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Photographs by Charles Snow, Chief, Bureau of Identification and Records, North Carolina Prison Department

The First Four Prison Officers' Schools Conducted by the Institute of Government for the State Prison Department

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THE CLEARINGHOUSE

Cities Meet the Drought

The water drought that struck North Carolina this summer spread and spread throughout September and early October as the supplies in many cities dropped lower and lower. Of the larger cities **Burlington** and **Raleigh** faced the gravest emergency, **Asheville** was getting into trouble, and many others such as **Henderson, Oxford,** and **Sanford** faced critical periods. Among the steps taken to conserve water until the emergency passed were these:

1. Ordinances strictly limiting the purposes for which water could be used. Among the purposes commonly forbidden are watering the lawn, car-washing, street cleaning. Some cities have cut off or reduced supplies to large industrial users. Among the devices introduced in **Raleigh's** intensive campaign which cut water consumption in half were a ban on the future installation of air conditioning units which did not recirculate water used and an emergency ordinance which required all users to reduce their water consumption in October to ⅔ that in October, 1950. Violators will have to pay a penalty equal to 500% of the cost of the excess water used.

2. Publicity campaigns aimed at reducing unnecessary water consumption. Newspaper articles, radio announcements, the cooperation of hotels, restaurants, and other larger users of water have been employed in discouraging the use of water, and many tips on ways in which water can be saved—such as bathing less frequently and shaving but once every two days—have been effective.

3. Securing emergency sources of water. **Henderson, Oxford,** and **Raleigh** have all tapped new sources of water for emergency purposes.

And even in cities where the supply has been ample, the current water shortage has caused a re-examination of existing supplies to insure that future shortages can be met. Where shortages have been encountered, the cities have been put on notice and efforts to obtain more adequate sources of water should be made.

Radar Nabs Speeders

Some North Carolina police departments are calling on modern science to help them control speeding on streets and highways. The device, christened the "whammy" by **Greensboro** policemen, is a radar speed meter which can accurately determine the speed of cars passing within 150 feet. In use it is mounted on a patrol car or on a porch and the speed of passing vehicles is recorded. When a speeder is detected, his license number is sent by radio to a patrol car which hands out the speeding citation.

Winston-Salem has been using the meter for about a year but it has not been bringing motorists into court on the radar evidence alone. Violators detected by the machine are mailed cards telling them of the speed violation and asking co-operation in traffic safety by driving slower. **Greensboro** began using the meter in September and brought 19 motorists into court the first day. The **Mecklenburg County** police department is purchasing a unit for testing purposes. Other cities and the State Highway Patrol have indicated interest in the meters but are hesitating to purchase one or many until the courts have indicated whether they will accept the meter readings as evidence in court. In the meantime law enforcement officials are pointing to the strong psychological effect the radar control system can have on speeders even though the violators are not brought into court.

Grade Crossing Survey

Grade crossings on the State's secondary rural roads have recently been classified as to their potential danger to motor vehicle traffic. The survey has been conducted by the Division of Statistics and Planning, State Highway and Public Works Commission, and covered the 2,024 places where railroad tracks cross secondary rural roads at grade.

The survey became necessary because of the increased paving of secondary rural roads and the attendant increase in traffic and speeds on those roads.

The survey can be used by the Highway Commission in their attempts to cut down the accident potential at the most dangerous crossings.

Street Mileage

At the time of the meetings of the State Municipal Road Commission, appointed in 1949 to study the problem of state aid to streets, no one in North Carolina knew the precise mileage of streets in the State. Guesses ranged from 6,500 to 7,500. All guesses, it turns out, were too low.

There are more than 8,000 miles of streets in the State, according to a study recently made by the Division of Statistics and Planning of the State Highway and Public Works Commission. The study was made on the basis of the reports of surveyed mileage by the cities and towns applying for Powell Bill aid.

In the 386 active cities and towns, there are 7,507 miles of streets. In the 189 small towns that have no officials and carry on no governmental activities, there are an estimated 516 miles. The total is therefore about 8,023 miles.

Of the 8,023 total miles, 2,361, or 29 per cent, are the responsibility of the State, being either on the State Highway System or the County Road System; 5,662 are the sole responsibility of the cities and towns.

Of the 8,023 total miles, 4,349 are paved; thus 54 per cent of the total mileage is paved. Of the remainder, 1,974 are soil surfaced, 1,489 are unsurfaced, and 211 are less than 16 feet wide.

Salute!

This month *Popular Government* salutes

City Managers R. W. Flack of Durham and J. L. Womack of Reidsville who were awarded certificates at the recent International City Managers Association Convention for having completed 25 years of managerial service. Only 50 men in the country have received this honor.

. . . and Kelly G. Vester, Sr., Sanitarian of the Rocky Mount Health Department, who was presented the Reynolds Award for distinguished service and outstanding achievements in the field of public health at the annual meeting of the N. C. Public Health Association in Winston-Salem on September 14. The Rocky Mount city council recognized this honor and Mr. Vester's years of service to the city in a special resolution on September 20.

Cost-of-Living Raises

The 15 point increase in the Bureau of Labor Statistics' average Consumers Price Index in the first year after the beginning of the Korean War is statistical evidence of the hard fact that has thinned many a public employee's pocketbook and proved a real problem for the General Assembly, and city and county governing boards.

Neither governing bodies nor employees have been able to ignore the rising cost of living. The 1951 General Assembly noted the problem and passed a total of 135 local acts concerning salaries of county employees and 5 changing the salaries of city officials. They also granted some 20,378 State employees a $15-a-month pay raise effective July 1st.

Many cities and counties have also granted salary increases. The amount and the effective date of the increases have varied widely. The increases appear to range from 3 to 20 per cent with the greatest number of increases being 10 per cent. The method or formula used to distribute the increases has also varied. The following are five of the methods used to calculate the increases. A few of the cities and counties granting each type of increase during the past year are indicated.

BONUS. **Wilmington** and several other towns that were rapidly losing employees granted retroactive monthly bonuses. In Wilmington a $5 bonus retroactive to July 1, 1950 was voted all employees in December, 1950. In most instances the bonus was a stop gap emergency measure to grant temporary relief without jeopardizing the budget by granting permanent salary increases.

UNIFORM MONTHLY RAISE. Among the cities and counties granting uniform monthly raises to permanent employees are: **Burlington** which granted a $15 monthly raise effective January 1, the City of **Hertford** which granted a $10 monthly raise effective July 1, and **Wilmington** and **New Hanover County** which granted $10 raises March 1.

UNIFORM PERCENTAGE INCREASE. Both **Alamance County** and **Kinston** granted 5 per cent salary increases October 1, 1950. **Edenton** granted a similar increase in July of this year. In March, **Greenville** and **Jacksonville** gave 10 per cent raises. Ten per cent increases were also granted by **Winston-Salem** in May and **Dunn** and **Lenoir** in July. **Greensboro** raised their salary schedule two steps to give their employees 10 per cent more. In March, **Onslow** County gave their employees a 15 percent raise.

SLIDING PERCENTAGE INCREASE. Several governing bodies believed that the increase in the cost of living created a greater burden upon their lower paid employees and granted larger percentage increases to these workers. **Durham** granted a 10 per cent increase to all employees receiving less than $4,000 a year, 7 per cent to employees receiving from $4,000 to $5,000 and 5 per cent to employees making over $5,000 a year. **Statesville** granted 5 per cent increases to employees making less than $2,880 a year and 3 per cent to employees receiving over tht figure. **Guilford County** granted 10 per cent increase to all employees making less than $2,400 a year and $20 a month to all other employees. All of the increases in **Durham, Statesville,** and **Guilford County** were effective July 1, 1951.

RAISE PLUS PERCENTAGE INCREASE. **Charlotte's** formula for distributing the salary increases was also designed to give lower paid workers the largest increases. The method used is actually in part a combination of the monthly raise plus the uniform percentage increase. All full-time employees receiving less than $200 a month rceived a raise of $10 a month plus 15 per cent after the addition of the $10 raise. Charlotte employees earning more than $200 and less than $400 a month received a 15 per cent increase. Employees making more than $400 a month were granted a 5 per cent increase.

With the cost-of-living index continuing to edge upward and with increased income tax deductions effective November 1st, employees may find that neither the "take home pay" nor the purchasing power of these increases are as large as the figures at first indicated.

New City Ordinances

Among the new ordinances received by the Institute of Government from North Carolina cities and towns are the following:

Greensboro. Regulating the operation of concessions, theatrical and vaudeville performances, public lectures and music concerts in the stadium, and prohibiting the use of the stadium for circuses, dog and pony shows and carnivals without a permit therefor.

. . . Amending the taxicab ordinance to increase boundary zones, increase passenger rates, provide for amount charged for additional passengers, trunks and baggage carried inside and outside the cab and for the amount to be charged for stops made at the request of the passenger.

Winston-Salam. Attending the city ordinances regulating the keeping of animals within the city boundaries to limit rabbit-raisers within the city to no more than six rabbits and to require all hutches to be more than 100 feet from a neighbor's home, and to relax restrictions on the raising of chickens so that chickens and other fowls may be raised within the city provided the enclosures are maintained in a sanitary manner and are at least 15 feet from neighbors' homes.

Fayetteville. Prohibiting peddling and solicitation of sales at home and on the streets and sidewalks. This ordinance is based on the ordinance of **Alexandria, Louisiana,** which was upheld by the U. S. Supreme Court this summer in the case of *Breard* v. *Alexandria,* 95 Law Ed. Advance Opinions 838. The right of North Carolina towns to enact such an ordinance has been upheld by ruling of the Attorney General which will be published in *Popular Government* next month. The **Fayetteville** ordinance is similar to the **Alexandria** measure in prohibiting solicitation and peddling in private homes without having been requested by the owner, but it does make the prohibition void if the solicitor or peddler registers with the chief of police, secures a certificate giving detailed information as to his occupation, and shows the certificate to the occupants of private residences before attempting to make a sale. The ordinance also prohibits soliciting subscriptions to periodicals and for the sale of goods on the streets of the city. The provisions of the ordinance do not apply to the sale of milk, vegetable, fruit, poultry, eggs, farm products, newspapers, or to solicitation by religious, charitable or benevolent organizations.

Report on Social Security

Approximately 5,200 persons from 182 North Carolina cities, counties, and other governmental agencies have been covered by Social Security since the 1951 General Assembly passed the necessary enabling legislation, according to a report from Nathan H. Yelton, Executive Secretary of the Teachers' and State Employees' Retirement System and the state agent dealing with the Federal Social Security Board. The total includes 97 cities and towns, 39 counties, 20 ABC boards, 8 boards of health, 8 public libraries, 6 school administrative units, and 4 housing authorities.

