning of *State v. Pelley*, 222 N.C. 684. However, I have been able to locate no authority in support of such a conclusion, and so express no opinion thereon.

Nevertheless, there are certain qualifications to a defense by a surety that the principal cannot stand trial "by reason of . . . military service," even when relying on the Soldiers' and Sailors' Civil Relief Act. For instance, it has been held that military service alone is insufficient to prevent forfeiture of bond without further showing that because of such military service the principal was actually prevented from attending trial. Furthermore, it has been held that the sureties must show that they have made proper effort to secure the person of the accused from the military authorities.

ADOPTION

Effect of temporary absence in military service on right to adopt. A resident of North Carolina is temporarily absent from the state in military service. He will be joined in the state in which he is now stationed by his wife, who expects to return to North Carolina as soon as her husband is sent to another place or is permitted to return to this state. Does such a person have the legal right to adopt a child under our law in view of the provisions of G.S. 48-4(c)?

To: W. W. Cohoon

(A.G.) It is my opinion that this person who is a resident of this state would have the legal right to adopt the child and would not be prevented from doing so by the provisions of the statute referred to above. The Commissioner of Public Welfare suggests that the petition be filed before the wife of the proposed adopting father leaves the state.

House Passes Stream Pollution Bill

(Continued from page 8)

prove the plans for a new disposal system and that such approval shall be binding for such time as may be specified in the approval. Such approval may be given, however, only where the commission finds that the proposed plant will effectively protect the waters and will require such a substantial expenditure by the applicant that it is fair to give him reasonable protection against being required to make further expenditures in connection with the same waste treatment problem.

Further procedural requirements are that the commision keep a mailing list of all persons interested in its proceedings, that it publish and mail to such persons all its rules and regulations and give notice of all its official acts of general application, and that it follow specified procedures in conducting its hearings. Most of these provisions are related to the requirements applicable to administrative agencies of the federal government.

Conclusion

House Bill 53 as amended represents an interesting answer to the perennial problem of how to control the actions of an administrative agency so as to prevent arbitrariness and discrimination, while at the same time leaving it free to take necessary action to meet unforeseen problems which might arise. The procedural requirements of the bill provide for protection of individual rights at every step of the way, and the standards by which the commission must make its decisions are set forth as specifically as possible. No other administrative agency in North Carolina has been given such a complete chart by which to chart its course. Whether the bill's requirements will prove too stringent, in practice, to permit effective action by a commission expected to meet only at intervals of several months is a question that only experience can answer.

Regardless of the answer which time gives to this question, it is apparent that the bill represents a firm beginning to a solution of the stream pollution problem in North Carolina. If provided adequate funds with which to carry on its work, the new commission may be expected to proceed at an accelerated pace upon the basic studies initiated by the State Stream Sanitation and Conservation Committee. Under the permit provisions of the bill, the commission should be able to hold pollution at the level at which it now stands. And although there are fairly serious hobbles in the way of enforcement action to correct existing pollution problems, the establishment of a permanent agency with which to deal is expected to accelerate voluntary corrective action on the part of industrial and municipal waste disposal agencies.

The Minutes Tell the Story

(Continued from page 3)

to be used for support of the recreation system, the City of *Statesville* must seek other sources of revenue for its program. However, in the February 6 election over 60 per cent of the voters favored the proposal that the city should continue to operate a recreation system with funds from parking meters. There is another notable feature about the Statesville election—the participation of the electorate. Seventy-one per cent of the voters registered for the election exercised their franchise in this election.

Alderman of *New Bern* have regulated the operation of taxicabs in their city through a new ordinance requiring certificates for taxicab operation. The Board of Aldermen is given the power to issue the one year certificates on the basis of public convenience and necessity.

Chapel Hill's council recently requested the General Assembly's permission to zone an area for four miles beyond its limits, rather than the one mile authorized by a special act in 1949. The four-mile belt would not include the town of Carrboro or any land outside of Orange County. To insure fair treatment of property in the area, the proposed bill would require that the town's zoning commission and its zoning board of adjustment both be enlarged to include three additional members, who would be residents of the area affected and would be appointed by the Orange

County Board of Commissioners. Under the proposal Chapel Hill would have authority to zone the new Chapel Hill-Durham highway as it traverses Orange County, as well as to exercise some measure of control over the building boom taking place beyond its immediate limits. The General Assembly has already passed a bill granting the authority requested.

Meanwhile, *Durham County* continues to hold public hearings on its zoning ordinance authorized under a special act of the 1945 General Assembly. Durham's ordinance will allow it to protect the Durham County section of the Durham-Chapel Hill highway. If this ordinance, which divides the county into 19 different districts, is enacted, Durham County will be the first county in the state to have a zoning ordinance.

