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Cover: Here are examples of the four services the Institute of Government's Legislative Staff offered during the 1951 General Assembly. See article on page 1.

INSTITUTE OF GOVERNMENT LEGISLATIVE SERVICE - 1951

Organization and Objectives

For the past eighteen years the Institute of Government has reported the day by day operations of every session of the North Carolina General Assembly to the members of the legislature themselves, to state officials, and to local officials in every county and town in North Carolina. When each session is adjourned the members of the Institute staff take critical inventory of their work in Raleigh, inviting criticism helpful in extending or improving the service, and begin to make plans for the session two years ahead. This year we decided to summarize our operations in the form of an illustrated article, thinking that the people who use our legislative service might be interested in what we try to make of it and in how we gather and publish the information that appears in our legislative publications.

The reasons for the service go a long way back in the Institute's history, but an incident from a recent session of the General Assembly illustrates the grandfather of all the reasons for the service. Before the 1949 legislature convened, a detailed report and set of recommendations by the State Education Commission had been printed for use by members of the General Assembly in their deliberations on public school matters. Almost as soon as Senator J. C. Pittman organized his Senate committee on education that year he appointed a subcommittee to study this 450-page report, and when he made his appointments he expressed the fervent hope that the subcommittee would be able to reduce the substance of the report to a single sheet of paper. This demand for brief and understandable explanations of propositions presented to the General Assembly is acute among the members themselves and essential to citizens outside the legislative halls interested in what is happening there. North Carolina newspapers do a remarkably able job of covering legislative matters, but a great deal of the work of the General Assembly, often of vital importance to limited groups or particular localities, has little news value as that term is commonly understood. Consequently the papers are inclined to treat local legislation and highly



Months before the session convened we began planning for our work in Raleigh.

technical "lawyers' bills" in a summary manner. Members of the House and Senate, crowding their days and nights with committee meetings, conferences, and attendance at session, find it almost impossible to read every bill with care. Yet they are expected to vote on every measure with intelligence. County and city officials throughout the state, charged by virtue of their offices with administering the law and having to know what the law is, find themselves hard put to keep abreast of the proposals suggested for enactment. State officials face the same situation. Often proposals are of paramount significance to the operation of their offices and departments, and it is essential that they know what is happening. In brief, accurate information is needed and it is needed quickly, for it does not take long for a bill to become law or for another bill to meet legislative death.

People often ask what the Institute of Government's legislative service is supposed to be doing. Why does the Institute send staff members to Raleigh during the sessions of the General Assembly? We try to answer that question by reciting what we

believe to be the need for accurate and rapid reporting of legislative matters illustrated here. We are in business as an instrument of the state to try to help members of the legislature, public officials, and the people in general keep up with what is going on. State and local officials receive their bulletins without additional charge by virtue of their



We assigned Shep Bryan and Basil Sherrill to report the work of the Senate.



Bills, law books, journals piled high. Sometimes it was late in the evening before the bills were digested.

official positions. In an effort to offset the heavy expense involved in carrying on our regular service, for set fees we supply bulletins and special information services to a number of business firms and private individuals both in North Carolina and outside. In an article written after the 1945 session, Peyton Abbott expressed our objective in this way: "To carry the greatest amount of legislative information to the greatest number of state and local officials possible within our budgetary limitations. Our goal dictates our watchwords: conciseness, completeness, economy, and impartiality . . ."



Staff members did all the proof-reading. In the last two hurried weeks Charles Knox and Cliff Bumgarner, new members of the Institute, came to Raleigh and gave us help with this endless job.

Months before the session convened we began planning for our work in Raleigh. This planning involved a great deal of estimating—the probable duration of the session and the probable volume of legislation. There were paper and envelopes to be purchased. We had to estimate costs, locate office space near the capitol and living quarters for staff members. We had to recruit part-time workers to help us with the stenographic and clerical parts of our work, and, of major importance, we had to train ourselves for the bill digesting and reporting process.

The easiest way to explain our legislative service is in terms of the four separate publications we issue during each session of the General Assembly. The basic publication is called the Daily Bulletin. From this stem the other three, a Weekly Summary of matters of general importance, a separate Bulletin of Local Legislation issued weekly for each county in the state, and a Final Summary issued when the session has adjourned. To handle this work in 1951 we brought to Raleigh a staff of six lawyers: J. Shepard Bryan, Jr., George H. Esser, Jr., Henry W. Lewis, Ernest W. Machen, William E. Poe, and Basil L. Sherrill.

Our day to day operations were concentrated on the work involved in writing and mimeographing the Daily Bulletin. We assigned Shep Bryan and Basil Sherrill to report



If existing sections of the General Statutes were to be amended they had to be checked.

the work of the Senate and George Esser and Bill Poe to report the work of the House. One of these men in each house sat at the press table, took notes, and observed each meeting of the body to which he was assigned. When a bill was introduced, through the courtesy of the administrative staffs of the House and Senate, our reporter at the press table obtained a full text copy for our files. In most cases the representative or senator introducing the bill had had it drafted in the Attorney General's office where the clerical staff had carefully stamped one of the necessary copies for the Institute. Thus, unless for some reason there were insufficient copies, we were assured of a copy of each bill as soon as it was introduced. As a day's session moved forward bills were introduced, they were reported from committee, received from the other house and assigned to committees, possibly they were amended, and other bills were voted on. All of these things are important in the process of enactment, and a bill's position at a particular time can be of great significance, just as it is of great importance to know whether amendments have been adopted, what report a committee has given a bill, and what final action is taken. As these things happened, the Institute's reporters jotted down notes as rapidly as possible. Four or five sessions ago when Institute personnel available for legislative work was very limited, one man in each house was forced to handle the entire assignment alone. Fortunately it is now possible for us to assign two men to each house. This meant that by checking on each other's notes we were able to insure



Although he remained in Chapel Hill, Alex McMahon helped us with bills dealing with municipal problems.

greater accuracy in reporting, and during long debates, Bill Poe in the House, for example, was able to slip back into the principal clerk's office and make copies of amendments or check up on calendar action while his partner at the press table, George Esser, was free to record what was happening on the floor. This process went on each day of the session in each house. Sitting at the press table with the representatives of the newspapers and wire services, the Institute's reporter was able to keep up with what the newsmen had learned in their daily rounds of committee meetings and off-the-record sessions at local hotels and restaurants. Often this information was of great assistance to us in understanding the policy behind new bills and proposed amendments.

As soon as the sessions of the houses were over—around 1 p.m. until toward the end of the session—the reporters returned to the Institute's temporary Raleigh quarters, bringing their notes and the copies of bills introduced that day. This year we made a determined effort not to miss any meals, so if it was late in the day they grabbed some lunch before starting on the afternoon's work, on heavy days they would start work before having lunch. For the Institute this after-session work was the most important single part of our operations. With bills, law books, and journals piled high, sometimes it was late in the evening before all the bills were digested. Ernest Machen and Henry Lewis frequently left their regular jobs to help the reporters handle the new bills.

In digesting a bill the reporter first read it carefully, making notes

of the changes or additions to the law the bill was designed to effect. If existing sections of the General Statutes were to be amended they had to be checked, and the significance of the changes noted. Most important, the reporter had to try to understand just exactly what the effect of the bill would be if passed. Having gone through this process he wrote the digest of the bill identifying it by the name of its sponsor and its exact title. The language used in these digests was important. We tried hard to write concisely and clearly, keeping in mind that our work was designed for all kinds of readers, not for lawyers alone. Often this proved to be difficult. The hardest struggles came over extremely long and detailed bills setting up new agencies or rewriting whole chapters of the existing law. In these cases we tried to assign the bill to the staff member with widest experience in the field concerned. When an Institute staff member's regular work had led him into some specialized field, even when he did not happen to be working with our legislative staff, we felt that his help in digesting bills in the field of his specialty produced the most reliable work. For example, Alex McMahon, a staff member who remained in Chapel Hill, had devoted considerable time to matters affecting municipal street finances. It was only natural for us to ask him for help with bills in that field. His assistance with the Powell Bill, as an example, was particularly helpful. On the other hand, George Esser had worked ex-

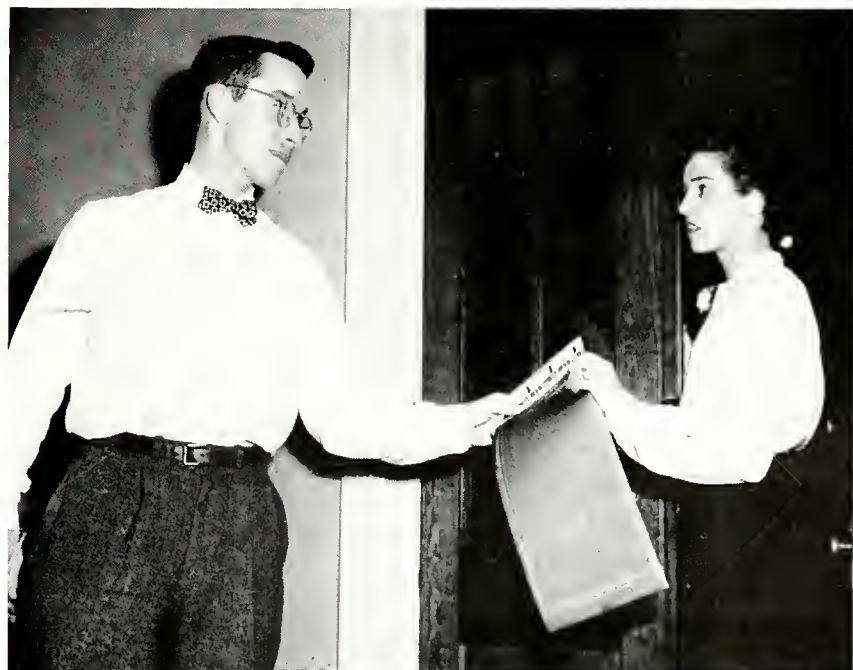


The reporter had to try to understand just exactly what the effect of the bill would be.

tensively with city charters, municipal governing bodies, and other city and town problems, so he was usually assigned the job of digesting intricate legislation in those fields. Of course, it was not always possible to allot bills in this way, and each staff member was expected to take on any bill that might happen to fall to his lot.