The number of employees covered does not include members of existing retirement systems who are excluded under the terms of the Federal Social Security Act. Thus counties and cities who are participating in the North Carolina Local Governmental Employees' Retirement System are not eligible to bring their employees under the Old Age and Survivors Insurance Program.

Governmental units which have not as yet come into the program may do so at the beginning of any calendar quarter or they may make the coverage retroactive to January 1, 1951. Before participation begins the unit must sign an agreement with the state agent, the official liaison officer between the federal board and the individual governmental units since the federal board will not deal directly with local political subdivisions (See Ch. 562, 1951 Session Laws). Copies of the agreement and other information can be secured by interested governmental units by writing Nathan H. Yelton, Director, North Carolina Public Employees' Social Security Agency, P. O. Box 2629, Raleigh, N. C.

The following North Carolina governmental units have been covered to this time.

CITIES AND TOWNS—

Ahoskie, Apex, Asheville, Aurora, Ayden, Belhaven, Benson, Bethel, Biltmore Forest, Black Mountain, Brevard, Burlington, Canton, Carolina Beach, Chadbourn, Chapel Hill, Cherryville, Clayton, Clyde, Columbia, Dunn, Edenton, Elkin, Enfield, Fairmont, Franklin.

Garner, Gibsonville, Graham, Granite Falls, Hamlet, Hazelwood, Henderson, Highlands, High Point, Hot Springs, Jacksonville, Jamestown, Kings Mountain, Kure Beach, La Grange, Lake Lure, Laurinburg, Leaksville, Lenoir, Liberty, Littleton, Louisburg, Lowell, Maiden, Manteo, Marshville, Mebane, Mocksville, Mooresville, Mount Airy, Mount Holly, Mount Olive.

Nashville, North Wilkesboro, Pembroke, Pittsboro, Plymouth, Randleman, Reidsville, Roanoke Rapids, Robbins, Robersonville, Rockingham, Roxboro, Rutherfordton, Saluda, Sanford, Scotland Neck, Siler City, Smithfield, Southern Pines, Spindale, Spruce Pine, St. Pauls, Stanley, Star, Statesville, Tarboro, Thomasville, Tryon, Troy.

Vass, Wake Forest, Waxhaw, Waynesville, Weaverville, Whiteville, Williamston, Winterville, Wrightsville Beach, Zebulon.

COUNTIES—

Ashe, Beaufort, Bertie, Bladen, Burke, Camden, Chatham, Chowan, Clay, Cleveland, Columbus, Duplin, Graham, Granville, Greene, Halifax, Haywood, Hertford, Hoke, Iredell, Jackson, Johnston, Lenoir, Macon, Madison, Montgomery, Moore.

Orange, Rutherford, Sampson, Scotland, Stanly, Transylvania, Tyrrell, Vance, Warren, Watauga, Wayne, Yancey.

ABC BOARDS—

City boards: Asheville, Louisburg. County boards: Beaufort, Bertie, Carteret, Catawba, Chowan, Cumberland, Dare, Edgecombe, Greene, Halifax, Lenoir, Moore, Nash, Pasquotank, Tyrrell, Vance, Warren, Washington.

BOARDS OF HEALTH—

Alamance, Bladen, Cherokee-Clay-Graham, Columbus, Hertford-Gates, Sampson, Vance, Warren.

HOUSING AUTHORITIES—

Cities: Charlotte, Durham, and Fayetteville.

Eastern Carolina Regional Housing Authority.

PUBLIC LIBRARIES—

Cities: Canton, Enfield, and Scotland Neck.

Counties: Anson, Bertie-Martin-Hyde, Halifax, Pasquotank, Sampson.

PUBLIC SCHOOL—

Cities: Durham, Fayetteville, Mooresville, Raleigh, and Winston-Salem.

Counties: Forsyth.

Burlington Personnel Manual

As a follow-up to their recent job classification and wage survey (See *Popular Government*, June 1951, p. 12), Burlington has distributed an 11-page Personnel Manual to all of their employees. E. C. Brandon, Jr., Burlington city manager, writes in the introduction that the Personnel Manual was prepared (1) to bring together in convenient form the policies, procedures and pay rates which are designed to staff the municipal organization with capable, loyal and satisfied employees, and (2) to clarify the organization for everyone interested and concerned.

In addition to containing a copy of the new pay plan which became effective July 1, 1951, the manual contains an organization chart, and a detailed statement of municipal policy on such subjects as hours of work, overtime compensation, holidays, vacation, sick leave, military leave, hospital insurance, social security, and resignation notice.

Of special interest is the provision that each full-time weekly paid or hourly rate employee will be entitled to vacation or sick leave at the rate of one working day for each month employed by the city. All unused time during the year is deemed sick leave and accumulates until used. Also of interest is the sick leave provision for monthly employees. Employees with less than 10 years of service are allowed 12 days sick leave a year; employees of more than 10 but less than 20 are allowed 18 days a year; employees of more than 20 years but less than 30 are allowed 21 days a year; and employees of more than 30 years of service are allowed 22½ days of sick leave a year. All present employees were granted a sick leave credit for previous years of service according to this graduated scale. The actual amount of sick leave taken in previous year was then subtracted from the credit granted each employee to determine his present sick leave balance.

NEWS LETTER—

The North Carolina News Letter, published fifteen times a year by the Institute for Research in Social Sciences, will be sent to any of our readers on request. A request to be added to the News Letter mailing list should be addressed to the University of North Carolina News Letter, Chapel Hill, North Carolina.

Notes from North Carolina Cities

City Managers: Oliver O. Manning began his duties as city manager of **Dunn** on September 1. One of his first steps was to prepare a list of goals and objectives for the town to attain and to issue to all business firms a printed booklet entitled "Our Town" which reviews some of the problems facing the town and how the business firms can help in their solution . . . Herman Dickerson has become city manager in **Laurinburg**, the first since that city formally adopted the city manager form of government . . . The editor of the News-Reporter in **Whiteville** declared in a recent evaluation of town government that "the council-manager form of government has paid its own way many times over in actual savings of dollars and cents and equally as many times in services rendered."

Fire Prevention. New volunteer fire departments have been formed in **Hudson** and **Maysville**. **Hudson** is using a fire truck belonging to a local textile firm and has just finished installing a $90,000 water system financed by a bond issue. **Maysville** has no water system but the town has purchased a fire truck and is now building a combination town hall and fire department in which to house it.

Public Buildings. "Open House" was held in **Charlotte** on October 3 for council inspection of the new $200,000 jail. Not only is the jail a completely modern detention building with 139 cells but also it contains a comfortable assembly and recreation room for the city policemen which is the pride of Chief Frank Littlejohn The city council has also approved the plans for the new auditorium-coliseum . . . The **Winston-Salem** ABC board was able to buy office and warehouse space within two blocks of the city hall. When remodeled the buildings will make ideal headquarters for the board . . . **Ahoskie** is taking steps to build or buy new quarters for the town jail . . .

Sewage Disposal. The **Durham** city council, harassed by damage suits from landowners on property adjoining one of its sewage disposal plants, has decided to acquire by condemnation a mile-wide corridor of land on each side of the sewer pipeline running 6.3 miles along Ellerbe Creek to the Neuse River from the plant. A total of 21 suits have been brought against the city on account of odors and overflow waste from the plant, and one of the suits has already been decided in favor of the plaintiff. A referee is hearing the evidence in 19 of the suits. The council hopes that it can avoid further litigation through acquisition of the land.

Parking. Roxboro opened a new city parking lot (80-car capacity) last month on land leased to the city without charge . . . the **Raleigh** city council has voted unanimously to establish a city parking authority under the provisions of Chapter 779 of the 1951 Session Laws . . . **Wilmington's** parking authority, created in July under the same statutory authority, was dissolved in September and the city council has agreed to set up a new authority. The mayor asked each councilman to submit the names of "five outstanding businessmen" to form the basis for the appointment of new members.

Zoning. The **Raleigh** zoning ordinance has been extended to apply for one mile beyond the city limits on all sides under the authority of Ch. 540 of the 1949 Session Laws. The land affected has been designated as an industrial area . . . and the **Raleigh** planning commission has decided to recommend that the city council establish a new type of zoning district known as an "office and institution district." The new type district is designed to meet the problem of handling doctors' offices and similar offices which want to open in residential districts.

Planning. Hickory and **Newton** have pooled their resources to hire a city planner and traffic specialist who will work for both cities. Charles H. Davis, who has been employed by a municipal consultant firm on traffic and planning problems, has accepted the job

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Cities in Other States

Are leasing cars. Some cities and other governmental units are leasing vehicles needed for public business rather than purchasing them. The International City Managers' Association reports that **Alexandria, Virginia** is the most recent city to adopt the rental method. The city drew specifications for sealed bids on 30 cars, and the lowest bidder was awarded the contract to supply the cars on a fixed rental fee basis. In addition to the rent the city must pay for gasoline, oil, and liability and property damage insurance. Under the agreement the 14 vehicles for the police department will be replaced at the end of 12 months since the department runs up about 35,000 miles a year on each vehicle used in patrolling.

A different basis of negotiation was worked out by **Charleston County, South Carolina** in renting 14 police cars equipped with three-way radio in 1950. The successful bidder agreed to provide all maintenance, repair and lubrication at a price of 2⅓ cents per mile with the agreement subject to renegotiation depending upon the rise or fall of the Bureau of Labor Statistics' Automotive Equipment Price Index. Each car is to be replaced by a new one after it has traveled 30,000 miles or has been in service one year, whichever condition arises first, but the county guaranteed payment for each car for a minimum of 30,000 miles per year, payable monthly on the basis of the actual miles traveled. The county pays for gasoline, oil, installation of special equipment, and insurance.

Are renting curb space to motorists. **Milwaukee, Wisconsin** has found a new source of revenue in the renting of curb space to motorists who are unable to locate a garage in which to park their cars overnight. The city issues a monthly permit for a $4 fee to any motorist who does not have a readily available parking lot or garage within two blocks of his residence. A total $330,000 was realized by the city in the first 15 months of operation and is being used for the purchase and development of off-street parking lots.

Are advertising on parking meters. Permission to place advertising plates on parking meter standards is being sold by **Newport, Kentucky** at a price of one dollar per month per meter with a guaranteed minimum of $400 per month. **Peoria, Illinois** also sells this privilege. On the other hand **Minot** and **Grand Forks, North Dakota** have recently followed more conventional practice in refusing to allow such advertising.

