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1952 Sheriffs' School

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THE CLEARINGHOUSE

A Summary of events of particular interest to city, county and state officials.

Meter Repair School

The North Carolina Section of the American Water Works Association is sponsoring its third annual Meter Repair and Allied Activity School in Fayetteville on April 18 and 19.

The purposes of the school are to (1) assist water departments to increase revenues through better meter practices, (2) reduce operating costs by developing modern maintenance and construction procedures, and (3) create better public relations by the adoption of sound and fair policies regarding consumer complaints. For the first time the school is conducting a meter workshop along with classroom lectures and discussions. Stanford E. Harris, water and sewerage superintendent for the city of Winston-Salem, is chairman of the school committee.

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City Planners Organize

After holding a number of informal meetings during the past two years, the professional city planners of the state recently completed organization of the North Carolina Section of the Southeast Chapter of the American Institute of Planners. Headed by Herbert W. Stevens, Director of Planning for the city of Raleigh, the group has undertaken a variety of functions. It plans to hold nine monthly meetings during the year at the Institute of Government, for the purpose of exchanging information as to current planning problems; sponsor and conduct a Planning Conference at the annual convention of the League of Municipalities; furnish speakers on planning subjects to interested groups; and recommend changes in North Carolina planning enabling legislation. Two pieces of proposed legislation are currently under study: an act authorizing cities to adopt official maps for the protection of proposed streets and an act making more definite the authority of cities to regulate subdivisions.

Although the group is composed primarily of professional planners, its membership is open to other interested officials and citizens, such as Building Inspectors, Planning Board members, members of Zoning Boards of Adjustment, City Councils, City Engineers, and others. Persons interested in receiving notices of meetings should write the Institute of Government.

SALUTE!

This month *Popular Government* salutes:

Fayetteville and Salisbury for tying for first place in providing the best National Fire Prevention Week Program in the state. The awards were announced by the National Fire Protection Association. Winston-Salem placed second, Greensboro third, and Gastonia received honorable mention.

. . . . Chief Stanhope Lineberry of the Mecklenburg County Police Department, whose officers arrested almost 11,000 persons during 1951 and obtained convictions of 94% of those arrested in the county recorder's court. This record is due in great part to Chief Lineberry's examination of every acquittal to see if failure to convict resulted from inaccurate evidence or poor court testimony on the part of the arresting officer. Officers found at fault are given further instruction in law enforcement.

. . . . J. B. Snipes, Chatham County Farm Agent, who, during the past winter, helped sponsor Chatham County's fourth annual Farmers' School in conjunction with the Siler City Chamber of Commerce. The school was held on January 12.

Reports

American cities and towns have become increasingly aware of the necessity for good public relations and of the value of periodic reports to their taxpayers showing how tax funds have been spent and the services they support. These reports range from handsomely-printed and illustrated reports to mimeographed "pie" charts prepared to accompany tax bills. Many of them reflect the ingenuity of city officials, and a very unusual one was recently furnished the Institute of Government by Archie Uzzle, Jr., superintendent of public works for the city of Hickory.

On a sheet of paper a little larger than one foot by three feet Archie has described, in pen and ink drawings and capsuled information, the services rendered by each department of the city. Particular attention is paid to the services rendered by, and the equipment used by, the department of public works.

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A Bit of History

The town of Chapel Hill has operated under the city manager form of government for many years but town officials were puzzled recently by the statement in the annual *Municipal Yearbook* that the manager form of government was adopted in 1922. The town charter had only been amended to provide for a town manager in 1931.

Manager Tom Rose decided to do a bit of research and began leafing through the town minutes one afternoon. He finally discovered this entry for July 27, 1922:

> E. M. Knox elected Business Manager for one year ending June 14, 1923, with a salary of $1,290.00 for the year, with the duties of Town Clerk, Town Tax Collector and Purchasing Agent in addition to the regular duties of Business Manager.

Almost a year later, on May 25, 1923, Mr. Knox was given the additional duties of town engineer, raised in salary to $2,400.00 annually, and given the title of "Town Business Manager." Not until Chapter 45 of the Private Laws of 1931 was passed did the town secure a formal town manager form of government.