Once a reporter had finished writing his digest he passed it on to another staff member, usually Henry Lewis this year, for suggestions both as to substance and form.

After the new bills had been digested, the reporters for each house turned to making up what we called "calendar action." This was the daily



We measured progress by the number of stencils completed.



It did not take long to estimate that Mrs. Whitehead needed only 20 minutes in which to run off the 1300 copies of each stencil used for our daily mailing.



Assembling, stapling, folding, stuffing into envelopes . . . Next to accuracy, speed had to be our objective. Eighteen women, most of them with other daytime jobs, came on alternate nights in shifts of nine to help us. Their concern for the neatness and legibility of the final product contributed materially to the process.



Envelopes had to be tied by towns to expedite delivery.



The post office wanted to know the weight of each piece of mail.



The night's work for the ladies is almost over . . . Henry Lewis distributes the time sheets.



Sambo Wilder, veteran mimeograph operator, commandeered as many staff members as he could find to help load the mail to the post office.

report of what happened that day with reference to individual bills considered. This information was organized and written from the notes the reporters had made during the day's meeting. As the session grew older, more and more time was spent in discussing bills on the chamber floors, consequently the calendar section of our Daily Bulletin grew longer and longer. Here our readers could find the substance of amendments, what the committees did with respect to bills, what bills had left one house and arrived in the other, and what bills had passed or failed.

Finally, and sometimes it was late in the evening after the session, all this material, together with the digests of new bills, was typed on stencils. Our regular secretaries did most of this work, but when other jobs kept them late, we had the assistance of Miss Elizabeth Flournoy, Mrs. Essie Goodman, and Mrs. Billie Norwood. All of this typing called for a high degree of accuracy. Again the staff members took over, for it is an Institute tradition that staff members do all of the proof-reading.

Sometimes by 5 p.m. Mrs. Doris Whitehead, one of our mimeograph operators, was able to start running off the stencils, but as the work piled higher, it was often much later. We measured progress by the number of stencils completed. With a constant weather eye for the time we could get a little sleep, it did not take us long to estimate that Mrs. Whitehead needed only 20 minutes in which to run off the 1300 copies of each stencil used for our daily mailing. On Mondays when the legislature customarily met at 8 p.m. all this work had to be done after adjournment that night. Frequently this meant that it was far into Tuesday morning before we were able to get to bed.

On normal days, by 8 or 9 p.m. the bulletins had been mimeographed and were ready for assembling, stapling, and stuffing envelopes for mailing. Next to accuracy, speed had to be our objective, for the Institute has always felt a keen responsibility for getting the bulletins to our readers as quickly as possible. Eighteen women, most of them with other daytime jobs, came on alternate nights in shifts of nine to help us assemble and mail the bulletins. One of these faithful assistants, Mrs. Virginia Perry, had worked with us through three sessions prior to this one, and several of them had worked with us in 1947 and 1949. They worked with speed, and their concern for the neat-



For her third session Mrs. McGowan carried on single-handed the tedious task of posting cards each day to maintain a current record of the exact status of each bill.

ness and legibility of the final product contributed materially to the process. As fast as a bulletin was assembled and stapled it was folded and placed in an envelope already addressed from our master file in Chapel Hill by Mrs. Julie Morrissey. To help the post office these filled envelopes had to be tied by towns to expedite delivery. We became one of the Raleigh post office's best customers. Weighing the mail was an important step in each night's routine,

because the post office wanted to know the weight of each piece and the number of pieces in the pound. When all this had been done and with the bulletins packed for mailing, Henry Lewis doled out the time sheets, Sambo Wilder, veteran mimeograph operator of many sessions, commandeered as many staff members as he could find to help load the mail to the post office. About 900 Daily Bulletins were sent by mail, and the following morning Henry



Mrs. Ratliff, serving her first session as office manager, Mrs. McGowan, and Henry Lewis conferred frequently and long over puzzling amendments and how to keep our records straight.



Special subscribers required a great deal of attention. We all pitched in to see that special orders for bills and requests for information were filled.

Worth, our efficient messenger, delivered copies for members of the legislature and for all state offices and departments in Raleigh.

This was the principal daily process, but there was a parallel job going on in our office all the time. For her third session, Mrs. Mildred McGowan carried on single-handed the tedious task of posting cards each day to maintain a current record of the exact status of every bill. Mrs. Bobbie Ratliff, serving her first session as office manager for our legislative service, devoted much of her time to keep a journal against which we were able to verify the status of any bill at any time. She, Mrs. McGowan, and Henry Lewis conferred frequently and long over puzzling amendments and how to keep our records straight. Those records took on great significance when we were asked questions about particular pieces of legislation. We knew that we could rely on them, a fact that made it possible for us to give newspapers, officials, and all sorts of interested people accurate and current information at all times. On Saturdays, these records assumed an independent importance in the publication of the bulletins of local legislation.

Our special subscribers required a great deal of attention. Often we received long lists of bills they wanted copied, and at other times they would ask for copies of amendments and committee substitutes. Local officials frequently asked for help in interpreting the status of proposals

in which they had interest. Members of the legislature would consult us for information about local legislation for their own and other counties. We all pitched in to see that special orders for bills and requests for information were filled.

On Thursday night each week our staff held a sort of conference to discuss what we considered the most interesting and significant developments in legislative affairs up to that time during the week. From these discussions came tentative lists of subjects to be analyzed for possible use in writing our informal Weekly Summary of matters of general interest. Each staff member would



On Saturdays every staff member did yeoman service. Bill Poe is correcting a stencil.

agree to take certain subjects as his particular responsibility for that week's Summary. Shep Bryan, for example, would work on happenings in the field of highway safety, Bill Poe would take liquor legislation, and Basil Sherrill would take matters of special interest to local officials. By Friday night this tentative list of subjects might need considerable revision, but generally we were able to hold to the main points agreed upon on Thursday night. When Friday's Daily Bulletin had been written, each staff member wrote sections of the Weekly Summary on the subjects assigned to him. Invariably in an enterprise of this kind there is too much copy, and our experience did not vary from the rule. Our two-page limit on the Weekly Summary was a challenge, and the tightening and abbreviating process was painful. One member of the staff, usually Henry Lewis, would take the material submitted by the other staff members and work it over to attain a fairly consistent style. Miss Elizabeth Flornoy would come in late on Fridays and cut the stencils for this publication. No matter how late the hour Mrs. Whitehead and Sambo Wilder were there to mimeograph the 6,000 copies needed for mailing on Saturday.

Even though the House and Senate normally held only the most abbreviated of sessions on Saturday mornings, Saturdays were always busy days for the Institute staff. This was the day set aside for publishing the local legislation bulletins for each county. The records of individual local bills Mrs. McGowan had been keeping county by county all week

(Continued on page 16)



For more than a month before adjournment Ernest Machen had been working on our Final Summary.

THE CLEARINGHOUSE

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

Building Codes

Virtually all of North Carolina's larger cities regulate the construction of buildings within their limits, according to a comprehensive report compiled and issued recently by the Division of Housing Research of the federal government's Housing and Home Finance Agency. The report indicates that all 82 of the state's municipalities with populations greater than 2,500 and 58 of the 126 towns with populations between 1,000 and 2,500 issue building permits before construction begins.

North Carolina is one of 11 states which have state building codes, the report declares. In addition, 74 of its cities with populations over 2,500 and 3 towns with populations between 1,000 and 2,500 have building codes of their own. Of these, 8 codes are based on the National Building Code issued by the National Board of Fire Underwriters, 1 is based upon the Pacific Coast Building Officials Conference Code, and 13 are based upon the Southern Standard Building Code prepared by the Southern Building Code Congress.

The report provides for the first time factual information on the extent and nature of building regulations in the United States, as a background for future administrative and technical research in the control of building construction. Over the country as a whole, the federal agency found that 3,014 municipalities of over 2,590 population and an additional 1,833 towns with populations over 1,000 issue building permits. Two thousand, two hundred and thirty-three of these cities and towns have building codes, of which 36 are based on the Building Officials Conference of America Building Code, 235 on the National Building Code, 548 on the Pacific Coast Building Officials Conference Code, 249 on the Southern Standard Building Code, 41 on the Suburban Building Officials Conference Code. A total of 224 cities have adopted the National Electrical Code.