City--Collected Fines Go To Schools

A long-standing question reappeared in the Attorney-General's rulings again this summer, a question that is frequently asked.

May fines imposed for the violation of municipal ordinances be deposited in the town general fund?

The answer is clearly NO. Article IX, Section 5, of the Constitution requires that "the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the state . . . shall belong to and remain in the several counties and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties in this state."

This section of the Constitution received careful interpretation in the case of *Board of Education* v. *Henderson*, 126 N.C. 689, where the county board of education sued the town for fines and forfeitures collected and not turned over to the board. The town answered that an act of the legislature directed that fines and penalties shall be paid into the treasuries of towns for municipal purposes and prohibited any action to collect fines from the towns (Ch. 128, Public Laws of 1899). This act the court held to be unconstitutional. The opinion pointed out that the General Assembly has made the violation of town ordinances a misdemeanor punishable by a fine of not more than $50 or imprisonment for not more than 30 days, that such violations are therefore violations of the criminal laws of the state, and that all fines imposed for violations of the criminal laws of the state must be turned over to the county schools in accordance with the constitutional provisions.

On the other hand the court upheld the right of the town to deposit in its treasury the proceeds of penalties imposed for the violation of *town* ordinances which the town may sue for in a civil action.

This decision has been affirmed many times since 1900. See *Directors* v. *Asheville*, 128 N.C. 251; *School Directors* v. *Asheville*, 137 N.C. 507; *State* v. *Maultsby*, 139 N.C. 585. The court has further interpreted the section by holding that the county school agencies are barred by the two-year statute of limitation from collecting fines not already turned over to the agencies, *Board of Education* v. *Greenville*, 128 N.C. 4; by holding that "clear proceeds" means the total sum of the fine less only the sheriff's fees for collection when the fine and costs are collected in full, *State* v. *Maultsby*, 139 N.C. 583; and by holding that the court clerk may not deduct his commission from the fines, *Board of Education* v. *High Point*, 213 N.C. 636.

Since the mayor is constituted an

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The 1950 Census Writes New Law

When the final 1950 census figures were issued, they created law in every state in the union. State legislatures often use the device of limiting the application of particular laws to cities, counties, or other governmental units falling within a particular population classification. The practice has utility, for though every city and town in North Carolina may be incorporated, everyone will agree that the powers suitable for the town of 1,000 will not begin to answer the needs of the cities having over 100,000, or even 10,000 inhabitants.

Because the North Carolina legislative process still leans heavily on public-local and special legislation, the population classification of laws pertaining to local governmental units has not been used as frequently as in those states restricted solely to general legislation. There are, however, some laws applying only to cities and towns with a given poulation, and some of these laws should be reviewed now that the 1950 census figures have been made final. In applying these statutes, the individual city or town should make sure that there is no conflicting special act on the subject.

Cities 1,000 to 5,000—

A total of 26 North Carolina towns reached and passed a population of 1,000 in 1950. These are **Apex, Biscoe, Boiling Springs, Burnsville, Carolina Beach, Coats, Draper, Elon College, Fair Bluff Garner, Gaston, Holly Ridge, Hope Mills, Jacksonville, Lillington, McAdenville, Mars Hill, Mount Gilead, Pembroke, Pilot Mountain, Pinetops, Pittsboro, Robbins, Roseboro, Rowland, and Weaverville.** As a result these towns now:

1. Are subject to the state building inspection and safety laws (G.S. 160-115 to 160-154).

2. Must appoint a chief of the fire department to enforce the building laws and the building code of the N. C. Building Code Council (160-117 to 160-123: 143-138). These provisions do not require that a fire department be established, although all but five of the 26 towns have presently existing fire departments.

3. May hold elections to determine whether or not wine and beer may be sold in the town.

4. May establish a municipal recorder's court (G.S. 7-185; 7-212).

5. May join with the county in forming a municipal-county recorder's court if the town is a county seat and has a population of over 2,000 (G.S. 7-240).

Cities Over 5,000—

A total of 10 North Carolina towns reached and passed a population of 5,000 in 1950, while two more dropped below that figure. Those passing 5,000 are **Albemarle, Belmont, Chapel Hill, Graham, Lincolnton, Morehead City, Oxford, Sanford, Smithfield,** and **Waynesville.** Those dropping below 5,000 are **Canton** and **Forest City.** Those towns having a population of 5,000 or more:

1. May establish a domestic relations court, either alone or in conjunction with the county (G.S. 7-101 as amended by Ch. 1111, 1951 Session Laws).

2. May establish a housing authority (G.S. Ch. 157; G.S. 157-3).

3. May establish a city juvenile court (GS. 110-44).

4. May provide for the repair or demolition of buildings unfit for human occupancy under the procedure set forth in G.S. Ch. 160, Art. 15 (G.S. 160-183).

Cities Over 25,000—

There are 10 North Carolina cities having a population of more than 25,000 which may now establish urban redevelopment commissions under the authority of Ch. 779, 1951 Session Laws. They are **Asheville, Charlotte, Durham, Fayetteville, Greensboro, High Point, Raleigh, Rocky Mount, Wilmington,** and **Winston-Salem.**

Controlling Charity Hospitalization Expenditures

In recent years most counties have experienced an increase in their expenditures for "charity hospitalization," a term used to cover the payments of the hospital bills of indigent patients. Part of the increase is of course due to the fact that hospitals must charge more today than they did five years ago. But in addition some counties feel that the number of people requesting hospitalization on the grounds of indigency and the average length of the hospital stay of indigent people is increasing at such a rate as to indicate the need for tighter control over the entire charity hospitalization program. Because of of this feeling, the story of what two counties are doing to control the program is of state-wide interest.

Durham County

For twelve years, since August, 1939, the charity hospitalization program of Durham County has been conducted by the Department of Hospitalization under the direction of Mr. Thomas Pendergrass. The department works in the following manner:

When a person requiring immediate hospitalization arrives at one of the county's three hospitals and that person or the relative or friend accompanying him or her states that neither the patient nor anyone in the family is able to pay the bill, the admitting officer takes two steps: (1) he advises the relative or friend to have some member of the family report to the Department of Hospitalization immediately; (2) he reports the admittance of the patient to the department the following morning.

When a person examined at a clinic or by a private doctor is found to need hospitalization and that person states that he or she is unable to pay the hospital bill, the clinic personnel or the doctor advises the person to report to the Department of Hospitalization to make arrangements for admittance to the hospital.

When a person comes to the department on behalf of a relative or to make arrangements for his or her own hospitalization, that person is questioned concerning the income in the family. If the department head determines that the family can pay the bill, the person is so advised and told to make arrangements with the hospital to pay the bill. If the department head determines that the family can pay the bill in installments, the person is asked to sign an agreement to pay so much a week until the county is reimbursed for the cost of the bill; the county pays the bill when the patient is discharged and is reimbursed in installments. If the department head determines that the family can not pay the bill, either now or later, the county pays the bill and seeks no reimbursement. In case the county is to pay the bill, whether or not it is to be reimbursed later, the hospital is so advised and requested to send the bill to the county for payment.

The Department of Hospitalization itself makes the determination of ability to pay. The cases are not referred to the Welfare Department at all. In several instances, persons drawing old age assistance, aid to dependent children, or aid to the totally and permanently disabled have been required to pay the hospital bill if the total family income is sufficient to do so. In other cases such persons have been asked to agree to reimburse the county for payment of the bill if family income is sufficient. These cases usually arise where there is other income in addition to the welfare payments.

When reporting the admittance of a patient, the hospitals also report the expected length of stay. Moreover, in addition to reporting new admittances the hospitals report the discharges each day. With this information, the department knows precisely who are in the three hospitals each day and the expected date that each will be discharged. As the time of expected discharge of each patient draws near, the department checks with the hospital to see if the patient will be discharged on time. By keeping up with things in this manner, the department has cut down the average length of stay. In the absence of such follow-ups, the department feels certain that some patients would prolong their stay unnecessarily. Moreover, in the case of persons who must go to the hospital on a non-emergency basis, the department will refuse to approve their admittance unless the hospital and the operating doctor are ready to take care of the patient immediately; this prevents patients from going to the hospital several days ahead of the time of operation at the county's expense when there is no reason for it.

Every so often a non-resident is admitted to one of the hospitals on an emergency basis. The department discovers this fact in its investigations and notifies the patient's home county that it expects reimbursement for the cost of the hospital bill.

A comparison of the work of the Department of Hospitalization in 1940-41, the first full year of operation, with the work of 1950-51 is revealing. In 1940 Durham County had about 80,000 people; in 1950 it had 101,639, an increase of over 25%. In 1940-41 the county paid the hospital bills of 2,495 people including indigent persons and persons who later repaid the county for some or all of the cost of their bills; in 1950-51 the county paid the bills of only 1,852 people. In 1940-41 the county paid about $69,000 to the hospitals under the program, whereas in 1950-51 it paid about $162,00; the sole reason for the increase in payments was due to the fact that the cost of hospital care rose from $2.30 and $2.70 a day in 1940-41, depending on the hospital, to between $9.18 and $13.37 a day in 1950-51. In 1940-41 the department collected about $5,200 from people able to pay their bills in installments, or 8% of its total outlay to the several hospitals; in 1950-51 it collected about $17,000 or 11% of its total outlay, and in addition collected about $700 from other counties whose residents were admitted to Durham hospitals on an indigency basis. In 1950-51, while the bills of 1,852 patients were being paid by the county, the county had 950 people paying their bills in periodic installments and 620 completed the payment of their bills on this basis during the year. Moreover, 186 people who applied for charity hospitalization were turned down on the basis that they were capable of paying their bills. One other fact is significant: the average length of stay of charity patients at the beginning of the program in 1939 was 12½ days; the average length of stay in 1951 was slightly more than 7 days.

Two persons make up the personnel of the Durham Department of Hospitalization: Mr. Thomas Pendergrass and his secretary. In the 12 years of operation, 19,009 patients have participated in the program, about 60% being colored and 40% white. The department collected $121,269.36 through June 30, 1951, from persons able to pay their bills in small installments although unable to pay it upon discharge from the hospital.

Mr. Pendergrass believes that the

plan has been very successful. In addition to the money collected, money has been saved by accepting into the program only those people in need of financial aid, and money has been saved by cutting down the average length of stay. Moreover, he states, the hospitals are pleased over the working of the plan. His advice to those counties interested in the plan is to get as many people to come to the office before they are hospitalized, for such persons more readily agree to pay back their bills in installments than do these who have already been taken care of following admission to a hospital on an emergency basis.