It is interesting to note that in practice a large number of North Carolina towns of the population of 5,000 or less have a single official who is responsible to the town board for all administrative and financial functions and who answers to any one of two or more titles. From a strictly legal point of view such an official is not a town manager; as a matter of fact many of these officials exercise the prerogatives and responsibilities of managers.

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Notes — From North Carolina Cities

Personnel

Promotion examinations were conducted in January to fill two captaincies in the **Greensboro** Police Department. All candidates were required to take a written examination given by the Police Department and then an oral interview. The oral examination was conducted by three local leaders—D. O. Tice, manager of Belk's Department Store, A. P. Routh, principal of Senior High School, and Grady Love, director of the Greensboro Evening College.

The **Greensboro** city council has authorized the revamping of the school crossing guard system to replace traffic patrolmen with women guards. The plan provides for three active duty policemen, 14 women guards, and two retired police officers to be on duty at the school street crossings.

The plan will release five officers for patrol duty in the congested downtown traffic area.

Winston-Salem started an intensive 88-hour recruit training school for police officers who have joined the Police Department since the last training school was held.

Greensboro Fire Department started a school for 20 captains in the Greensboro fire companies and 12 officers from the fire departments of nearby towns. Although the school originally was intended for local personnel only, Chief C. W. Wyrick invited departments in other cities to send representatives and officers from the departments in **High Point, Burlington, Thomasville,** and **Asheboro** to attend. Each lesson was given two consecutive days so that officers on all shifts might attend. Red Cross first aid classes were also held in conjunction with the school to enable the fire fighters to renew their first aid certificates.

Traffic and Parking

The **Durham** City Council has been making an intensive study of the parking problem and is considering the establishment of a Parking Authority. It has hired a traffic engineering consultant to make the necessary studies and recommendations. **Raleigh's** new Parking Authority has been considering various proposals for relieving the parking situation while awaiting the results of a traffic and parking survey completed this month by the City Planning Department. **Fayetteville** has taken a 25-year lease on property to be developed into a 100-car municipal parking lot. Two structures now on the land will have to be demolished, after which the lot will be surfaced with asphalt and meters will be installed. A study of off-street parking needs is also under way in **Charlotte.**

Another approach to the traffic congestion problem is represented by proposals for a new east-west expressway through **Winston-Salem.** Surveys are under way on the project, after approval by city officials. The proposed route, which is close to the center of the city, is expected to drain off much of the through traffic now impeding shopping in the downtown business district. **Greensboro's** City Council has been considering the question of whether to give priority to a major expressway through the city or to an "inner loop" for carrying traffic around the central business district. Both projects are included in long-range street plans for the city.

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Local Improvements

Kernersville has voted to spend $200,000, financed by a bond issue, for the enlargement and extension of the town's water supply system. A new reservoir and pumping stations and additional water lines will be built. . . . **Murfreesboro** voters have approved the issuance of $160,000 in bonds for the expansion of the water supply system and the sewer system and for curbs and gutters. . . . **Robbins** will hold a bond election for the approval of $59,000 in bonds for construction of additional water and sewer facilities. . . . **Wendell** voters have approved the issuance of $50,000 in bonds for extension of the water supply system, purchase of fire-fighting equipment, and the construction of a building for storing the fire equipment.

Planning and Zoning

The **Durham** Planning Department received a valuable tool to assist its work recently when an aerial mapping job for the city was completed. Complete with contours, the new maps show a wealth of detail impossible to include by ordinary mapping techniques. A similar job is being undertaken for the city of **Raleigh,** while the State Highway Department is contracting for aerial maps of much of the state.

Although it is occasionally overlooked, one of the most important functions of a local Planning Board is to coordinate the plans and programs prepared by the various departments of the city government. This was underlined recently at a joint meeting in **Winston-Salem** of the City School Board, the City-County Planning Board, the Housing Authority, and the Urban Redevelopment Commission, called by the Mayor to consider means of coordinating the activities of these groups. A suggestion was made that the chairmen of the four agencies form a coordinating committee, but after discussion, it was agreed that this function should be performed by the Planning Board as one of its regular duties.