New York, Massachusetts, Connecticut, Ohio, Indiana, Wisconsin, Kentucky, Tennessee, Alabama, and New Mexico are the only other states besides North Carolina with statewide

codes. In addition to this code, North Carolina law requires every city with a population of over one thousand to have a building inspector (G.S. 160-115, 160-118), the Fire Chief having this duty unless a separate inspector is named. Everyone wishing to build inside a city must apply to this inspector for a permit; the inspector must then make inspections while construction is in progress and issue a certificate of occupancy at completion if the building complies with state law (G.S. 160-126). It is a statutory misdemeanor for the local legislative body to fail to name such an official (G.S. 160-119) or for him to fail to carry out his duties properly (G.S. 160-120).

Waynesville - Hazelwood Consolidation

(Note: This proposal was defeated in the May 26 election by a vote of 342 to 278.)

If the voters of the town of Hazelwood approve in an election to be held on May 26, the town will be merged into the town of Waynesville and an unusual joint enterprise aimed at eliminating conflict between the two municipalities will be completed. Authority for the consolidation was granted by the North Carolina General Assembly (Ch. 603 of the 1951 Session Laws) at the request of both municipalities following an exhaustive study by a commission appointed by both towns.

Because of their very proximity, problems arose between the two towns which were difficult to solve by the joint action of two individual governing bodies. Most serious of these problems was the public water supply. It had become apparent that the Waynesville system could not long continue to sell water to the town of Hazelwood without increasing its own facilities, and engineering studies indicated that Waynesville was furnishing water to Hazelwood at too low a cost. While Hazelwood resisted attempts to increase the price of the water, it was also apparent that the cost of constructing its own water

system would be very great. In addition, complications arose in the joint sewer problems of the two towns because certain newly-incorporated areas of Waynesville drained into the Hazelwood system.

Before irrevocable decisions by either town were taken to expand these facilities, the two boards of aldermen decided to appoint a commission to examine the possibilities of consolidation. Each board appointed three members to the commission and these members appointed a seventh member to serve as chairman. After a very careful study of the entire situation, the commission recommended to the boards that the two towns merge, as the only solution by which advantages would accrue to the citizens of both towns. The report cited, among other things, that (1) the cost of constructing a separate water system for Hazelwood would be unnecessarily expensive, (2) Hazelwood could retain its corporate existence only by increasing the cost of water or increasing its tax rate, (3) consolidation would eliminate all future conflict concerning the sewer lines, (4) planning and zoning for the two-town area would be facilitated by merger, (5) street funds could be more efficiently spent and that more effective traffic plans could be put into effect, (6) a consolidated town could better afford a sewage disposal plant which is rapidly becoming a necessity, (7) more adequate police protection would be possible, (8) recreation facilities would be easier to secure, and (9) that the overall costs of municipal management would be decreased.

Under the proposed charter as contained in the legislative act, a municipal election is to be held on July 17 or 24, if Hazelwood approves the consolidation. A board of five aldermen to serve two year terms is to be selected by the voters of the entire town, three of the aldermen to come from the area now roughly composing Waynesville and two from the area now roughly composing Hazelwood. The mayor will be elected from the town at large, and the city manager form of government will be in effect.

The consolidated municipality will

have a combined population of 7,069 and a combined assessed valuation of over five million dollars, and it will become the fourth largest town in western North Carolina.

School for Legislators

The Commonwealth of Massachusetts recognized the importance of instructing freshmen legislators in their work just as in North Carolina the Institute of Government through its guidebook of legislative practice and procedure and Secretary of State Thad Eure through his sessions with new members of the House of Representatives do. For sixteen years the Clerk of the House of Representatives, Lawrence R. Grove, has been holding classes in the Capitol. The sessions last for about eight weeks beginning at 2:30 in the afternoon and sometimes lasting two hours. This year legislators who attend a majority of the classes will receive university extension certificates. In class the legislators study the process of a bill's becoming law and the peculiarities of the Massachusetts rules which, for example, prevent any measure from ever being killed in committee.

Deputette

For the first time in its history, Surry County has a "deputette," Mrs. Betty Robertson. Sheriff Sam Patterson appointed her because he felt there were many instances in which he needed a woman on his staff. For instance, a "deputette" would be available to search women prisoners and to escort them to state institutions. Mrs. Robertson has often been called on to perform such tasks for Sheriff Patterson.

Charlotte Truck Traffic

Mr. Henry Yancey, city manager of Charlotte, reported the results of a recent traffic survey of Charlotte in the city managers' publication, *Public Management*. He pointed out how the survey discovered about 1,656 heavy trucks enter the city between seven o'clock in the morning until seven at night and that 32 per cent of them do not stop in the central business district. Consequently, acting on recommendations embodied in the survey report, the city councilmen designated a truck route on the edge of the business district for through trucks. To provide for trucks stop-

ping within the city, the council decreed that three axle trucks and trailer trucks would not use certain streets unless traveling over those streets was necessary to reach a certain designation. In such a case the truck must obtain a permit from the city.

The survey noted that 47 per cent of the trucks loading and unloading within the city complete their tasks before noon. Among the survey's recommendations then were the suggestions that the existing 251 loading zones be retained for the hours from 10 until 12 in the morning and that the Traffic Engineer might designate additional loading zones. Furthermore, it recommended that 176 of the existing zones be released to passenger parking during the afternoon hours.

Pertinent suggestions were made to the merchants of the city to facilitate trucking procedures. These included asking the merchants to ship goods at hours when traffic was slow, to provide loading room, to have shipments reading for immediate shipping, to discourage trucks from unnecessary parking in loading zones. Advocating an important principle of municipal planning, the report urged amending the zoning ordinance to require all new or remodeled buildings to provide off street loading facilities.

Guidebook for County Accountants

A *Guidebook for County Accountants* is the most recent Institute of Government publication available for distribution. Mr. John Alexander McMahon has just completed this 210 page study which will be the basis of Institutes for County Accountants. Topics included in the guidebook range from "Appointment and Duties of the Accountant" to "Closing the Books at the End of the Year." There are chapters on "Classification of Funds and Accounts," "Preparing the Budget," "Organizing the Ledgers and Posting the Budget," "Accounting for Cash Receipts," "Accounting for Cash Disbursements," "Accounting for Non-Cash Transactions," "Accounting for Special Funds," "Financial Reports," and "Budgetary Control." The County Fiscal Control Act is printed in full in the Appendix. Mr. McMahon has illustrated his text with thirty-one sample forms filled out according to accepted accounting practices. Copies of this publication are being mailed all county accountants.

Little Hoover Commission

When the 1949 Legislature in Minnesota adjourned, it had authorized a citizens committee to study ways of improving the state administration. And the chairman of that commission, Leroy F. Harlow, tells how the Minnesota Efficiency in Government Commission developed 250 recommendations which are estimated to save the state some \$4,300,000 a year. The Commission was unique in that it was made up of 19 private citizens, nine appointed by the House, nine by the Senate and one appointed by the Governor. There were no legislators or state officials on the commission, yet the suggestions stemming from it reflected the best managerial practices advocated by professional administrators. The Commission divided itself into twelve committees and invited other private citizens to serve with them. One hundred and thirty citizens in all or over eighty per cent of those invited undertook the work. Each committee studied several state departments and agencies with only limited consultation with professional managerial organizations and some help from the state Certified Public Accountants' organization, the Legislative Research Commission, and Institute of Governmental Research.

Among the recommendations suggested by the Commission were the establishment of a year round Department of Legislative Services, the establishment of a post-audit, transfer of the accounting department and the state treasurer's functions to the Department of Administration, and transfer of the Secretary of State's functions to the Departments of Highway and Revenue. The Commission urged that the Governor be given four assistants. It suggested adoption of the short ballot. And along this line the Attorney General would be appointed by the Governor rather than be elected. Two of its suggestions were particularly unusual. First, it proposed the establishment of a state licensing authority of laymen to review the action of licensing boards made up of professionals. Secondly, the functions of supervising the educational system were to be divided between two boards of regents appointed by the Legislature in joint session. One board would supervise the university; the other would oversee primary, secondary schools and teachers' colleges.

Local Schools for Law Enforcing Officers

Stemming from the Institute of Government's Conference of Law Enforcing Officers in February, at least seventeen local schools for law enforcing officers have been established throughout the state. In Wilson County, for instance, members of Sheriff Thompson's department, police from the City of Wilson, Elm City, Saratoga, Stantonsburg, as well as local ABC officers and State Highway Patrolmen stationed in the vicinity attend two hour classes on Tuesday and Thursday evenings. And in Surry County the police from Mount Airy, Dobson, and Elkin join deputies from the Surry County Sheriff's department to study *The Law of Arrest*, *The Law of Search and Seizure* and *The Rules of the Road*. Sheriff Walters of Guilford County reports that attendance for classes held in his county averages 60 officers. Iredell County officers can attend classes in either Mooresville or Statesville while in Lumberton classes are offered in both afternoon and night sessions on Tuesdays and Thursdays. Reports have also been received about the success of schools in the cities of Albemarle, Asheboro, Dunn, Elizabethtown, Wilmington, High Point, Laurinburg, Hickory, and Kinston and Edgecombe, Hertford, Nash, Orange, Person and Robeson Counties.