Wake County

During 1950-51 Wake County was faced with ever-increasing costs in its charity hospitalization program. Final expenditures for the year exceeded $60,000, more than 50% in excess of the $40,000 budget. Attempts to control the program, first under the Welfare Department and then under a full-time officer, had not been successful. The result was the establishment of the Department of Negro Hospitalization, under Mr. James R. Sloo, the Veterans Service Officer. The operation of the Durham County department was studied and many of the procedures of the latter were adopted. Wake, however, decided to limit the operation of the department to its Negro citizens.

The hospitals of Wake County require patients on admission to pay the estimated amount of their hospital bill. A person not immediately in need of hospitalization is refused admittance unless he or she can make this payment, and in the cases of colored persons applying to St. Agnes Hospital, they are advised to go to the Department of Negro Hospitalization to make necessary arrangements. Emergency cases are admitted immediately, however, and the patient is advised to have a relative make an immediate call on the department. Persons anticipating the need for hospitalization are advised to go to the department ahead of time to make necessary arrangements.

Persons applying to the department for hospitalization are interviewed. If they are are on the welfare rolls and drawing some kind of relief, they are immediately classified as charity patients and are not asked to pay anything toward their hospital bill. On the other hand, if they are not on the welfare rolls they are asked about their financial status. If it appears that they are unable to pay their hospital bill, they are referred to the Welfare Department for certification. If it appears that they can repay their bill in small installments, suitable arrangements are made for such repayment to the county. If it appears that they are not in financial difficulty at all, they are refused help and the hospital is so notified. The hospital is notified by the department that the county will pay the bills of each charity case and each case which has agreed to repay the county.

The director of the department goes to the hospital every morning. He is given a roster of all persons in the hospital for whose bill the county has assumed responsibility and in addition is given a statement concerning each person admitted, the latter containing the estimated length of stay of the patient. During the visit, he checks on those patients due to be discharged shortly in order to make certain that they do not stay longer than necessary. Upon returning to his office, he checks the names of persons newly admitted to see if they are on the welfare rolls or if they have made prior arrangements for the hospitalization. If they fall into neither category, the patient is notified to have a relative report to the department to make arrangements for the bill. If no one appears, a letter is written requesting their appearance at the department. This procedure has resulted in reaching practically all persons not on the welfare rolls.

In addition to the current procedure, the department was given the records of all patients admitted to the hospital during the past two years who were not on the welfare rolls. These people, 300 of them, were written letters asking them to come to the department to make arrangements for repaying the county. Over 80 have replied and are periodically paying small amounts on their old bills.

In the 2½ months the plan has been in operation, over $1,000 has been collected from patients able to repay. The department is certain that the amount of repayments will increase after the plan has been in operation for a longer period.

Two persons make up the personnel of the department: Mr. James R. Sloo and his secretary. Mr. Sloo is convinced that the department will be successful in recovering a great portion of the bills of those able to pay. Moreover, he feels that the department has already instilled in the minds of the colored citizens of Wake County that idea that while the county will help them, it expects them to do their part. This, he says, will make it easier in the future to recover from those able to pay for they no longer feel that it is the county's duty to pay for their hospitalization.

City-Collected Fines

(Continued from page 5)

inferior court with criminal jurisdiction only, he cannot hear actions in which the town sues for the recovery of a penalty imposed for the violation of a town ordinance but can only enforce town ordinances under the statutory provisions declaring that a violation of a town ordinance is a misdemeanor. Thus all fines collected by the mayor for the violation of town ordinances must be turned over to the county schools, and they may not be deposited in the town general fund.

Article 21 of G.S. Chapter 115 (as amended by Ch. 785, 1951 Session Laws) sets forth the procedure for handling and accounting for fines, including the keeping of a record and payment to the county treasurer or treasurer of the school fund. Misappropriation of fines is made a misdemeanor punishable in the discretion of the court.

In other words if the town has an ordinance which prescribes a penalty of $25 for failure to procure a privilege license, the town may retain the amount of the penalty if the businessman pays it without protest. It may also retain the penalty if it sues the businessman for the amount of the penalty. If, however, the town sues out a warrant and charges the businessman with committing a misdemeanor by failure to comply with the town ordinance, and if the mayor or recorder finds the businessman guilty and orders him to pay a fine of $25, then that $25 must be paid by the mayor or recorder's court to the county treasurer for the use of the county board of education.

If a town wishes to make penalties for the violation of town ordinances available to the town general fund, it must specify the penalty to be paid in the ordinance. This it is authorized to do under the provisions of G.S. 160-52. It must take care, however, to prescribe a specific penalty to be collected for the violation of a particular ordinance. If the ordinance provides a penalty of "not less than $10 nor

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Prison Officers' Schools

Two hundred officers of the state's prison system - - including all the prison camp superintendents, stewards, and division supervisors, and fifteen staff members of Central Prison, Women's Prison, and Butner Youth Center - - attended Prison Officers' Schools at the Institute of Government during October. The schools, first of their kind in North Carolina, were conducted by the Institute at the request of the State Prison Department.

There were four schools, each lasting for five days, with the first two being planned primarily for prison camp superintendents, the last two for prison camp stewards (who also serve as assistant camp superintendents).

Staff members of the Institute of Government took part in the program, and representatives of the Prison Department, the Paroles Commission, the State Board of Welfare, the State Board of Health, and the University faculty joined the instructional staff of the Institute of Government during the series of schools. The program for each of the four weeks included the following lectures and their subjects:

Walter Anderson, Director of Prisons, *The Objectives of the North Carolina Prison Department*; Donald B. Hayman, Assistant Director, Institute of Government, *Personnel Management in the State Prison System;* Albert Coates, Director, Institute of Government, and George Esser, Assistant Director, *Origin and Evolution of Penal Institutions, Practices, and Attitudes in North Carolina;* Charles Knox, Assistant Director, Institute of Government, *The North Carolina Court System;* J. D. Wilson, Classification Division, Prison Department, *Classification Procedures;* Dr. W. G. Cheves, Medical Director, Prison Department, *Medical Service - Examination and Treatment*; Charles Snow, Chief of the Bureau of Identification and Records, Prison Department, *Identification and Records Work;*

H. J. Elam, staff member, Institute of Government, *The Law Governing Commitment; Rights of the Prisoner; Power of the State over the Prisoner; Arrest and Search; The Law of Escape, Rescue, and Prison Breach;* and *the Law Governing Probation, Pardon, Parole, and Discharge;* Sgt. John Laws, State Highway Patrol, *Firearms Handling;* R. L. Turner, Supervisor First Prison Division, and C. O. Benfield, Supervisor Eighth Division, *Security Measures in Prison Camps;* H. H. Honeycutt, Assistant Director of Prisons, *Disciplinary Procedures;* E. O. Brogden and Larry Beltman, legal advisors to the prison department,*Prison Department Legal Services and Problems;*

Dr. Lee M. Brooks, Professor of Sociology (Criminology and Penology), University of North Carolina, *Who is the Criminal?*; Dr. Ellen Winston, Commissioner of Public Welfare, and T. A. Early ,Inspector of Correctional Institutions, *Constitutional and Statutory Responsibilities of the State Department of Public Welfare with Respect to Penal Institutions;* Otis Banks, former Business Manager of the Prison Department, *Financial and Accounting Procedures of the Prison Department;* Murray Linker, State Board of Health, *Environmental Sanitation and Food Sanitation in Prison Camps;* E. C. Hubbard and Ernest Hinton, State Board of Health, *Water and Sewage Sanitation in Prison Camps;* Miss Sallie Mooring, State Board of Health, *Nutrition and Food Preparation in Prison Camps;*

Foil Essick, Assistant Commissioner of Paroles, *Parole Practices and Procedures;* Dr. T. C. Johnson, Commissioner of Paroles, *Relationship of the Parole Program to Prison Work;* Dr. J. F. Owen, Prison Department, Psychiatrist, *Psychriatic Services of the Prison Department;* Rev. W. H. R. Jackson, Prison Department Chaplain, *Opportunities for Rehabilitation Through Religious Activities;* Miss Ronie Sheffield, Superintendent of Women's Prison, *Opportunities for Rehabilitation Through Recreational Activities.*

W. M. Cochrane, Assistant Director of the Institute of Government, was in charge of organizing and conducting the four schools.

Sgt. John Laws of the State Highway Patrol giving instruction to officers of the Prison system on safe handling of firearms. (Photograph by Charles Snow)

City-Collected Fines

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more than $50," the penalty cannot be collected in a civil suit because the action is for a debt and must be for a *sum certain*. See *State* v. *Irvin*, 126 N.C. 989.

A common example of the distinction between a fine and a penalty is found in ordinances regulating traffic. Many of these ordinances provide that the penalty for violation shall be one dollar or two dollars, and that if the penalty is paid within a certain period, warrants will not be issued charging the commission of a misdemeanor. If the small penalty is paid, the town may retain the penalty. If the driver refuses to pay the penalty and is brought into court, the fine he must pay goes to the public schools.

Book Received

THE LOGIC OF LIBERTY, *Reflections and Rejoinders. Michael Polanyi. Chicago: University of Chicago Press. vi, 260 pp. $4.00.*

1951 Conference of City and County Tax Collectors

From noon, October 8, until noon, October 10, fifty-five county and city tax collectors met for their annual conference at the Institute of Government. With enthusiasm and close attention, the collectors worked their way through a program of instruction and discussion calculated to stir the wits and interest of every person concerned with property and license tax work in North Carolina.

The program was organized around a series of factual problems designed to bring before the group current collection problems of importance to both counties and municipalities. With these problems as a basis, the collectors shared their own experiences and solutions to even more troublesome matters.

At the beginning of the meeting each person in attendance was presented with a copy of the new Institute of Government guidebook for tax collectors. This 330-page book, designed to shed light on every aspect of property tax collection work, was received with enthusiasm. It was used throughout the sessions as a reference for the discussions.

Realizing that many collectors were unable to attend this meeting because of the press of business in October or because they have no help in their offices, the Institute of Government has made an effort to bring to all collectors not present a detailed report of what went on in Chapel Hill. Every county collector, attorney, and the county and city attorneys of counties and cities having no tax attorney has been sent a copy of this book. Moreover, copies of the principal questions raised at this meeting, together with answers to those questions, have also been mailed to the same group.