The work of the **Winston-Salem** Urban Redevelopment Commission has been expedited by the arrival of a professional city planner to head its technical staff.

Chapel Hill hopes to complete action sometime this month on its new perimeter zoning ordinance, regulating development for four miles beyond the town limits. After rural opposition to the ordinance originally proposed was expressed in January, the membership of the town's Zoning Commission Enlarged was revamped and consideration of a new measure begun. A series of neighborhood meetings has been held in the area affected, with a final public hearing by the Commission scheduled early in April. If action is favorable, the Board of Aldermen will receive the ordinance for early consideration. Earlier this year **Raleigh** adopted a plan zoning the area for one mile beyond its limits. Both cities acted under special acts.

Several interesting amendments of city zoning ordinances have been adopted recently. **Raleigh** has excluded from its industrial district "dwell-

ings or residences of any type except the residence of a caretaker or watchman for an industrial plant, or an alteration to an existing dwelling which changes the dwelling without adding another family unit." This change is in accord with present-day zoning theory, which is based on the facts that when residences are permitted in industrial districts (1) tracts necessary for industrial purposes are subdivided and rendered difficult to assemble, (2) the city is forced to provide schools and similar facilities in a patently unsuitable district, (3) inhabitants are inclined to harass industries with complaints about the normal noise, odor, dust, etc., associated with industrial operations, and (4) the area is unsuitable for healthy and pleasant living facilities.

Wilmington has amended its zoning ordinance to provide a new class of limited retail district, in which residential uses, drug stores, gift shops, florist shops, and offices and clinics of doctors and dentists (but not animal hospitals) will be permitted. Regulations for the district require that front and side yards meet residential district requirements. Nonresidential uses must provide one off-street parking space for each 100 square feet of floor area in the main building. Businesses are limited to one sign not exceeding 15 square feet in area, parallel to the face of the building and not extending over the street right of way.

The residential district provisions of **Hickory's** zoning ordinance have been revised extensively. A new definition of a "home occupation" was adopted in an effort to meet problems arising under existing provisions: "An occupation for gain conducted only by the immediate family all of whom live on the premises and provided that no special space is designed or arranged for such occupation and provided that no article is sold or offered for sale except such as may be produced by the immediate family residing on the premises." Enforcement provisions added by the amendment include the following: "Prior to the actual construction of any structure for which a building permit has been issued the owner or contractor in charge of construction shall establish upon the ground all exterior corners of the proposed structure and the lot corners and have the same approved by the building inspector . . ." "No person, firm or corporation shall move any structure, except tool sheds and accessory buildings, without first having obtained a permit therefor from the building inspector."

An amendment to the new **Durham** ordinance was more lenient to home occupations, permitting beauty parlor operators in residence districts who were conducting a business in their homes with not more than two chairs or two operators at the time of adoption of the ordinance to continue indefinitely. As originally adopted, the ordinance provided that such businesses should cease within five years.

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Outside City Services

The state REA reports that 60 North Carolina municipalities sell and distribute electric power to customers outside their city limits. The largest suppliers to rural communities were listed as **Albemarle, Fayetteville, Greenville, Kinston, Lexington, New Bern, Rocky Mount, Washington,** and **Wilson. . . .** The **Durham** water department estimates that from 20 to 25% of its new service connections are going to consumers living outside the city limits.

Warsaw recently extended its town limits for the first time in 65 years, increased its population from a little over 1500 to a little over 2000, and thereby became the largest town in Duplin County. The Junior Chamber of Commerce initiated the program and sold it in the three areas brought inside the town, where water facilities were particularly desired. An election on a bond issue for water and sewer improvements is being planned for the spring. . . . **High Point** and **Lexington** have dropped plans for large annexations in the face of opposition from the areas to be annexed. One residential area in Lexington has since petitioned the city for annexation.

Fuquay Springs is one town but it has two post offices—one at Fuquay Springs at the south end of town and one at Varina at the north end of town. So many citizens feel that they are citizens of Varina and the town is so often referred to as Fuquay Springs-Varina that the town ordered 50 municipal motor vehicle licenses with the name "Varina" stamped thereon instead of "Fuquay Springs."