Dan K. Edwards

Another honor has been bestowed on the young ex-mayor of Durham. President Truman appointed Mayor Dan K. Edwards to fill the position of Assistant Secretary of Defense, a post vacated by Mark Leva. Mr. Edwards, mayor of Durham from 1949 to 1951, has served in three General Assemblies. This year he headed the Legislative Committee of the League of Municipalities and last year he received the Distinguished Service Award of the North Carolina Junior Chamber of Commerce.

Mr. Edwards is a graduate of Duke University where he was elected to Phi Beta Kappa, honorary fraternity, and a graduate of the Harvard Law School.

He is author of "Amphibious Operations" and "The Use of Government Centralization in North Carolina," and he has contributed several articles to this magazine.

Cemetery Beautification

Cemetery beautification is receiving attention from the Town of Clinton. Under the direction of Town Commissioner H. B. Barwick and City Market Manager T. S. Cornwell the original cemetery has been completely reworked and the new addition to it has been landscaped. On the new section azaleas, dogwood trees, and bulbs have been planted.

Clinton, as is the case with many cities who operate cemeteries, is faced with the problem of taking care of lots belonging to families who have moved or who have died out. To provide for these eyesores the town plans to establish a trust fund from the receipts of sales of lots in the addition. The town already has purchased mowing equipment to care for the cemetery grounds.

Census Tabulations

The final figures for North Carolina in 1950 have been released by the Census Bureau. One notable fact in North Carolina and in the nation is the increasing urbanization of the population. For example, in 1940 in the United States there were 996 incorporated places with population over 10,000. And in 1950 the figure has increased to 1,228 incorporated places. New Jersey has the highest proportion of urban population, 86.8 per cent, while the nation's average is 64 per cent. In the United States as a whole one-half of the 3,070 existing counties lost population; only 1,560 counties gained inhabitants. Incidentally, there still exist three unincorporated urban areas in the nation. One is Kannapolis, North Carolina and the other two are East Bakersfield, California and Oak Ridge, Tennessee.

Another interesting fact brought out by North Carolina census figures is the change in the population of Congressional Districts. In 1940 the average population of each district, assuming all the districts were equally divided, was 297,600 persons. In 1950 each Congressman would have a few more than 336,500 constituents if an equal division of population were made among the twelve districts. At the present, seven districts exceed this new average (the fourth by 65,000, the sixth by 60,000, the seventh by 44,000, the eighth by 32,000, the tenth by 22,000, the fifth by 17,000, and the ninth by 2,000).

The Minutes

Tell the Story

City and County governing boards have been disturbed by the Treasury Department's proposal to tax state and municipal bonds. Both Union County commissioners and Statesville aldermen recently passed resolutions opposing the proposed taxation. And Attorney General Harry McMullan appeared before a hearing of the House Ways and Means Committee to declare that such a tax was unconstitutional and that its approval would open a wide and dangerous avenue to further centralization of government.

Dunn voters have authorized the continuance of its city manager form of government by a vote of 575 to 327, according to a report made to the commissioners. The present city manager, R. Thomas Hobbs, has submitted his resignation to the board of commissioners because he has been called back into the Navy. In Fayetteville the question of the city's form of government was voted on and a margin of 447 voters approved retaining the city manager system.

Surry County recently installed a \$5,000 photostat machine for the Register of Deeds' office.

Councilmen voted to give Wilmington employees a \$10 per month raise for straight time employees and a \$.05 per hour increase for temporary or hourly employees. Officials estimate that the total increase will cost the city about \$19,000. Wilmington officials also voted to purchase a miniature train and track for the city park. Revenues from its operation are expected to liquidate the \$10,500 debt its purchase entailed.

Winston-Salem aldermen voted, on recommendation of the city manager, the mayor, and the finance committee, to establish the position of "Budget Officer" within the Finance Division. His duties will include serving as liaison officer between the Director of Public Accounts, the Finance Officer, and the City Manager as well as between the Finance Officer and the various city departments. He will assist department heads in preparing their budgets, in checking their fiscal operations, and he will make studies on costs, services and materials in other cities.

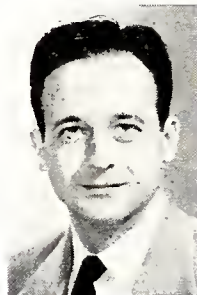
New Laws Affecting Law Enforcement

On April 14 the General Assembly completed its work for the 1951 regular session and adjourned for another two years. Although not a great number of outstanding changes were made in the field of criminal law and procedure, it is quite important that law enforcement officers be informed of the changes that were made in order that they may be fully prepared to carry out their duties. In this bulletin we will review new legislation dealing with (1) substantive crimes, (2) the liquor law and its enforcement, (3) general criminal procedure, and (4) subjects of general interest to law enforcement officers. Numerous proposals were considered by the General Assembly which dealt with the motor vehicle law, highway safety, and traffic law enforcement. However, no attention will be given them here, as a comprehensive article concerning these measures is being prepared by John Fries Blair, Assistant Director of the Institute of Government, and will appear in a forthcoming issue of POPULAR GOVERNMENT.

SUBSTANTIVE CRIMES

Tear gas. A new criminal statute, which became effective April 5, makes it a misdemeanor punishable by fine or imprisonment in the discretion of the court to possess, use, sell, or transport within the state any tear gas, or any container or device for holding or releasing tear gas. The statute does not apply when the gas is to be used (1) by the armed forces of the United States, (2) by any governmental agency, (3) by municipal or state peace officers, (4) for scientific, educational, or industrial purposes, or (5) in safes, vaults, or depositories as a means of protection against theft.

Taking game on the highway. The North Carolina Game Law of 1935 was amended (a subsection was added to G.S. 113-102) to prohibit any person from taking or attempting to take with firearms any game bird or animal from the right of way of any public highway or publicly maintained thoroughfare. This does not apply to Duplin and Pender Counties. (Although several other acts were passed which will affect the work of fish and game protectors, they made



By
**ERNEST W.
MACHEN, JR.**

Assistant
Director
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Government

no direct change in the criminal statutes on fish and game, and so are not included in this bulletin.)

Profanity over the telephone. A new section, G.S. 14-196.1, was added to the criminal code, effective February 28, making it unlawful for any person to use lewd or profane language or words of vulgarity or indecency over the telephone to a female person. Although statutes have long been on the books prohibiting the use of such language on passenger trains, over the telephone to female telephone operators, and on any public road or highway within the hearing of two or more persons (G.S. 14-195 to 14-197), apparently we had no law to protect female listeners on the telephone who were not operators. Notice that the wording of the statute does not prohibit the use of such language by a man to another man, or by a woman to a man, but does prohibit its use by a woman to another woman, as well as by a man to a woman.

Palmistry and fortunetelling. In thirty-two counties the practice of phrenology, palmistry, clairvoyance, fortune telling, and other similar crafts is now made a misdemeanor punishable by a fine of up to \$500 and imprisonment up to 1 year, or both. Amateur practice in connection with social events in church or school buildings is not prohibited. The counties affected are Ashe, Bertie, Bladen, Camden, Carteret, Clay, Craven, Cumberland, Dare, Davidson, Duplin, Graham, Granville, Guilford, Halifax, Harnett, Haywood, Hertford, Hoke, Lee, Madison, Martin, Northhampton, Onslow, Orange, Person, Polk, Richmond, Scotland, Vance, Wake, and Warren.

Protecting sports events. Article 51 of the criminal code makes it a felony for anyone to bribe profes-

sional baseball players or officials or for such players and officials to accept bribes or to lose games intentionally. The article, which was enacted in 1921, has now been amended to make it applicable, not simply to baseball, but to all athletic contests.

Protecting the Venus fly trap. As of July 1, 1951, the Venus fly trap will be included among those plants which may not be taken from another's land without his written permission, and the sale or export of the rare plant, except for scientific study, will be a misdemeanor punishable in the court's discretion.

LIQUOR LAW ENFORCEMENT

Hours for beer sales. On May 1 new hours for the selling of beer went into effect. Formerly beer could be sold only between 7:30 a.m. and 11:00 p.m.; now it may be sold until 11:45 p.m. On-premises consumption of beer is now permitted between 7:30 a.m. and midnight.

Inspecting beer establishments. G.S. 18-140 has been amended to give malt beverage inspectors, at any hour of the day or night while in performance of their duty, authority to enter any place licensed to sell beer in order to see that the laws governing such places are being observed. Formerly this power of entry was limited to hours when beer was being sold or consumed on the premises.

Souped-up autos. When a motor vehicle is seized under G.S. 18-6 for illegally transporting liquor and is found to be modified or equipped in such a way as to increase its speed, the court is now specifically authorized to order the equipment destroyed and the vehicle restored to its original, manufactured condition before it can be sold. If the modifications are so extensive that it is impractical to restore the vehicle to its original condition, the court may order the vehicle turned over to a governmental agency or public official within the court's jurisdiction for use on the performance of official duties only. The purpose of the act is to prevent "souped-up" bootleg cars and trucks from falling into the hands of those who may use them again for illegal purposes.

Bay rum. From and after May 14 the sale of bay rum will be prohibited

in most counties, except to drugstores and barber shops or on a doctor's prescription. Counties which are *not* affected by the new law are Alamance, Anson, Beaufort, Brunswick, Burke, Camden, Caswell, Cleveland, Columbus, Craven, Currituck, Duplin, Edgecombe, Forsyth, Franklin, Gates, Greene, Halifax, Harnett, Iloke, Hyde, Johnston, Lenoir, Lincoln, Martin, Nash, New Hanover, Onslow, Pasquotank, Pender, Perquimans, Pitt, Randolph, Robeson, Rutherford, Stanley, Tyrrell, Wayne, and Wilson.