The *Durham* city zoning ordinance has also been presented to the Board of Aldermen and hearings are being held about it. The ordinance was prepared under the supervision of City Planner Frank L. Dieter, who recently resigned to become assistant planning director of Westchester County, New York. The plan provides for 15 types of zones, including 4 different classes of one-family dwelling zones, 1 two-family zone, 4 classes of apartment zones, 4 classes of commercial zones, and 2 classes of industrial zones. Passage of the ordinance would result in creating and preserving population density districts, setting up of a schedule of specific commercial uses permitted in each commercial zone, and requiring all new commercial and industrial developments to provide adequate parking facilities.

Police Executives Plan Local Schools

(Continued from page 6)

Pines. Nash: G. O. Womble, Sheriff; J. I. Nichols, Chief of Police of Rocky Mount; Norman Gold, Judge of County Recorder's Court; T. G. Dill, Solicitor of County Recorder's Court. New Hanover: J. J. Padrick, Chief of Police of Wilmington; Bruce Valentine, Chief of Police of Carolina Beach. Orange: W. T. Sloan, Chief of Police of Chapel Hill. Pasquotank: A. D. Baume, Chief A.B.C. Officer; W. C. Owens, Chief of Police of Elizabeth City. Person: C. C. Holeman, Sheriff; G. C. Robinson, Chief of Police of Roxboro; G. L. Burke, Jr., Judge of County Recorder's Court. Pitt: R. W. Tyson, Sheriff; G. C. Langston, Chief of Police of Greenville; W. J. Bundy, Solicitor of Fifth Judicial District. Randolph: C. J. Lovett, Chief of Police of Asheboro; W. E. Perdue, Lieutenant of Police Department of Asheboro. Robeson: M. G. McLeod, Sheriff; W. M. Harris, Chief of Police of Lumberton; H. A. McKinnon, Jr., Assistant Recorder; J. W. Campbell, Solicitor of Recorder's Court. Rockingham: M. F. Loftis, Chief of Police of Reidsville. Richmond: L. S. Allen, Chief of Police of Rockingham. Rowan: K. E. Clarke, Lieutenant of Police Department of Salisbury. Scotland: T. W. Davis, Chief of Police of Laurinburg; L. T. Rollins, Lieutenant of Police Department of Laurinburg. Stanly: L. D. Cain, Chief of Police of Albemarle; W. L. Coble, Solicitor of Recorder's Court. Surry: Frank R. Freeman, Judge of Recorder's Court; M. W. Boone, Chief of Police of Mount Airy. Union: B. L. Wolfe, Sheriff; C. M. Shannon, Chief of Police of Monroe. Wake: R. J. Pleasants, Sheriff; R. R. Hargrove, Chief of Police of Raleigh; C. C. Cunningham, Judge of Recorder's Court; Alfonzo Lloyd, Solicitor of City Court of Raleigh; W. L. Pritchett, Chief of Police of Fuquay Springs; R. A. Cotten, Solicitor of Recorder's Court. Washington: E. L. Owens, Judge of Recorder's Court. Wayne: H. L. Morris, Chief of Police of Goldsboro; T. W. Wilson, Sergeant of Police of Goldsboro. State Highway Patrol: Colonel J. R. Smith, Commanding Officer, Raleigh; Major D. T. Lambert, Executive Officer, Raleigh; Captain C. A. Speed, Asheville; Captain W. B. Lentz, Greensboro; Captain S. H. Mitchell, Greenville; Captain W. F. Bailey, Fayetteville. State Bureau of Investigation: Eugene C. Fender, Raleigh; L. P. Phillips, Apex; L. E. Williams, High Point; R. A. Allen, Reidsville; R. W. Turkelson, Hickory.

GOVERNMENTAL LABORATORY BUILDING
INSTITUTE OF GOVERNMENT

INSTITUTE OF GOVERNMENT SERVICES

		TO CITY, COUNTY AND STATE OFFICIALS	TO CITIZENS	TO SCHOOLS
COMPARATIVE STUDIES of the structure and workings of government in the cities counties and State of North Carolina	SET FORTH IN	Guidebooks	Study and Discussion Programs	Supplementary Texts
	TAUGHT IN	Schools and Conferences	Institutes for Public Affairs Committees	Training Courses for Civics Teachers
	DEMONSTRATED IN	Governmental Laboratory and Demonstration Offices	Governmental Laboratory and Demonstration Offices	Governmental Laboratories and Demonstration Offices
LEGISLATIVE SERVICE to inform officials, citizens and schools of new laws in the making	THROUGH	Daily Bulletins	Periodic Summaries of Daily Bulletins	Periodic Summaries of Daily Bulletins
		Summary of New Public Laws	Summary of New Public Laws	Summary of New Public Laws
		Summaries of New Local Laws affecting each County and City	Summaries of New Trends in Local Legislation	Summaries of New Trends in Local Legislation
		State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws
CLEARING HOUSE OF INFORMATION between city halls, county court houses and state and national capitols to keep officials, citizens and schools informed of new developments in government	THROUGH	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.
		Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws, Programs and Rulings
		Monthly Magazine and Special Studies	Monthly Magazine and Special Studies	Monthly Magazine and Special Studies
		Federal and State Services to Local Units	Federal and State Services to Local Units	Federal and State Services to Local Units
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