One important item of business discussed at the October conference was the desirability of changing the date of the annual meeting. Experience has proved that October is usually too busy a month for this meeting, so it was decided that future statewide meetings will be held in the month of April. For the benefit of collectors who find it impossible to be away from their offices more than one day at a time, plans are being formulated to hold one-day meetings at various places throughout the state to enable them to join in the program of cooperative instruction. Collectors will hear more about plans for these district meetings later.

At the final session of the October conference the collectors elected the following officers to serve for 1951-52:

President, James W. Armstrong, Collector of Revenue of the City of Charlotte; Vice Presidents, C. C. Rich, Tax Collector of Wake County, Mrs. Forrest Hall, Tax Collector of the Town of Graham, C. R. Morse, Tax Collector of the City of Wilmington and of New Hanover County; Secretary, The Institute of Government, Chapel Hill.

Notes from Cities

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and will spend 20 days in every month in Hickory, 10 days in Newton. The two cities are sharing his salary on a ⅔, ⅓ basis.

Urban Redevelopment. Ch. 1095 of the 1951 Session Laws permits incorporated cities over 25,000 to establish urban redevelopment commissions. These include Charlotte, Winston-Salem, Greensboro, Durham, Raleigh, Asheville, Wilmington, High Point, Rocky Mount, and Fayetteville. **Charlotte, Winston-Salem, Greensboro** and **Fayetteville** have applied for reservations of federal funds for redevelopment projects, **Charlotte** and **Winston-Salem** have appointed their commissions.

Miscellany. Raleigh has voted to spend $75,000 to develop one park and to purchase the sites for two more. The local Junior Chamber of Commerce and the Civitan Club are each going to sponsor one of the new parks . . . The **Rocky Mount** board of aldermen has approved the fluoridation of the city water supply to help protect teeth from decay. Several other cities are presently considering the process which was initiated in North Carolina several years ago by **Charlotte.**

1951 Statutory Legitimization of Children

By S. Nathan Spiller, Regional Attorney, Social Security Administration

A 1951 statute legitimatizing children born of a bigamous or voidable marriage reflects a new attitude toward this problem. This statute effects a desirable change in the outmoded law in this field. Mr. Spiller discusses problems arising in its application and effect in this article. The opinions expressed in the article are those of the author and not of the Social Security Administration.

With one apparently simple feat of legislative ledgermain the recently adjourned session of the General Assembly effected a far-reaching change in the legal status of a large group of previously unrecognized children in North Carolina, including those yet to be born. Casting aside traditional concepts, the legislature enacted Chapter 893, section 2, 1951 Session Laws, effective July 1, 1951, as follows: "A child born of a voidable or a bigamous marriage is legitimate notwithstanding the annulment of the marriage." This new provision will be found in the General Statutes as section 50-11.1 in the Chapter on Divorce and Alimony. However, it boasts the same common ancestor as General Statutes, section 49-12, which provides for the legitimation of children born out of wedlock upon the subsequent marriage of their parents, and which appears in the Chapter entitled "Bastardy-Legitimation." Both, it would appear, may trace their genealogy directly to an act adopted by the General Assembly of Virginia in 1785 from a report submitted in 1779 by a committee of revisors headed by Thomas Jefferson. With local modifications this Jeffersonian brain child has found its way into the statute books of almost half of the States. Against this background, then, of over 150 years of experience in other jursidictions, we might attempt an appraisal of how our legislative infant will fare in the climate of North Carolina.

Prior to July 1, 1951, the effective date of the new legislation, the status of children of voidable marriages may have been in some doubt. Certain decisions of the Supreme Court of North Carolina gave reason to believe that they might have been considered to be legitimate ("notwithstanding the annulment of the marriage") even before Chapter 893. But there was no doubt at all about the children of a bigamous marriage, a marriage attempted while one or both of the parents already had a spouse living and undivorced. In such a case the parents were legal strangers and their marriage was void from the beginning. No court action was necessary to declare its illegality. The offspring bore the indelible stigma of illegitimacy, and except for certain statutes designed to prevent their becoming public charges, they were nobody's children. Not even with respect to their mother, from whom they enjoyed inheritance rights, does it seem that they were considered legitimate.

Now, however, for those fortunate enough to come under the protective mantle of this remedial statute, the picture would appear to be substantially changed. First and foremost, by operation of the law, they are declared legitimate. The statute contains no qualifications in this respect, and it would appear to be a reasonable prediction that the courts of North Carolina would hold them to be legitimate for all purposes. That is to say, all the reciprocal rights and obligations of parent and child including those of custody, support and inheritance, would be determined in the same manner, and subject to the same legal principles, as though these children had been born of a completely lawful marriage. Of course, the statute has no other effect on the parents as between themselves. It imposes on them the rights and duties of legitimate parenthood without in anywise recognizing the legality of their relationship.

On the question of what children of voidable or bigamous marriages the General Assembly intended to legitimate by this law several important problems become apparent. It seems clear enough that any such child born after July 1, 1951, would be protected. But what about children born before the statutes was passed. An educated guess would be that some of them are legitimated and some are not.

Starting with the statute itself it must be observed that it contains no time requirement with respect to the birth of a child. The phrase "born of a voidable or a bigamous marriage" seems to be merely descriptive of those children to whom it was intended to apply without regard for when they might have been brought forth into the world. It refers broadly to children in being when the law was passed as well as to those who are born subsequently. As for when the statutory result takes place, the law speaks simply in the present tense. The child "is legitimate." However, legitimacy does not exist as an abstract concept somewhere in outer space. It involves the notion of relationship to other individuals as well as to society as a whole. Accordingly, if a child born of a bigamous marriage before the statute was passed were an orphan on July 1, 1951, it would not seem to mean much at all to say that he was legitimatized. Legitimatized with respect to whom? And what rights might be expected to flow from this new-found status? If only one of the parents of the child were living on the effective date of the statute, the problem is similar. Such a child might be considered legitimatized with respect to the surviving parent, but what about the relationship to the parent who predeceased enactment of the law, especially if such parent were the father? Having in mind the rule of statutory construction that acts of the legislature will not be given retroactive effect where vested rights would be disturbed, the conclusion seems inescapable that a child would not be held to be legitimatized with respect to a father who died prior to the statute. Rights of heirship to the estate of this parent would have vested upon his death, and to hold thereafter that a child who was illegitimate at that time and therefore not entitled to inherit would be legitimatized by the law would be interfering, in effect, with vested rights. In this situation it is most unlikely that the courts of North Carolina would confer a legtimate status retrospectively under the statute.

It is arguable that to legitimatize a child whose parents are living after July 1, 1951, would be giving a retrospective application to the law. But such an argument would not carry much weight in court. This type of remedial statute has been given a liberal interpretation from the very

beginning and the construction placed on it in Virginia and elsewhere is particularly significant. Consistently it has been held that children born before the law was passed are legitimated with respect to a father who died after its enactment. There is good reason to believe, therefore, that the new North Carolina law will be construed as legitimating children of voidable or bigamous marriages who were born before July 1, 1951, and who were living at that time, with respect to their parent or parents also in being on that date.

From this point of departure there is one area where it would seem that the statute will have an immediately beneficial impact. Under the Federal Social Security Act, as amended, the right of a child to obtain monthly benefits on the wage record of a deceased or retired wage earner depends upon whether or not such child would have the right to inherit intestate personal property of the wage earner as a child under the law of the State where he was domiciled (where he had his permanent home) at the time of his death, or at the time application for benefits was filed if the wage earner were still living. Moreover, one of the conditions of eligibility for benefits under the Federal law is that the child be dependent upon the wage earner at the time of filing application or at the time of the wage earners death. A legitimate child is deemed to have been so dependent. One or two examples will show how that worked out prior to the change in the North Carolina law, and how it will work now.

Suppose that in 1940 John and Mary are married in North Carolina. Mary had been previously married to Bill and believed that he was dead at the time of the marriage to John. In fact Bill was still alive in 1940, and it is ultimately established that there had never been a divorce. Mary and John live together continuously in North Carolina as husband and wife until John's death in May of 1951. Three children were born to them, the oldest 9 and the youngest 3. Mary files application at the local field office for Social Security benefits for herself as the mother of the wage earner's minor children, and on behalf of each child. Mary's marriage to John, as it turned out, was bigamous and absolutely void. The three children were and remained illegitimate. They therefore had no right to inherit as children from his intestate personal estate. The result would be that the application for Social Security benefits would have to be denied If, however, John had not died until after the effective date of the new law, the three children would have been legitimatized by its operation and would have had status to inherit as children from his intestate personal estate. In this situation Social Security benefits on behalf of the three children would be granted. The application of Mary on behalf of herself, however, would still be denied, because she still would not qualify as the wage earner's (John's) widow.

The importance of legitimacy under the Federal Social Security program is further pointed up if we vary our hypothetical case just a little. Suppose that in 1949 John abandoned Mary and the three children and was not contributing to their support at the time of his death. If his death occurred in May, 1951, the result would be the same. Social Security benefits would not be payable to Mary or the three children for the reasons mentioned. But, if John lived until after the new law came into effect, the fact that he had abandoned the family and that it was not economically dependent upon him when he died would not defeat the right of the children to monthly payments under the Federal law because as his legitimate children they would be deemed dependent upon him.

This brief exposition has attempted only to discuss the highlights. Many problems, notably as to what constitutes a voidable marriage and those involving the interstate application of the law, have of necessity been left untouched. Nevertheless, it heralds the emergence of a new era of hope and security for innocent yet hitherto forgotten children.

BOOKS RECEIVED

PURCHASING FOR SMALL CITIES, Russell Forbes. Chicago: Public Administration Service, 1951. iv. 23 pp. $1.00.

This is a revised and expanded edition of an earlier publication on the same topic. It covers the establishment of a centralized purchasing system, including the personnel, the records, and the development of standards and specifications.

The largest part of the manual is devoted to a discussion of the purchasing procedure, from the initiation by a department of a requisition, through negotiations, bids, and contract award by the purchasing agent, to the accounting for the expenditure and stock inventory. Forms are included in the text to illustrate the procedure and to serve as a starting point for creation of forms by each municipality to suit its needs.

The manual should prove useful to those cities who are contemplating the establishment of centralized purchasing and to those cities with a purchasing agent. The procedure set forth contains the minimum requirements for a successful purchasing procedure, hut these minimums indicate that there is no easy road to successful purchasing.