Federal liquor license. From and after July 1, 1951, it will be a misdemeanor punishable in the court's discretion to obtain, possess, or issue a license, permit stamp, or other authorization from the United States Government to manufacture, sell, possess, transport, or purchase intoxicating liquor in this state. This does not apply to the armed services or to persons engaged in activity authorized by the state A.B.C. law.

CRIMINAL PROCEDURE

Evidence seized in illegal search. An important change was made in the North Carolina law with regard to the use of evidence seized in the course of an illegal search. For many years the courts of this state followed the rule that whether or not evidence seized from a defendant could be introduced against him in a criminal case depended upon whether the evidence was relevant and trustworthy, and not upon the manner in which it was obtained. The courts of the United States and of a number of the states would not permit the

use of evidence against a person when the evidence had been seized by the government in violation of that person's constitutional rights. In 1937 the General Assembly passed a statute (G.S. 15-27) prohibiting the use of facts discovered in the course of a search conducted under authority of an improperly issued search warrant but failed to prohibit the use of facts illegally obtained where there was no search warrant at all. G.S. 15-27 has now been amended so that facts discovered or evidence obtained by illegal search *cannot* be used in any action, whether the illegality of the search was due to the fact that the warrant was defective or to the fact that the officer had no warrant at all under circumstances where one was required.

Clerk's bail power. In all counties except Alamance, Durham, Guilford, Lee, and Rowan the clerk of the superior court is now authorized along with other judicial officers, to take bail in all misdemeanor and felony (not capital) cases.

MEASURES OF GENERAL INTEREST

Police jurisdiction. An amendment to G.S. 160-18 now authorizes municipal police officers to go beyond the corporate limits of their cities and towns for the purpose of carrying arrested persons to a jail and for the purpose of attending court in another town. A number of local laws were passed extending police jurisdiction one mile beyond the corporate limits for individual municipalities. Police

chiefs should consult their city attorneys for information on local acts concerning their towns.

Police residence. Of great interest to many police departments is the fact that G.S. 160-25 has been amended to eliminate the requirement that police officers must be qualified electors of the town in which they serve. This means that officers no longer are required to have their residences with the town limits.

Arresting without a warrant. No effort has been made in this bulletin to discuss measures which were proposed but failed to pass. One proposal, however, because of the fact it did not pass seems significant enough to warrant comment. That bill would have amended G.S. 15-41 to permit any peace officer to arrest a person against whom a warrant or capias had been issued, even though the officer did not have physical possession of the warrant at the time of the arrest. Since the bill failed, it remains the law in this state that when an arrest is made under authority of a warrant or capias, the arresting officer must have the warrant or capias with him.

New officers for the S.B.I. and Highway Patrol. Also of general interest to all enforcement officers is the fact that the legislature authorized a complete new troop of 105 men for the State Highway Patrol, and 2 additional senior investigators for the State Bureau of Investigation, which will mean additional service for officers and citizens throughout the state.

County and Municipal Employees May Now Join Social Security

By DONALD B. HAYMAN

Assistant Director, Institute of Government

Membership agreements permitting North Carolina counties and municipalities to bring some of their employees under Social Security will be mailed to all counties and municipalities on or about June 1 according to Mr. Nathan Yelton, Secretary of the Board of Trustees of the Teachers' and State Employees Retirement System. Mr. Yelton was designated as the "State Agency" to administer the Social Security program for public employees in North Carolina by the 1951 General Assembly. He was authorized (1) to approve membership agreements with local govern-

mental units within the State; (2) to enter into an agreement with the Federal Security Administrator (with the Governor's approval) for extending Social Security benefits to state and local employees not already covered; and (3) to issue necessary rules and regulations. At a statewide meeting in Raleigh on May 18, Mr. Yelton announced that the agreement with the Social Security Administrator would be signed as soon as it is prepared by the Attorney General.

Governing bodies planning to bring their employees under Social Secur-

ity should

- (1) determine the employees to be covered;
- (2) complete the membership agreement and return it to Mr. Yelton;
- (3) include a 1½ per cent Social Security contribution in next year's budget;
- (4) withhold employee deductions; and
- (5) appropriate funds to make membership retroactive to January 1, 1951, if possible.

Employees Covered

The Social Security Act Amendments of 1950 as enacted by Congress and signed by the President on August 28, 1950, provided as follows:

"(d) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group."

Although the debates in both the House and Senate, as recorded in the *Congressional Record*, indicate that it was the intent of Congress to bar all firemen, policemen, teachers, and other public employee groups having their own retirement systems, from Social Security benefits, the above paragraph (d) does not seem to have achieved that objective. Mr. M. D. Dewberry, Regional Supervisor of the Bureau of Old Age and Survivors' Insurance, stated in Raleigh on the 18th that future rulings would be necessary before the situation will be clarified. He asserted that there is a possibility that public employees now belonging to, or eligible to join, a public retirement system may yet be brought under Social Security if their retirement system is liquidated or if they should cease to be eligible for membership in their present systems.

At present, no law enforcement officer and no public employee belonging to, or eligible to join, a retirement system may be covered by Social Security. Although the status of firemen who belong to local Firemen's Relief Funds is uncertain, those who do not belong to local retirement funds may be eligible for Social Security.

The 1951 amendments specifically excluded certain employees—persons on work relief projects and patients or inmates of a hospital or other institution. Other employees who may be excluded at the request of a coverage group if the State Agency approves include emergency employees, elective officials, part-time employees, or persons compensated on a fee basis. All other employees of the coverage group are automatically covered when the agreement is approved.

Temporary state employees are eligible for Social Security but they will probably not be covered at this time because no funds were ap-

propriated by the General Assembly to match their contributions.

Social Security Payments

The cost of retirement and survivors' benefit payments will be paid from a payroll deduction on the first 3,600 of salary ranging from 1½ per cent in 1951 to 3¼ per cent beginning in 1970, plus a matching contribution paid by the employing governmental unit. The ultimate cost of the benefits are estimated at approximately 6 per cent of the payroll. As combined contributions will not equal 6 per cent until 1965, the fund will not be completely self supporting or on a full-reserve actuarial basis. However, the fund will be very close to an exact balance, and by the year 2,000 a reserve fund of between 78 to 102 billion dollars will have accumulated. The estimated balance will range within these limits depending on whether earnings from interest equal 2 or 2½ per cent.

Salary deductions and employer contributions will be transmitted quarterly to the State Agency where

ters since 1950. A minimum of six quarters of coverage are necessary and an employee is fully insured for life when he has 40 quarters of coverage.

If coverage is made retroactive to January 1, 1951, employees 63½ years of age or over as of that date will be eligible to retire on July 1, 1952.

Retirement Benefits

The 1950 amendments greatly simplified the method of calculating old-age and survivors' benefit payments. As a public employee now coming under Social Security, you can determine your monthly retirement allowance by

- (1) adding all wages covered by the law after 1950;
- (2) dividing the total wages by the number of months after 1950. (The average cannot be less than \$40 or more than \$300 per month.);
- (3) take 50 per cent of the first \$100 of your average monthly wage;

TABLE I
OLD AGE AND SURVIVORS INSURANCE BENEFITS
June, 1951

(All figures rounded to nearest dollar)

Years of Covered Employment	Average Monthly Salary	Monthly Old Age Pension Single Employee	Monthly Pension Married Employee ¹	Monthly Survivor's Pension Aged widow, parent, or 1 child	Widow & 1 child	Widow & 2 children
1½	\$100	\$50	\$ 75	\$38	\$ 75	\$ 80
1½	150	58	86	43	86	115
1½	200	65	98	49	98	130
1½	250	73	109	54	108	150
1½	300	80	120	60	120	150

¹ With wife 65 or over.

they will be audited and forwarded to the Collector of Internal Revenue. The cost of auditing these payments will be divided among participating units according to the number of employees covered.

Effective Date

Governmental units desiring to get maximum retirement benefits for their older employees with a minimum of future employment should make the membership agreement retroactive to January 1, 1951. Funds for the employees' share of this contribution must either be collected from the employees by the governmental unit or appropriated by the governing body. Chapter 103, Session Laws of 1949, authorized each municipality "to appropriate such funds as are necessary to enlist their employees therein."

Eligibility Requirements

To be eligible for retirement benefits under Social Security, all public employees must have received \$50 or more in wages in at least one calendar quarter for each two calendar quar-

- (4) add 15 per cent of the remainder up to \$200.

The total is your monthly old-age insurance payment. If your wife is over 65, or if you have a dependent child under 18 years of age, your monthly payment would be one-half larger. If you have a dependent parent, your old-age insurance payment would be three-fourths larger.

Table I can be used to calculate what you will receive when you retire. Let us assume that your town or county places you under Social Security as of January 1, 1951. Let us also assume that you and your wife are both 65 years of age, that you have no children, that you are receiving a salary of \$200 a month, and that you retire on July 1, 1952.