Notes — North Carolina Counties

Schools

A move is developing in **Durham County** to ask the General Assembly to amend the law which states that school busses cannot pick up children living within one and one-half miles of their schools. The Durham County Parent-Teachers Association Council passed a resolution last year to this effect and have since sought the support of the Durham Board of County Commissioners. The latter has agreed to back the resolution. The problem in Durham County, and undoubtedly in other counties of the State, arises when children must walk to school along a heavily travelled highway. The General Assembly, if presented a plan for increase school bus service, will probably find its greatest obstacle in the search for funds to finance the increased service.

Catawba County carries an accident insurance policy on school children. The policy costs $1.25 a year per child and protects only those children who pay this amount; between 85 and 90% of the children of the county schools have paid and are covered by the policy. The policy, which pays $1,000 in case of accidental death and up to $1,000 in hospital bills in case of accidents, covers the student from the time he leaves home until the time he returns, and includes accidents which take place inside the school building or on the school grounds It also covers a student away from school in such outside activities as athletic games and band performances. The policy even covers a child killed while waiting for a school bus.

Pamlico County, faced with a suit alleging discrimination in the school facilities for negro children, has decided to consolidate all negro schools at one location. The location is that of the Pamlico Training School. The $83,000 received by the county from the State school bond money is being used for additions to that school and a bond issue of $100,000 was submitted to the Pamlico voters late in March to finance another addition.

Miscellaneous

The **Surry** County Board of Commissioners has agreed to share the services of the chief county librarian with neighboring **Stokes County.** The arrangement came about because Stokes County had no certified librarian and hence was not able to share in the State funds available for county libraries. Under the arrange-

(Continued on next page)

ment the Surry librarian will spend two days a week in Stokes cataloguing and ordering books for that county, Stokes paying two-fifths of her salary. Surry will use the money saved on the librarian's salary to hire an assistant librarian, and Stokes will be able to share in the State fund.

Madison County is considering automatic voting machines, the machines having been placed on display in the courthouse for several days during the past winter so that they may be inspected by the county commissioners and citizens of the county. Each machine costs about $1,240 and a machine is needed for every 500 voters, according to representatives of the company making the machines displayed. The machines are sold on a ten-year rental program and if Madison County purchases sufficient machines it would pay $3,500 per year for ten years or a total of $35,000. If the board of county commissioners decides to purchase the machines, Madison will be the first county in North Carolina to use automatic voting machines.

After a trial of seven months, the **Forsyth County** board of commissioners has decided to continue operating the courthouse on a five-day week. Experience showed that the courthouse was little used on Saturdays, only one and one-half percent of county taxpayers, for example, having paid their taxes on Saturdays when the courthouse was open on that day. Moreover, county officials reported that they lost employees to private businesses who operated under the five-day week plan. There will be one man on hand for emergencies in the Office of the Registrar of Deeds and the Clerk of Superior Court, and the Sheriff will continue to operate on Saturdays, but all other offices will be closed.

Mecklenburg County's commissioners have decided to establish a County Planning Board under the provisions of G.S. 153-9(40). Although such a board will have no power to zone the county or otherwise carry its plans into effect, it is expected that it will begin studies which can be used as a background for such measures. The commissioners have been asked to seek from the 1953 General Assembly a special act authorizing county-wide zoning and extension to the county of the controls embodied in Charlotte's minimum housing standards ordinance.

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Questionable Zoning Practices

Some zoning practices should be avoided as they may be found to be illegal use of legislative authority

PHILIP P. GREEN, JR.

Examples of three types of zoning practices of questionable legality have recently appeared in newspaper accounts of zoning activity over the state. These practices are (1) so-called "spot zoning" amendments, (2) zoning regulation of the minimum cost of structures in particular districts, and (3) adoption of "interim" zoning ordinances. Planning Boards and City Councils dealing with zoning matters should be aware of the dangers involved in these practices.

"Spot Zoning"

Every City Council and Planning Board charged with enacting or making recommendations concerning proposed amendments to the zoning ordinance is familiar with the practice of "spot zoning," although possibly not under that name. Each such board is commonly besieged by individual property owners seeking to have their lots placed in another district classification. When the board yields to these pleas and grants an application by changing the classification of only one or two lots, it is "spot zoning" in most cases.