MUNICIPALITIES AND THE LAW IN ACTION. *1951 Edition. Edited by Charles S. Rhyne. Washington: National Institute of Municipal Law Officers. 481 pages. $10.00.*

This volume contains the proceedings of the 1950 annual convention of city attorneys, including the reports of 20 standing committees, prepared addresses, and panel discussions. Its contents reflect the vital concern of the cities with problems brought on by re-armament and the Korean crisis, with particular attention being paid to civil defense. There is also careful consideration of how local communities can control communist activities through such measures as local registration of members of subversive organizations and a required oath of allegiance from public employees. The committee reports are perhaps the best available surveys of annual developments in different phases of municipal law. The volume should be of value to the full-time city attorney faced with responsibilities in a variety of fields, each of which merits the attention of a specialist.

THE MUNICIPAL YEAR BOOK, *1951. Clarence E. Ridley and Orin F. Nolting, Editors. International City Managers' Association. 1313 East 60th Street, Chicago 37. 588 pages. $10.00.*

This annual publication contains a wealth of factual information on all phases of municipal activity throughout the country. To the regular summaries, analyses and charts on particular municipal functions in 1950 are added sections of public housing, building inspection, and centralized purchasing.

Recent Supreme Court Decisions

By Mason Page Thomas, Assistant Director, Institute of Government

The Supreme Court of North Carolina has recently:

Held *that an employee of a state governmental agency is personally liable for his negligence within the scope of his employment when his job is mechanical or ministerial in nature, and is not protected by the governmental immunity of the state agency from liability for the negligence of its employees.*

In *Hansley v. Tilton*, 234 N. C. 3, plaintiff administrator instituted a civil action against the Forsyth County Board of Education and Jack Tilton, a school bus driver regularly in its employ, to recover damages for the death of his intestate and for injuries to the interstate car. The controversy arose out of a collision on a narrow bridge between the intestate's automobile and a school bus driven by the defendant Tilton. The plaintiff elected to take a voluntary nonsuit against the Forsyth County Board of Education, realizing that it was not subject to liability for the negligence of its employees because of its governmental immunity. The jury found on issues properly submitted that the death and property damage were due to the negligence of the defendant bus driver, and that the intestate had not been contributorily negligent. The defendant appealed from the damage award to the Supreme Court, insisting the action against him should have been nonsuited below regardless of his negligence. The defendant argued that since he was driving the school bus as an employee of the county board of education, he was clothed with the governmental immunity of the board and consequently exempt from liability to the plaintiff. The Supreme Court did not uphold this contention, but affirmed the judgment. It has long been established that no private action for tort can be maintained against the State, in absence of statute. Since the board is a state governmental agency, a suit against it is considered one against the state.

Consquently the board itself could not be held responsible for the negligence of th bus driver. The immediate question concerning the court was to what extent this immunity protected agents of the board. The rule is based on public policy. It is believed that if public officials are held personally liable for negligence in the exercise of their discretionary duties, it would be difficult to find people who will accept public office. However, the rule is limited by the reasons for its existence, and extends to protect only public officials and those engaged in the performance of discretionary duties. Now the problem narrows itself to a classification of the defendant's particular job. Admittedly, driving a school bus requires the exercise of some judgment, but the court did not feel that it was a discretionary function within the purview of the rule. The defendant was labeled by the court as a "mere employee performing a mechanical task" and as such held personally liable for his negligence.

Held *that, even though the purchaser at a tax foreclosure sale fails to acquire a valid fee simple title, he is not entitled to a refund of the purchase price from the taxing authorities.*

In *Wilmington v. Merrick*, 234 N.C. 46, the city-county tax collector brought a civil action under G.S. 105-414 against the heirs at law of Titus Wright, deceased, to foreclose tax liens on real property. Foreclosure under this section is similar to a mortgage foreclosure, and void as to any interested person who is not made a party. A sale was conducted and one Lewis was the purchaser. Lewis was unable to obtain possession and secured a writ of possession from the court. Subsequently, two heirs at law of Titus Wright moved that the court vacate the judgment of foreclosure and deed executed pursuant thereto, since they had not been joined as parties. The court granted the motion, holding the foreclosure judgment and deed to Lewis were void as to the two heirs not properly notified. On appeal by the plaintiff and Lewis, the judgment was affirmed by the Supreme Court. (231 N.C. 297) when the decision of the Supreme Court had been certified to the lower court, Lewis filed a motion in the cause asking the court to order a refund of his purchase money. The court ordered Lewis to quitclaim to the taxing authorities all his right, title and interest in the land acquired through the commissioner's deed, and receive in return the purchase price he had paid. On appeal by the plaintiff, the Supreme Court reversed, holding that Lewis was not entitled to the refund. The principle of *caveat emptor* is relied upon as a basis for the decision, i.e that the purchaser buys at his own risk. A tax deed is in effect a mere quitclaim deed which contains no covenants or warranties of title, and none are implied. The purchaser must ascertain from the tax records and court papers the state of the title, and takes the risk of some defect. Luckily, however, Lewis is not entirely without remedy. Since his purchase money has been used to satisfy tax liens against the land, the court holds that he acquires by subrogation whatever enforceable tax liens the tax collector may have had against the land. These liens may be enforced by him as equitable assignee of the taxing units.

Held *that the statute applicable to firemen making certain types of heart diseases occupational diseases per se is unconstitutional, since it attempts to confer special privileges on firemen not accorded other employees under the Workmen's Compensation Act.*

In *Duncan v. Charlotte*, 234 N.C. 86, the widow of Marvin W. Duncan, deceased, former member of the fire department of the city of Charlotte, sought to obtain compensation benefits under the Workmen's Compensation Act. The deceased died as a result of a coronary occlusion while on vacation. The Commission made an award based on G.S. 97-53 (26), which provides that in the case of active members of city fire departments, certain specified heart diseases shall be compensable as occupational diseases. Coronary occlusion is among the disease listed. There was no evidence tending to show that the disease was a result of the occupation of the deceased. The defendant city appealed to the Superior Court, which affirmed. Thereupon, the defendant appealed to the Supreme Court, which reversed the judgment, holding the statute unconstitutional. Basically, the Workmen's Compensation Act is intended to provide compensation for injuries arising out of and in the course of employment. The causal connection between

(Continued on inside back page)

The Attorney General Rules

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

By Mason Page Thomas, Assistant Director, Institute of Government

PROPERTY TAXES

Exemption of privately owned schools. A city contains privately owned and operated schools, such as a business school, a school for watchmaking, a school of appliance, a school of dancing and a school for beauty operators. These schools are operated for a profit. In some cases, the furniture and equipment used by the school are owned by the operator of the school but are listed for taxes in the name of the school. Is the personal property used by these schools in teaching exempt from taxation?

To: R. L. Lyerly

(A.G.) G.S. 105-297 (3) provides a tax exemption for "furniture, furnishings, books, and instruments contained in buildings, wholly devoted to educational purposes, belonging to and exclusively used by churches, public libraries, colleges, academies, industrial schools, seminaries or other institutions." The exemption is not restricted to nonprofit educational institutions. In my opinion, if the various schools are *bona fide* schools with regular courses in training or regular curricula, the personal property devoted wholly to educational purposes, whatever the educational objective of the school may be, would be entitled to exemption, notwithstanding the fact that the schools are operated primarily for profit. Whether the items of personal property in question are owned by the school or by the owner of the school, they are entitled to exemption if devoted to educational purposes.

Transfer to exempt owner. In January, 1951, a property-owner listed his house and lot for county taxes. In June, 1951, a church bought the property and began to use it at once as a residence for its minister. The 1951 county tax rate was set in July, 1951, based on January, 1951, listings, to raise money to operate the county government for the fiscal year running from July 1, 1951, through June 30, 1952. Since the house and lot had become the property of the church before July, 1951, is the property still subject to the county's lien for 1951 taxes?

To: C. D. Taliaferro

(A.G.) Yes. Property purchased after January 1 of any year by a nontaxable owner is nevertheless subject to taxation and to the lien of the tax for the entire year. The Constitution authorizes the General Assembly to exempt property held for religious purposes, but does not compel it to do so. Pursuant thereto, subsection (3) of G.S. 105-296 has provided an exemption for the residence of the minister of any church when owned by the church. Since this exemption is entirely statutory, it is limited by the statutory provisions for the lien of the tax. The lien attaches to the listing-owner's real property in the taxing unit as of listing day (January 1) "regardless of the time at which liability for the tax may arise or the exact amount thereof be determined." (See G.S. 105-330) Priority of the lien is not affected by transfer of title to the land, and it continues in effect until the taxes plus interest, penalties, and costs have been fully paid. (G.S. 105-376) Thus property purchased after the tax listing date by a tax emempt organization is nevertheless subject to the lien of the tax for the entire year.

Taxable situs of personalty. A company has its office and principal place of business in the city limits. It owns two bulldozers, one of which is operated within the city and listed for municipal taxation. The second bulldozer is used mainly in the county, but on certain occasions is in use inside the city. One of the partners of the concern lives outside the corporate limits in the county, and the other inside the city. Should the second bulldozer be listed and assessed for municipal taxation?

To: John H. Zollicoffer

(A.G.) Subsection (1) of G.S. 105-302 states it to be the general rule that the taxable situs of tangible personal property is at the residence of the owner. The residence of a corporation or partnership is fixed by that subsection as the place of the principal office in the State. Therefore, unless some subsection fixes the taxable situs of the second bulldozer at some place outside of the municipality, it is subject to municipal taxation. The only provision which would fix the taxable situs at some place outside of the municipality is subsection (4). This subsection means that if the bulldozer is used in connection with a permanent fixed location outside of town, it would be taxable at such permanent fixed location. In my opinion, if the bulldozer in question is moved from place to place as various jobs require and is not used in connection with a fixed or permanent place, it would not have acquired a taxable situs outside the municipality and would be taxable at the place of the principal office of the owner.

Effects of foreclosure upon an easement. G.S. 105-392 (c) provides that the purchaser at a tax foreclosure sale "shall acquire title to said property in fee simple, free and clear of all claims, rights, interests and liens except the lien of other taxes. . . ." A pipe line company owns easements across the lands of county property owners. The value of the right-of-way of the pipe line company is assessed by the State Board of Assessment and certified to the various counties for ad valorem taxation, and the pipe line company pays its taxes thereon. What effect would foreclosure to satisfy taxes against the land over which the easement runs have upon the easement?