Table I indicates that you would receive an old-age retirement allowance of \$98 a month as long as both you and your wife live. If your wife should die, you would receive \$65 a month. If you should die before your wife, she would receive a lump sum

(Continued on page 16)

The Attorney General Rules

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

Prepared by Willis C. Bumgarner and Charles E. Knox

Assistant Directors
Institute of Government

SUPERIOR COURTS

Settlement of nonsupport cases. A defendant has been indicted for nonsupport of his illegitimate child and upon conviction enters into an agreement with the prosecuting witness providing for a lump sum payment. Is future prosecution barred?

To: Neil McK. Ross

(A.G.) I do not think the prosecuting witness can contract away or deprive the court of jurisdiction by a lump sum settlement.

To my mind, the case of *State v. Ralph Dunean*, 222 N.C. 11, is decisive of this question. The court, considering the status of legitimate children, states in substance that the husband and wife can enter into any kind of agreement and bind themselves, "but they cannot thus withdraw children of the marriage from the protective custody of the court." Further on, the court says: "The court is equally alert to exercise its power to protect illegitimate children who are entitled to the benefit of laws enacted by the General Assembly to provide for their support and maintenance."

In addition, the statutes on bastardy state very clearly (G.S. 49-7; G.S. 49-8) that the court has the right to modify its orders from time to time, and it seems to me that it is clear that no agreement between the prosecuting witness and the father of the child can nullify the power of the court to make such modifications.

Remission of costs for Law Enforcement Officers' Benefit and Retirement Fund. In a criminal case, the judge imposed as a part of the sentence payment of the minimum fine required by statute and costs of court. The final statement of the judgment, however, undertakes to remit the court costs. May the judge of any court remit the two dollars assessed by G.S. 143-166 for the benefit of the Law Enforcement Officers' Benefit and Retirement Fund?

To: Henry L. Bridges

(A.G.) G.S. 143-166 provides that where costs of court are assessed against a party in a criminal prosecution, there shall be assessed against such party two dollars additional costs to be collected and paid over to the State Treasurer and held in a special fund by him. As we construe this statute, it is sufficient for the purposes of the present question to say that once the assessment of costs is made, the right of the Law Enforcement Officers' Benefit and Retirement Fund to the two dollars is vested and cannot be removed by subsequent attempt to remit the costs.

CLERK OF SUPERIOR COURT

Authority to appoint guardian for unborn child. A certain sum of money has been paid into the office of the clerk of superior court for an unborn illegitimate child. May the mother qualify as guardian in order to obtain the funds to pay her doctor bills?

To: Thos. E. Rhodes

(A.G.) I know of no authority or law that permits the appointment of a guardian for an unborn child. All of our laws on the subject clearly contemplate that a ward must be born and in existence and being before a guardian can be appointed. We have statutes that allow funds to be paid into the office of the clerk of superior court for unborn children, but these have never been extended to allow the appointment of a guardian before birth. I am, therefore, compelled to advise you that no such guardian can be appointed. This opinion is advisory only and you can take such steps in the matter as you feel justified in taking, irrespective of this opinion.

Authority to issue capias. A defendant fails to make monthly payments as ordered by the Superior Court upon a finding of guilty of nonsupport. Does the clerk have authority to issue a capias for the defendant, at the request of the prosecuting witness, to be brought to the next term of court?

To: Robert B. Morgan

(A.G.) I know of no authority which authorizes the clerk to issue a capias upon the mere complaint of a prosecuting witness. The matter must be brought to the attention of the Court by the solicitor who makes a motion that the capias should issue to the end that the defendant be arrested and brought in and be heard before the Court as to whether or not the conditions of the judgment have been breached. The jurisdiction to order such an arrest or to issue such a capias, in my opinion, is exclusively vested in the judge holding the Superior Courts of the county or if the matter is pending in an inferior court, then in the judge of such inferior court.

Authority to issue capias. A true bill is found by the Grand Jury against a defendant who is not present and the Court has not ordered a capias. Does the clerk have authority, without orders from the Court, to issue a capias to have the defendant brought before the next term of the criminal court?

To: Robert B. Morgan

(A.G.) I know of no statute which authorizes the clerk automatically to

issue capias when bills of indictment are found. A great many clerks do issue such capias upon some sort of implied understanding that such should be done. I would advise, however, that you have some order of the court, either written or oral, before issuing such capias.

Inheritance by adopted child from natural ancestor. A woman dies leaving two minor children, one of whom is adopted shortly thereafter. The father of the deceased natural mother then dies, leaving an estate. May the adopted child inherit any part of the estate of its deceased natural grandfather?

To: Paul A. Swicegood

(A.G.) The adoption act of 1949 provides that after the signing of the final order of adoption, the child shall be entitled to inherit real and personal property from the adoptive parents according to the statutes of descent and distribution. I see no limitation on the right of the child to inherit from its natural parents or the ancestors of such parents. I do not think the fact that a child was adopted prior to the death of its natural ancestor would prohibit the adopted child from inheriting any part of the estate.

CRIMINAL LAW

Evidence to convict for gambling. A group of people are engaged in a game of chance, using chips instead of money. On this information, does a law enforcement officer have authority to raid the house and arrest the people therein?

To: L. S. Ford

(A.G.) In *State v. Goodman*, 220 N.C. 250, the evidence was that there were a number of people sitting around a table playing cards and that several of the players had stacks of poker chips in front of them. The Court held that this was insufficient to sustain a conviction of gambling under the statute.

Use of handcuffs. Is there any law governing the use of handcuffs in this state?

To: Leonard T. Rollins

(A.G.) I do not know of any specific statute that deals with the use of handcuffs. An officer in general has a right to use such means as in his judgment is necessary to see that his prisoner does not escape. If in his judgment he thinks the prisoner should be handcuffed, it has been the custom in this state to use such handcuffs. This must be done in a reasonable manner and does not mean that

the officer can commit assaults upon a prisoner or commit any acts of cruelty or torture.

Revealing names of informants. An officer testifies on trial to a defendant's bad reputation for selling whiskey. May he be compelled to give the names of the persons furnishing the information?

To: Leonard T. Rollins

(A.G.) There is no law in this state that I know of that specifically holds that an officer is protected from revealing the names of his informants. I think an officer would be compelled to give their names if the Court ordered him to do so.

What is a public place? A Y.M.C.A. rents rooms to members and also to other persons. It also operates in its building a cafe which is open to the public. Does a police officer of the town in which the Y.M.C.A. is situated have a legal right to go into the lobby and cafeteria and arrest a person for being drunk and disorderly, assuming that the manager of the Y.M.C.A. requests that such an arrest be made?

To: Thomas K. Carlton

(A.G.) Bearing in mind that one must be drunk and disorderly in a public place, I have come to the conclusion that, within contemplation of law, this cafeteria and lobby is a public place. I am of the opinion that an officer, therefore, can go into the lobby or cafeteria and arrest a person who is drunk and disorderly because, in my opinion, such person is drunk and disorderly in a public place; and, in my opinion, the police officer is justified in following the usual rules of criminal procedure, swearing out a warrant, taking the prisoner before a magistrate, and seeing that the case is prosecuted just as he would do in any other criminal offense.

Confiscation of illegally possessed pyrotechnics. A defendant was recently convicted of violating G.S. 14-410 by possessing pyrotechnics. No provision was made in the judgment for the destruction of the pyrotechnics. The defendant has now asked to contact an interstate carrier to pick up the pyrotechnics and ship them out of the state. May this be done?

To: Thomas G. Lane, Jr.

(A.G.) It is stated in 56 C.J. 1250-51 that "it is a general rule that contraband or property, the possession of which is illegal, cannot be returned to accused from whom it was unlawfully taken, since that would make him a criminal when he became repossessed of it." The rule would apparently be the same as to property lawfully taken from the accused. However, I caution you that the cases cited in support of the above quotation all appear to concern contraband. "Contraband" is usually considered as meaning such articles as cannot be owned or possessed legally, or such as are capable of use only in the commission of a crime, *State v. Keeler*, 236 N.W. 561 (Wisc.); 17 C.J.S. 289; and since it is specifically provided by G.S. 14-410 that pyrotechnics can be legally possessed in North Carolina for certain specified pur-

poses, it might well be that they cannot be considered contraband with the consequence that the above rule would have no application in this case.

The North Carolina authority which I have found to be closest in point is *Felia v. Belton*, 170 N.C. 112. However, this case was partially distinguished in *Skinner v. Thomas*, 170 N.C. 98, 103, 104, and should be considered only in the light of both holdings. In your case the judgment did not contain an order of confiscation and destruction, as did that in *Felia v. Belton*; however, it would appear that the *Felia* decision would still be authority for the officer holding the pyrotechnics to refuse to surrender them in the face of G.S. 14-410.

REGISTER OF DEEDS

Acknowledgment of federal tax lien. The U. S. Bureau of Internal Revenue has recently ruled that acknowledgments are not essential to the validity of notices of tax liens and certificates of discharge of tax liens, Forms 668 and 669. However, the Bureau has directed that Collectors should comply with local requirements. Are these forms required to be acknowledged prior to registration in N. C.?

To: Edwin Gill

(A.G.) G.S. 44-65 and 44-66 do not require that the liens and certificates in question be acknowledged before they are filed for registration. However, G.S. 47-1 provides, in part: "The execution of all deeds of conveyance . . . and any and all instruments and writings of whatsoever nature and kind which are required or allowed by law to be registered in the office of the register of deeds . . . may be proved or acknowledged before any one of the following officials of this state." (Italics supplied). It is my opinion that this statute, by implication, requires that all instruments "which are required or allowed by law to be registered" be proved or acknowledged before one of the designated officials. No decision of the Supreme Court of North Carolina has been found which construes this statute, but in view of the fact that our Courts have consistently held that public records import verity, I believe that sound public policy requires the instruments in question to be acknowledged before they are registered.