Some Planning Boards and City Councils have recognized that such action is apt to be arbitrary and discriminatory and have established a policy of refusing such requests. A recent news story in the Durham *Morning Herald* stated that the Durham Planning and Zoning Commission had refused an application for rezoning a lot until it could determine whether or not it would be wise to rezone the entire block in which the property was situated. "To change one lot or one parcel of land in the area would definitely be 'spot zoning,' which is not the policy of the group, the board said." The City-County Planning Board of Winston-Salem and Forsyth County was recently reported by the Winston-Salem *Journal* to have denied a similar request. "In recommending against it, the planners stated this would be spot zoning, that is, creating a business lot in the middle of a residential area."

Other Councils and Boards, unfortunately, have not been so rigid in their policies. One Council was recently reported as having rezoned a small tract so as to permit a particular named business in a particular structure described in the ordinance on the tract —not even remaining within the scope of the existing ordinance to the extent of reclassifying the property as a type of district for which the ordinance provided regulations!

Where "spot zoning" has come before the courts, it has almost universally been denounced. This is because it amounts to special and arbitrary treatment for one or a few individuals, in the face of the constitutional requirement of uniformity and of the statutory requirement that zoning regulations be made "in accordance with a comprehensive plan" (G.S. 160-174).

Textwriters agree that the practice is bad, as in the following quotations:

"As years pass by, the increase of 'spot zoning' subverts the original soundness of the plan, and tends to produce conditions almost as chaotic as existed before zoning." Bassett, *Zoning* (2d ed., 1940), p. 122.

"Spot zoning, or, as it is sometimes called, piecemeal zoning, may be regarded as the enemy of zoning. It runs in direct opposition to the purposes of zoning, namely, it is not according to a comprehensive plan, nor within the spirit and intent of the zoning ordinance that the same should be enacted to serve the public health, safety and general welfare of the community. It is in disregard of the rights of others similarly situated or the effect which such spot or piecemeal zoning has on property values in the district or upon the future orderly development of the municipality as a whole. Generally speaking, spot zoning or piecemeal zoning is the result of effort on the part of some individual owner to benefit himself at the expense of the general public and sometimes as a result of spite on the part of the legislative body towards a particular owner." Rathkopf, *The Law of Zoning and Planning* (2d ed., 1949), pp. 66-67.

"Of one thing there can be no doubt. The law is well settled that 'spot zoning' as properly known and understood, and 'spot zoning' ordinances, as properly identified, are unconstitutional and void on the general ground that they do not bear a substantial relationship to the public health, safety, morals, and general welfare and are out of harmony and in conflict with the comprehensive zoning ordinance of the particular municipality." Yokley, *Zoning Law and Practice* (1948), p. 160 (citing 25 cases from states throughout the country).

What we have said should not be taken to mean that the city cannot properly establish small zones consisting of one or a few lots—particularly small neighborhood business zones serving particular neighborhoods. Such zones will be approved by the courts *provided* they meet one test: they must be established in accordance with a comprehensive plan. *Marshall v. Salt Lake City*, 105 Utah 111, 141 P.2d 704 (1943). It is rare, however, that requests for individual amendments will meet this test.

Minimum Cost Regulations

Another North Carolina city was recently reported to have adopted a zoning ordinance setting minimum costs of buildings which could be erected in various districts. This type of ordinance would fairly clearly be held unconstitutional, in the light of existing court decisions. Any zoning regulation, to be upheld, must bear a substantial connection with one of the so-called police power objectives: public health, safety, morals, or general welfare. It is difficult to demonstrate that regulations establishing minimum building costs have this relationship. As the New Jersey Supreme Court has stated in overturning such requirements, "No person under the zoning power can legally be deprived of his right to build a house on his land because the cost of that house is less than the cost of his neighbor's house." *Brookdale Homes, Inc. v. Johnson*, 126 N.J.L. 516, 19 A.2d 868.