To: Harley B. Gaston

(A.G.) I do not think the easement would be affected. The claims, rights, interests and liens referred to, in my opinion, mean outstanding mortgages, judgements or other liens against the fee, and do not cover easements such as that held by the pipe line company which is separately taxed by the counties through the State Board of Assessment. Under G.S. 105-301 (8), the taxes upon a separate right such as a right-of-way or easement is a lien on such separate right, but it may also be a lien upon the land and the land may be sold to satisfy the tax against such separate right. There is no provision for the converse situation, so that the separate right or interest may be sold to satisfy the lien against the land. The failure to

make such provision in the subsection dealing with separate rights in land would lead to the conclusion that where such separate rights exist, if the land itself is sold to satisfy taxes against the land, it is sold subject to such separate rights.

COUNTY FINANCES

Application of sinking fund surplus. A county will pay off and discharge a bond issue for the construction of its courthouse on December 1, 1951. The sinking fund has accrued to such an amount that there will be a surplus after the bond issue has been completely paid off. Can the county use the surplus funds for constructing a new roof on the courthouse, or must the surplus funds be transferred to the sinking fund for the liquidation of other bond issues?

To: Robert W. Proctor

(A.G.) There is no statute or Supreme Court decision dealing with this situation. We advise that such a sinking fund surplus should be applied to the sinking fund of other bond issues for the purpose of paying off such outstanding bonds, since such an application is related to the purpose for which the original sinking fund was maintained and from which the surplus was derived. We cannot say, however, that we know of any express prohibition that would prevent the use of the funds for courthouse repair as suggested by you.

CITY FINANCES

Street and sidewalk assessments. Is it lawful for a town to reapportion unpaid street and sidewalk pavement assessments among the property owners who have already paid their assessments?

To: W. C. Edmundson

(A.G.) Assuming the assessments of which you speak were levied under G.S. 160-85, et seq., the amount of the assessment becomes a lien on the property which is superior to other liens and encumbrances, and continues until paid against the title of successive owners thereof. If the ten year statute of limitations applicable to assessments under these sections has not expired, then I am of the opinion that to collect the assessment the town would have to foreclose against the property upon which the original assessment was made. If the statute of limitations bars recovery of the assessment, then I am of the opinion that no reapportionment can be made, since the town has lost its right to collect by failing to foreclose or to extend the time of payment as provided in G.S. 160-94.

Extending the sewer system. The sewer system of a town serves approximately three-fourths of its taxpayers, leaving one-fourth with no service. One per cent of the net profits derived from the operation of A.B.C. stores in the county is paid to this town. Is it legal to take some of the tax funds or A.B.C. money and build septic tanks for those taxpayers without sewer service to put all taxpayers on a more equal basis?

To: J. W. Auten

(A.G.) I an unable to tell whether you have surplus tax funds. G.S. 160-239 et seq., governs the power of a municipality to establish and maintain a sewerage system. In **McNeil v. Whiteville**, 186 N. C. 163, our Supreme Court held that other methods than outlined in the statute may be employed in financing a sewerage system, provided such method is not in violation of other provisions of law. This office has ruled that when a municipality has surplus funds on hand, and when its governing body by proper resolution finds as a fact that the sewerage system or an extension thereof is necessary for the health and welfare of the inhabitants of the municipality, it may amend the appropriation resolution adopted when the last budget was accepted and specifically authorize the use of so much of the surplus funds on hand as may be necessary for the desired purpose. I find no restriction upon the use which the town may make of the A.B.C. funds. I am of the opinion that the governing body of the town may adopt a resolution finding facts as above indicated, and amend its appropriation ordinance to allocate all or part of the necessary funds for the installation of this extended sewerage system from the net profits derived from the operation of A.B.C. stores.

Financing a city hall. A town resumed operation as a municipality this year and desires to purchase a lot and building costing $4,000 to be used for a city hall. No provision has been made in the 1951-52 budget to raise the money, and no appropriation made for that purpose in the budget. There is a contingency fund of approximately $800 set up in the budget. May the town purchase this property, using the contingency fund as a down payment and executing notes secured by a deed of trust on the property for the balance of the purchasing price?

To: A. A. Powell

(A.G.) I have the impression that the town has no outstanding public indebtedness. Therefore, it would seem that an indebtedness can be created only by complying with Article V, Section 4, of the State Constitution. This section provides that, except for certain purposes enumerated therein, the General Assembly shall have no power to authorize municipalities to contract debts, and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular municipality. It would seem that if the governing body of the town desires to purchase this property, it must submit the matter to a referendum vote of the people. If authorized by a majority of the votes cast in such an election, it would seem that the contingency funds set up in the present budget may be appropriated and used as a down payment, and the balance may be represented by notes of the town secured by a deed of trust and paid through annual appropriations for principal and interest.

Collection of sewer and water tap fees. A citizen owes $300 for sewer and water tap fees incurred over three years ago. Within the past three years, he has made payment on the bill. May the town obtain a judgment against the citizen to collect the fees?

To: Forrest C. Hall

(A.G.) Under G.S. 160-2, a town is authorized to sue and be sued in its corporate name. The statute provides that sewer or water charges shall not become a lien upon realty, and in my opinion, there is no lien for tap fees in the absence of statutory authority for imposing such a lien. I am of the opinion that the town may sue the citizen, as upon open account, which would be subject to the three year statute of limitations, since the town is suing in its proprietary capacity. Since payment has been made within the past three years, the statute would start running anew at the time of payment. Such payments have been given the effect of new promises in writing by our Court.

CITY PROPERTY

Lease of town property. Is it lawful for a town board to lease town property for a period beyond their term in office?

To: W. C. Edmundson

(A.G.) Yes. Our Court has upheld

the validity of contracts extending beyond the term of office of the governing body of a town. In **Plant Food v. Charlotte**, 214 N. C. 518, the Court took the position that some contracts so closely relate to the exercise of governmental functions of the city, and the governmental discretion, that one governing body ought not by contract be able to bind or abridge the discretion of the successor. But in making contracts relating to functions of the city ordinarily classified as proprietary functions, it is quite proper for one governing body to make a contract which will continue in effect during the term of its successor. "The true test is whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired." (214 N. C. 518, 520)

CITY POWERS

Release from taxes. Is it lawful for a town board to release individuals from paying taxes for a period of years for the improvement of their personal property?

To: W. C. Edmundson

(A.G.) Public funds may be used only for public purposes. Therefore, I do not think a municipality may release individuals from paying taxes for a period of years on condition that these individuals improve their own private property, because this would, in effect, be using public funds for private purposes.

Purchase of maintenance equipment. May monies allocated to a municipality by virtue of the Powell Street Aid Bill (Chapter 260, Session Laws of 1951, as amended by Chapter 948, Session Laws of 1951) be used by the municipality for the purpose of purchasing street maintenance equipment?

To: George C. Franklin

(A.G.) Yes. A municipality may purchase and pay for the upkeep of equipment for the construction and maintenance of streets. The funds derived from the Powell Bill may be spent for this purpose.

Employment of a deputy sheriff. May a town properly appropriate its funds to pay a Deputy Sheriff to do police work in the municipality, the Deputy not being sworn in as a Town Policeman?

To: H. A. Lentz

(A.G.) I know of no statute authorizing a municipal Board to contribute funds towards payment of the salary of a Deputy Sheriff. Since all actions by the Governing Board of a municipality must be authorize by statute, I doubt the right to use town funds for this purpose. I am of the opinion that an A.B.C. Board might lawfully contribute towards the cost of employing a Deputy Sheriff to do police work in your municipality, if it appeared that such contribution might materially assist in the enforcement of the A.B.C. laws.

Garbage Collection. A town ordinance, as recently amended, takes from its citizens the right to remove their own garbage as allowed under the prior ordinance, and levies on each person, firm or corporation a garbage collection fee. Varying fees are made applicable to residences and specified businesses. Violators of the ordinance are subject to fine. Is this ordinance legal?

To: W. L. Snyder

(A.G.) I am of the opinion that this ordinance is not valid because it is in direct conflict with G.S. 160-233 This statute authorizes a municipality to provide by ordinance for the removal of garbage. If the garbage is not removed individually, the municipality may require that the garbage be placed in convenient receptacles and provide for its collection. However, the charge for such collection may be only the actual cost thereof.

Fees of professional bondsmen. Under G.S. 105-41.1, a city council may pass an ordinance requiring profesional bondsmen making appearance bonds for defendants in the municipal court to be licensed. Does the city council have authority to pass an ordinance regulating the fees of professional bondsmen?

To: J. Mack Holland, Jr.

(A.G.) Cities and towns have not been granted the authority by the General Assembly to regulate the fees of professional bondsmen. This matter has been entirely regulated by public-local legislation. I advise that in the absence of public-local legislation your city council has no authority to pass a municipal ordinance regulating the fees of professional bondsmen.

ELECTIONS

Beer and wine election. During the early part of 1950, a petition was signed by 1903 registered voters of a county requesting an election upon the question of the sale of wine and beer in the county. Since this was an insufficient number under G.S. 18-61, the county board of elections refused to call an election. In the latter part of 1951 some of the proponents of the petition requested that the county board of elections return the petition to them so that they could proceed to add a sufficient number of signatures. May this petition be used in this manner?

To: H. Clay Hemric

(A.G.) The petition was filed with the board more than a year ago, and determined to be insufficient in that it did not contain a sufficient number of signers. It is my opinion that the proponents of the petition should start anew, and that they may not take the old petition and add thereto a sufficient number of names to require the board to call an election under G.S. 18-61.

SCHOOLS

Exclusion of pupils. What is the law as to married girls under 21 and unwed mothers attending the public schools of North Carolina?

To: Ralph H. Davis

(A.G.) The fact that a pupil has been lawfully married will not, in itself, be sufficient grounds to justify the exclusion of such pupil from attending school, provided such person meets the requirements of the school in other respects. As to unwed mothers, it would seem to be a matter of the moral character of the person at the present time. If the unwed mother is now a person of good moral character and otherwise qualified, I do not see that she can be excluded from attending the public schools simply because at an earlier date she made a serious moral error. If the school authorities should find upon proper investigation that she would be a menace to the school, in setting a bad example to the other pupils, they would have the right to exclude her under G.S. 115-145.

COURTS

Courts acting without jurisdiction. A city police court, with the same jurisdiction as a justice of the peace, is taking cognizance of offenses involving the motor vehicle laws over which it has no jurisdiction, other than as committing magistrate. What can the solicitor of the county's recorder's court do to stop this practice?

To: R. A. Hedrick

(A.G.) The county recorder's court should consider all actions taken by the city police court when beyond its jurisdiction as completely null and void. The solicitor can then proceed to prosecute the violators despite what purports to be a former conviction or acquittal in the police court. To support a plea of former jeopardy, it must be shown the prior court had jurisdiction.