Clerk's probate. Is the register of deeds authorized to record, without probate by the clerk of the superior court, (1) a certificate of discharge from bankruptcy, (2) an affidavit made in accordance with G.S. 45-37, subsection 5, and (3) the papers referred to in G.S. 153-9, subsection 17, as amended?

To: Eunice Ayers

(A.G.) From a reading of G.S. 47-14 in connection with G.S. 47-1, it is my opinion that when the instrument required or permitted to be registered is probated by the clerk, it is only necessary for him or her to certify to the proof of the instrument. But when the clerk passes upon a probate taken before some other of-

ficer, as required in G.S. 47-14, he is required to certify to the correctness of the probate and certificate, and order the instrument to be registered. Therefore, in direct answer to your three questions, it would seem that the law requires the clerk's probate or, if some other official probates the instrument, then the clerk must certify to the correctness of the probate and certificate, and order the instrument to be registered.

PROPERTY AND POLL TAX EXEMPTIONS

Property Tax. A fraternal patriotic organization owns a building a part of which is rented to individuals. Is that part of the building which is income producing subject to county tax?

To: Stacy C. Eggers, Jr.

(A.G.) In *Odd Fellows v. Swain*, 217 N.C. 632, the Court held that property owned by a fraternal and charitable organization and rented out for commercial purposes was not exempt from taxation. The Court did not discuss the question as to whether the valuation should be apportioned as between the part used for lodge purposes and the part used for rental purposes, but apparently held the entire building taxable. In *Piedmont Memorial Hospital v. Guilford County*, 218 N.C. 637, the Court intimated that such apportionment might be made but did not directly pass on the matter. It is certain, however, that under the *Odd Fellows* case property owned by a fraternal, religious, or charitable organization which is devoted to business or commercial uses is not exempt from taxation.

Poll Tax. Are members of the armed forces and the merchant marine exempt from payment of poll taxes under G.S. 105-341(4)?

To: C. E. Gwin

(A.G.) I am of the opinion that the cited section of the Machinery Act does still apply and members of the armed forces and merchant marine are exempt from the payment of poll taxes, inasmuch as the "existing state of war between the United States and any foreign nation" has not been officially terminated.

ELECTION LAWS

Time for holding city manager elections. A petition has been filed with the County Board of Elections requesting a special election upon the question of the adoption of a city manager form of government for a city within the county. G.S. 160-298 requires that such election "shall be fixed by the board not later than forty days from the receipt of such petition." G.S. 160-360 provides that no special election shall be held within two months of the time of holding any regular municipal election in those cases where the election has been called upon the question of the amendment, adoption or repeal of the charter of a municipality. A regular municipal election has just been held in the city concerned. What is the proper time for calling the special election required in this case?

To: H. C. Hemric

(A.G.) G.S. 160-298 is included in Article 21, Subchapter II, of Chapter 160 of the General Statutes, which specifically sets forth the manner in which a municipality may adopt one of the plans of government set forth in Article 22 of Subchapter II, one of which is the city manager form of government. G.S. 160-360 appears in Article 23 of Subchapter II which deals specifically with the manner in which a municipality may amend, repeal or adopt a new charter. The latter section reads, in part, as follows: "No special election provided or required by this article shall, except as otherwise provided in this subchapter, be held within two months of the time of holding any regular municipal election in any municipality. . . ." It clearly appears that an election to be held upon the adoption of one of the new plans of government must be held within the time set forth in G.S. 160-298. It is my opinion that G.S. 160-360, by its terms, excepts from its provisions such elections.

Registration of servicemen. A member of the Armed Forces resides in N. C. pursuant to military orders. Taking advantage of the Soldiers' and Sailors' Relief Act, USCA, Title 50, App. Section 574, he does not list his personal property for taxation in this state. Should he be permitted to register and vote in this state?

To: H. M. Eastwood

(A.G.) Although the Soldiers' and Sailors' Relief Act deals specifically with the taxation of persons in the military service, it is my opinion that if any such person takes advantage of the same and fails to list and pay his personal property taxes, he should not be considered a resident of North Carolina and be permitted to register and vote in this state.

Right of a person convicted of a felony in another state to vote in this state. Is a person who has been convicted of a felony in a foreign state barred from voting in North Carolina?

To: Frederick A. Moran

(A.G.) Article VI, Section 2, of the North Carolina Constitution provides that no person who has been convicted of any crime the punishment for which is imprisonment in "the State's Prison" shall be permitted to vote. Article II, Section II prohibits the General Assembly from passing private laws to restore the rights of citizenship of any person convicted of an infamous crime but permits the passing of general laws. G.S. 13-1 provides the method whereby a person who has been convicted of an infamous crime may have his rights of citizenship restored. Under the sections of the Constitution and the statute referred to above, this office has rendered opinions to the effect that, in order for a person to be deprived of the right to vote in this state, he must have lost his citizenship by reason of his conviction of a felony under the laws of this state. Before he can again vote, his citizenship must be restored in the

manner set forth in Chapter 13 of the General Statutes of this state.

The fact that a person has been convicted of a felony in a foreign state or in the United States courts would not deprive such person of the right to vote in this state.

NECESSARY EXPENSES

Sheriff's radio system. The Board of County Commissioners wish to purchase a two-way radio system for the Sheriff's office. Is this a necessary expense?

To: D. B. Teague

(A.G.) While I have been unable to locate any decision by our Supreme Court bearing directly on this subject, this office has previously ruled that the Board of County Commissioners of a county could make expenditures from tax funds in order to cooperate with a town for the installation of a city-county radio system which would be available for both groups of peace officers. I there advised that the Board could appropriate money for the maintenance and operation of the radio service out of any available funds not otherwise appropriated.

It seems to me that a radio system is such a highly efficient method of communication that it would fall within the realm of a necessary expense for the law enforcement of the county. Telephone and telegraph expenses of the sheriff have never been questioned. It seems that one medium of communication is as necessary as the other.

SCHOOLS

Right of county to deed county land to county board of education. A county owns 30 acres of land which is being used for the purposes of a county home and farm. The board of education requests the board of county commissioners to convey to it 24 acres of this land to be used as a site for a consolidated high school. Have the county commissioners the legal authority, without consideration, to execute a valid deed to the county board of education? If so, what formalities are necessary?

To: Ira T. Johnston

(A.G.) Under our school law, it is the duty of the county board of commissioners to provide the necessary school sites for all public schools in the county. It is the responsibility of the county board of education to determine the location of such schools. *Atkins v. McAden*, 229 N.C. 752. It is my opinion that the county commissioners would have a clear legal right to convey to the board of education to be used for school purposes any land which the county might already own, without any other consideration for the conveyance, provided the land so conveyed is not necessary for some other public county use and its conveyance is not prohibited by restrictions in the deed.

It would seem that the procedure instant to such a transaction would be: (1) A request from the county board of education in the form of a resolution, asking that the county board of commissioners convey to it the particular land desired to be used for the consolidated high school. (2) The county commissioners, if they saw fit to do so, should adopt a resolution authorizing the conveyance of that part of the county home and farm land requested and reciting that such part of the land was no longer needed for the county home and farm purposes. (2) Thereafter, the deed conveying the property could be executed and recorded.

MUNICIPAL TAXATION

Tax liability of a resident temporarily absent from state. A college official, resident of the town in which the college is located, was granted a leave of absence from September, 1949, to June, 1950, for graduate study at an out-of-state university. May the town collect from him poll and personal property taxes for the period during which he was studying out of the state?

To: C. P. Hinshaw

(A.G.) In my opinion you were correct in requiring the payment of the taxes. A temporary absence from the state on business or otherwise on tax listing day does not change the permanent residence of an individual.

PUBLIC HEALTH

Health ordinance adoption procedure. In passing local health ordinances, what does the county board of health have to do in the way of publishing the ordinance, setting the effective date, and fixing the maximum and minimum penalty for its violation?

To: C. J. McCotter

(A.G.) The statutes of this State do not make any requirement as to the length of time the ordinance must be published nor do they undertake to fix any time when the health ordinance shall go into effect. I have advised health units on this question that, in my opinion, they should pass an ordinance of their own requiring these health ordinances to be published in a newspaper for a reasonable length of time, such as once a week for two or four successive weeks in some newspaper published in the county and having general circulation. I have also thought a copy of the ordinance should be posted at the courthouse door, stating when it was adopted and its effective date. I seriously doubt if the courts would uphold an ordinance of a local health unit unless reasonable and adequate notice is given of its contents and effective date.

As to the effective date, the law again does not make any requirement. I think the effective date should be made at the expiration of the publication of notice, stating such ef-

fective date in the notice. The local unit may desire to extend the effective date to a period after the expiration of the notice of publication.

As to the maximum and minimum penalties for violation of health ordinances, G.S. 130-20 governs and makes such violation a misdemeanor punishable by fine not exceeding \$50 or imprisonment not exceeding thirty days.

Time of institution of program of dog vaccination. Is it permissible in the interest of the convenience of farmers, to begin the vaccination of dogs at an earlier date than April 1 and end it within ninety days after the beginning date?

To: Dr. A. D. Gregg

(A.G.) G.S. 106-367 provides that the program shall begin annually on April 1 and shall be completed within ninety days from the date of beginning. In our opinion it would be permissible to begin the program at an earlier date than April 1, but you could not prosecute a person for non-compliance before July 1.

In my opinion the official in question did not acquire a residence or domicile out of the state but remained a resident of the town throughout the period of his absence and was subject to the payment of these town taxes.

Taxing farm lands in town. Are cultivated farm lands which are within the corporate limits subject to ad valorem taxation by the municipality?

To: Mattie C. Allsbrook

(A.G.) There is no provision in the law for the exemption of farm lands, lying within the corporate limits, from taxes levied by the town. As a matter of fact, in *Anderson v. City of Asheville*, 194 N.C. 117, an act of the Legislature which divided a city into different zones and provided for the imposition of different rates of tax in different zones so that outlying areas would be taxed at a lower rate was held unconstitutional. The court held that the uniformity of taxation as required by the Constitution means that all taxable property within the same taxing unit must be uniformly taxed.

Town assistant tax collector. Has a town authority to appoint an assistant tax collector to assist the collector in collecting taxes by making levies and garnishes, without a special act of the Legislature?

To: T. D. Rose

(A.G.) I know of nothing in our general law which expressly authorizes the appointment of an assistant town tax collector. Such authority seems to have been assumed for a good number of years, as a large number of municipalities have assistant or deputy tax collectors. In my opinion, it would be the safer course to have a special act authorizing the appointment of an assistant or deputy collector, inasmuch as such person would be exercising the power of a deputy sheriff insofar as making levies upon property is concerned.

MUNICIPAL POLICE

Policeman killed or injured outside town limits. The jurisdiction of town policeman has, in many instances, been extended by the Legislature beyond the town limits to include as much as an entire township or townships. Would the town be liable under the Workman's Compensation Act to a town policeman who is killed or injured in the line of duty while outside the town but inside his statutory police jurisdiction?

To: John B. Lewis

(A.G.) In the case of *Wilson v. Mooresville*, 222 N.C. 282, the court discussed the liability of a town for injuries sustained by a policeman who was pursuing a misdemeanor outside of the town. In that case the jurisdiction of the injured policeman included two townships. However, he was injured after crossing into another county. The court, in denying recovery, held that when he left these townships "his going was not incident to his employment and therefore his injury did not arise out of his employment." This would imply that so long as the policeman was within the territorial limits of his jurisdiction, he would be covered by the Act. Thus, if an act of the Legislature gives police officers of a town jurisdiction beyond the town limits, it is my opinion that they would be covered by the Workman's Compensation Act when they are performing their duties within the area of jurisdiction.

Social Security

(Continued from page 12)

payment of three times your primary benefit or \$195, plus a monthly check of three-fourths of your primary benefit or \$49. If you were survived by your wife and a dependent child, they would receive \$98 a month. Maximum monthly payments to your family cannot be more than 80 per cent of your average monthly earnings or more than \$150.

Other Earnings

Under the Social Security Act as amended, neither you nor your widow may accept a benefit check if either of you are earning more than \$50 a month in work covered by the law. (The maximum was \$14.99.) However, this restriction does not apply after you or your widow are 75 years of age. Unlike wages or earnings, income from annuities, rentals, and dividends, do not disqualify a retired employee from receiving Social Security payments.

Increasing Interest

Although it is difficult to predict how many of the 10,000 state and local employees in North Carolina who do not now belong to a retirement system will be brought under Social Security, 40 governmental units sent representatives to the Raleigh meeting.

Legislative Service-1951

(Continued from page 6)

were brought out and made the basis of these bulletins. A county bulletin was designed to report to a large number of people in each county all bills introduced or action on all bills that week which affected only that particular county. With an augmented staff of typists and all 18 members of our assembling crew, we went to work on reporting these matters of concern to the people in the local areas. On Saturdays every member did yeoman service. In a babble of proof-reading, mimeographing, and typing, we got out these bulletins, folding in with each one a copy of the Weekly Summary written the night before. These publications reached about 6,000 people each week.

Sine adjournment of the General Assembly did not mean that the Institute staff members were able to return to Chapel Hill. There was still another publication to be finished, the Final Summary. For more than a month before adjournment Ernest Machen had been working at the job of reviewing new legislation that was meeting legislative approval. As the number of bills ratified increased until the number on the final day reached almost 200, it was too big a job for one man. As soon as other staff members could be released from their regular jobs they began to help prepare copy for the Final Summary. This summary is a publication with which we have tried several experiments in the past. Sometimes we have written it in "law review style," sometimes in newspaper style. After several sessions we published it in *Popular Government* and after others we made it a separate publication. Our objective has always been the same—to get out to the officials and to the public as soon as possible a publication that will at least put them on notice of the major changes in the law. This year we are trying another experiment, and we are confident that it will prove more useful than any summary we have tried before. We are publishing it in the form of a supplement to the General Statutes of North Carolina, showing exactly what has been done to the law by way of additions and amendments. This, we feel, will be useful both before and after the official volume of the session laws is printed.

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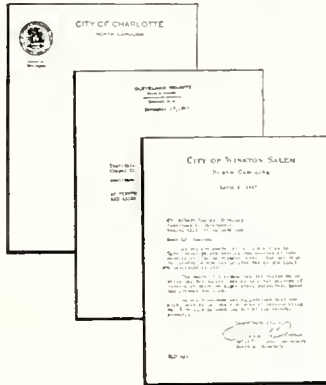
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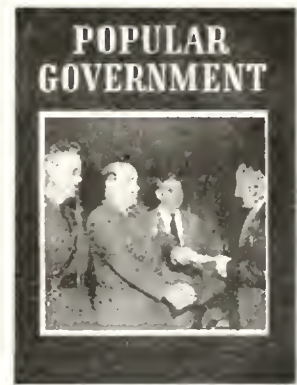
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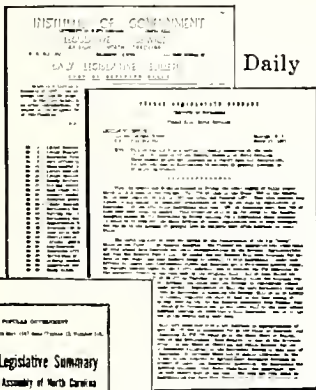


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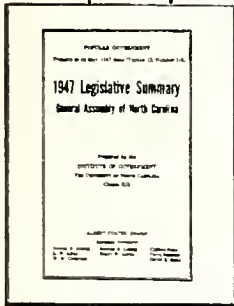
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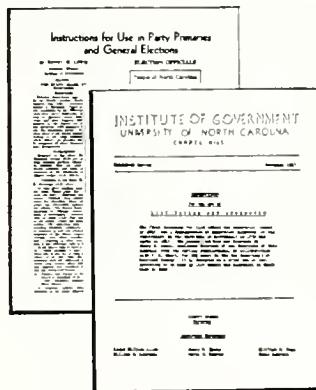
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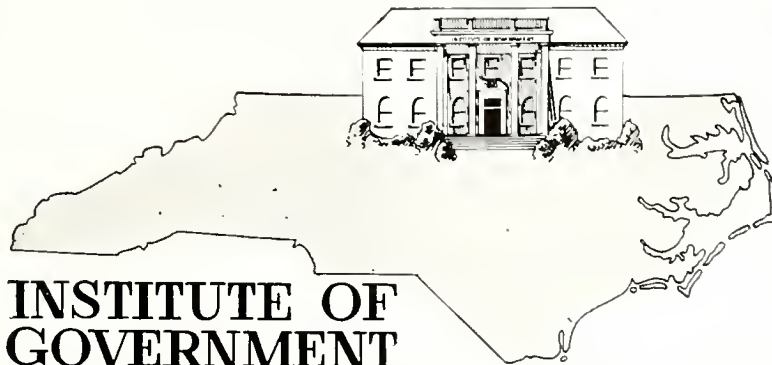
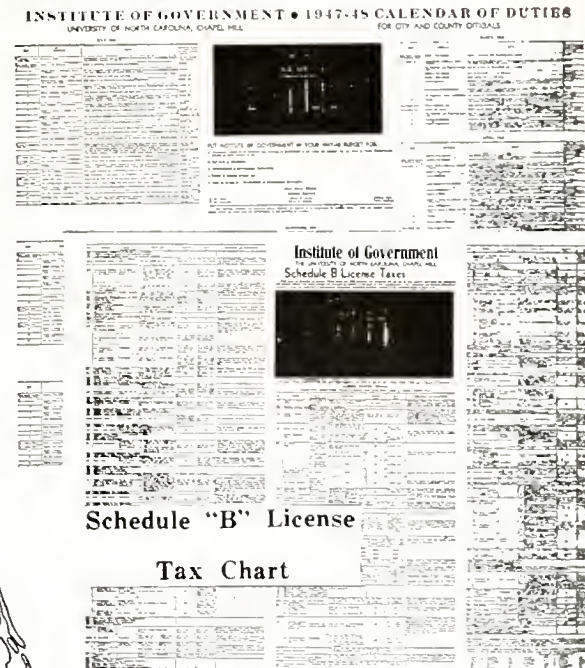


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