Reopening a criminal case. Does an inferior court have authority to rehear, reopen or modify the judgment in a criminal case once a judgment has been rendered?

To: J. L. Fountain

(A.G.) No. After it hears a case, enters judgment and the term of court has expired, an inferior court does not have authority to rehear the case, grant a new trial, or to modify a judgment of guilty or one of not guilty. If a judgment of guilty is entered, the only remedy of the defendant is to appeal to the Superior Court. An inferior court may suspend a judgment upon the performance of certain conditions, and has authority to go into the question of breach of such conditions as it may impose.

JUSTICES OF THE PEACE

Jurisdiction over speeding. May a justice of the peace try cases of simple speeding that occur on other than state-maintained roads and streets?

To: C. M. Beasley

(A.G.) Yes. G.S. 20-141, subsection (fl) provides that local authorities may fix by ordinance such speed limits as they deem safe and proper on streets within the municipality which are neither part of the highway system nor maintained by the State Highway and Public Works Commission. When a person violates an ordinance adopted by a municipality under this statute, he is guilty of a misdemeanor and subject to imprisonment for not more than thirty days or a fine of not more than $50.00. Since the punishment for this offense is so limited, the offense is one which a justice of the peace may try on its merits under G.S. 7-129.

SHERIFFS

Claim and delivery. What is the proper procedure in case of claim and delivery when the property to be seized is locked in a room or house, and personal service cannot be had upon the defendant?

To: G. W. Williams

(A.G.) Under G.S. 1-480, if the property is not delivered after a public demand therefor by the sheriff, he must break into the building and take the property into possession. He is authorized to use whatever force is reasonably necessary to break into the premises and seize the property when he is armed with proper legal process in claim and delivery. After the seizure, it is necessary to serve process upon the defendant by publication in conformity with G.S. 1-98, et seq.

Collection of bad check warrants. Is it proper for the sheriff's office to collect bad check warrants, plus costs of court, for justices of the peace in the county, and also other counties?

To: Tom P. Bardin

(A.G.) There is no statute or decision in North Carolina requiring the sheriff to collect amounts due, plus court costs, in cases where the defendant is charged with the issuance of worthless checks. Although this practice is followed in some counties, it seems to me the justice of the peace is placed in an embarrassing situation as to the judgment he renders following a final disposition of the case. Whether such procedure is lawful or not, it would seem to be bad practice, both from the standpoint of the sheriff and the justice of the peace.

Appearance through attorney. Is it proper for the sheriff to allow persons charged with being publicly drunk, and other petty crimes, to sign a power of attorney card allowing their representative to enter a plea before the designated justice of the peace for them, so they will not have to attend court?

To: Tom P. Bardin

(A.G.) A defendant charged with a misdemeanor not punishable by imprisonment may, with the permission of the court, waive personal appearance and appear in court through his counsel, but not through some other agent. When the offense charged is a felony or a misdemeanor punishable by imprisonment, the courts hold that the defendant must appear personally.

Collection in claim and delivery. May the sheriff collect the amount due, plus costs, on claim and delivery proceedings that are instituted in justice of the peace courts?

To: Tom P. Bardin

(A.G.) A sheriff is authorized to collect the amount claimed by the plaintiff, plus court costs, in claim and delivery proceedings. This is analogous to an execution in the hands of the sheriff.

CRIMINAL EXTRADITION

Extradition. On July 1, 1951, an officer left North Carolina for Illinois to return a fugitive. The application for extradition was made to the Governor on July 3, 1951. The officer returned the fugitive on July 5, 1951. The Governor did not sign the extradition papers until July 10, 1951, which was after the fugitive had waived extradition and been returned. Is the State liable for the expense of returning this fugitive?

To: Fred Folger

(A.G.) No. There was no outstanding extradition proceeding that had been honored by the Governor when the fugitive was returned. Although the application for extradition was before the Governor when the prisoner was returned, no official action had been taken on the same, and the fugitive had been returned upon his own waiver before July 10, 1951.

MOTOR VEHICLE LAW

Restoring revoked drivers' licenses. Under G.S. 20-17, the Department of Motor Vehicles is required to revoke the license of all persons convicted of driving drunk. G.S. 20-19 fixes the period of revocation as one year. May the Commissioner of Motor Vehicles restore a driver's license to an individual, so convicted and whose license has been revoked, *before* the expiration of the full twelve months period?

To: O. M. Mull

(A.G.) In my opinion, the Commissioner has no authority to restore a driver's license revoked because of drunken driving before the expiration of twelve months from the effective date of the revocation. Before 1951, revocations were permanent and the licensee had to apply for a new license at the end of twelve months. Under Chapter 1202 of the Session Laws of 1951, revocations must be for a stated period, the shortest of which is twelve months.

Collection of overloading penalties. The statutory penalties for overloading vehicles are made payable to the Department of Motor Vehicles by G.S. 20-118, as amended by Chapter 1013 of the Session Laws of 1951. Should the penalties be assessed and collected by the Motor Vehicles Department or by the courts of the state?

To: S. Ray Byerly

(A.G.) Ordinarily penalties are recovered in civil actions by the person to whom they are payable, unless the statute provides otherwise. Whenever the statute provides a method for collecting the penalty, this method is exclusive. G.S. 20-99 gives the Department of Motor Vehicles power to collect taxes by summary methods. It seems to follow that a penalty made payable by statute to a particular department which possesses specific methods of collecting taxes due that department is a legislative declaration of the procedure to be followed in collecting the penalty imposed. For purposes of collection, overweight penalties should be considered as taxes. Therefore, in my

opinion, the enforcement of overweight penalties is vested by statute in the Department of Motor Vehicles and is not a duty resting primarily upon the courts of the State.

Punishment for speeding. Is the penalty for speeding and reckless driving under G.S. 20-180 governed by 20-176, in which the maximum punishment is a $100 fine or not more than sixty days, or by both such fine and imprisonment?

To: Richard G. Long and R. B. Dawes

(A.G.) Yes. G.S. 20-140, prohibiting reckless driving, provides that a violation thereof shall be punishable as provided in G.S. 20-180. The same thing is true of G.S. 20-141, fixing speed limits. G.S. 20-180 provides that every person convicted of violating G.S. 20-140, G.S. 20-140.1 or G.S. 20-141 shall be guilty of a misdemeanor. G.S. 20-176 provides that the punishment for a misdemeanor which is a violation of the Motor Vehicles Act of 1937 is a fine of not more than $100, or imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment. Thus, under G.S. 20-176 the punishment for reckless driving and for speeding is a fine of not more than $100 or imprisonment for not more than sixty days, or both such fine and imprisonment.

Suspension of drivers' licenses. Is the department of Motor Vehicles authorized to suspend the license of a person against whom a judgment for $50.00 plus costs is rendered on a cause of action arising out of his operation of a motor vehicle?

To: F. W. Pharr

(A.G.) Under G.S. 20-234 and 20-235 the Commissioner of Motor Vehicles is directed to suspend the license of a person who has failed for a period of sixty days to satisfy a judgment recovered against him for more than $50.00 for damages to property, or a judgment for any amount for personal injuries arising out of the operation of a motor vehicle. When a judgment is rendered for $50 and costs, the judgment for damages is only $50.00, as costs are not part of the relief in civil actions nor punishment in criminal actions. In my opinion, if the judgment for $50 is rendered because of personal injuries and not satisfied, the license is subject to suspension. If the judgment is for injury to property, the Department has no authority to suspend the license.

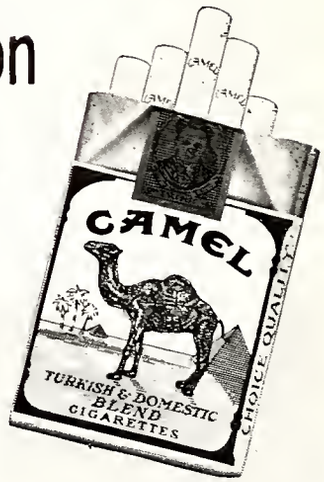
Recent Supreme Court Decisions

(Continued from page 12)

the injury and the job has always been the criterion of relief under the act. As the law in this field has developed, occupational disease has come to have a defined meaning. It is a disease which results from a particular employment often enough to be recognized as incidental to that employment. The statute at hand has conveniently hurdled the requirements of causal connection and incidence to a particular job, and categorically stated that certain disease are, in the case of firemen, occupational diseases. In cases where it is applicable, the statute has dispensed with the necessity of proving any causal connection between the heart disease and the employment. The court struck down the statute as being in contravention of Article I, Section 7 of the Constitution of North Carolina, forbidding legislative grants of separate emoluments and special privileges except in return for public service. The court felt the statute attempted to confer on firemen special benefits from the taxpayers' pocketbook not available to other employees under the act. Further, this attempted gratuity was made in the form of Workmen's Compensation benefits, when actually it was something quite different in the nature of health insurance.

IN A COAST-TO-COAST TEST OF HUNDREDS OF PEOPLE WHO SMOKED ONLY CAMELS FOR 30 DAYS, NOTED THROAT SPECIALISTS REPORTED:

Not one single case of throat irritation due to smoking CAMELS!



These stars tested for Mildness—and chose Camels!

John Wayne

"My movie roles are far from easy on my voice—I can't risk throat irritation. So I smoke Camels — they're *mild*!"

Joan Crawford

"I wanted a cigarette with rich flavor that suited my throat. I've made those mildness tests you've read about . . . My choice is Camels!"

Dick Powell

"What with movies and radio shows, the cigarette I smoke must agree with my throat. My own 30-day Camel test proved it was Camels for me!"

Test Camels in Your "T-Zone"

Smoke only Camels for 30 days—it's the sensible test. Your "T-Zone" (T for Throat, T for Taste) will tell you how mild and flavorful a cigarette can be!

● You can't judge cigarette mildness from one puff or one sniff. That's why the famous thirty-day Camel test is so convincing. Hundreds of people smoked only Camels for thirty days. Noted throat specialists examined their throats each week and reported *not one single case of throat irritation due to smoking Camels!*

The stars shown above have made their own thirty-day Camel tests — so have so many other smokers. Start yours today and see how rich and flavorful, how mild Camels are . . . how well they agree with your throat — pack after pack.

You'll see why, after *all* the mildness tests, **Camels lead all other brands by billions of cigarettes!**

R. J. Reynolds Tobacco Co., Winston-Salem, N.C.