A more usual type of provision which has recently come under fire from the courts is one which seeks to achieve the same end by specifying minimum lot sizes, minimum floor areas, minimum cubic contents of buildings, etc., at so high a level in particular districts as to preclude any but expensive dwellings. These provisions too are unconstitutional, where no relation to the police power objectives can be shown. *Dilliard v. North Hills*, 91 N.Y.S.2d 542 (Sup.Ct. 1949); *Baker v. Somerville*, 138 Neb. 466, 293 N.W. 326 (1940); *Frischkorn Construction Co. v. Lambert*, 315 Mich. 556, 24 N.W. 2d 209 (1946).

Where property owners desire to set minimum costs for buildings erected in their neighborhoods, the proper way to do it is by means of restrictive covenants—and not by an attempted exercise of the city's zoning powers.

"Interim" Zoning Ordinances

One of the difficult problems confronting a city as it goes about the task of securing a zoning ordinance is that the statutory procedures required in Section 160-175 of the enabling act are time-consuming. This means that while the ordinance is being prepared, a great many undesirable developments may take place which cannot be undone by the zoning ordinance. In order to hold matters in the status quo during this period, one North Carolina town recently was reported to have adopted a so-called "interim" zoning ordinance, covering the period prior to adoption of an ordinary zoning ordinance. This classified the city into "residence" and "non-residence" districts; the latter consisted of all blocks in which thirty-five per cent of the frontage had been developed for business or industrial use, while the former consisted of all other blocks. During the interim period no person was permitted to erect, extend, remodel, or convert any building in a "residence" district for any purpose other than residential and customarily accessory uses.

While such an ordinance would be permissible under the zoning enabling acts of a number of other states, in North Carolina it is fairly clearly invalid in light of the cases of *Shuford v. Waynesville*, 214 N.C. 135, 198 S.E. 585 (1938), and *Kass v. Hedgpeth*, 226 N.C. 405, 38 S.E. 2d 164 (1946). In both of these cases the North Carolina Supreme Court stated that in order for an ordinance to be upheld as a zoning ordinance, it must comply strictly with the statutory procedures; the city may not short circuit those procedures in order to meet an immediately pressing problem.

Here, where the difficulty is not a constitutional one but rather statutory in origin, there is a chance to relieve the city's problem. If North Carolina cities need and desire such authority, the proper course would be to secure an amendment of the state zoning enabling act granting it.

Conclusion

While the zoning powers exercised by North Carolina cities may be very beneficial in guiding the development of those cities along desirable lines, it is essential that this exercise be in the proper manner. Where amendments are enacted in an arbitrary and discriminatory manner, so as to favor or injure particular persons, the courts must overrule them. Where an attempt is made to regulate the cost of a dwelling which a man may build, rather than to insure by other means that the dwelling will be constructed properly so as to safeguard him and his neighbors, the courts will overturn that "legislative snobbery." Less serious are the cases where an attempt is made to preserve the existing situation until a zoning ordinance can be enacted; but in the interest of insuring that property regulations are carefully conceived and enacted in the proper statutory manner, the courts will strike down this attempt as well. Planning Boards and City Councils must constantly observe these restrictions on their powers, if their actions are to be upheld.

Not A "Talking"

Court Upholds Ordinance Giving City Outside Water Lines on Annexation

For many years the city of Winston-Salem has had ordinance provisions which permit subdivisions outside the city limits to tap into the city water and sewer lines, but provide where this is done "That the water system [or sewerage system] together with the fixtures, equipment, easements, rights and privileges appertaining thereto shall become the property of the city of Winston-Salem whenever the territory in which said system is located shall be incorporated within the city limits." Last month the North Carolina Supreme Court considered the question of whether the city was required, under operation of this ordinance, to pay just compensation to the owner for the system thus acquired. *Spaugh v. Winston-Salem*, 234 N.C. 708.

The court, in deciding favorably to

Where certain parties subdivide land adjacent to a city into lots suitable for residential purposes, and underlay the streets with pipes for water and sewer services (which are connected with the city mains); can these parties recover compensation for the water and sewer lines which were taken over by the city when the residential area was incorporated into the city? The Supreme Court's decision on this question is discussed in this article on use of city water.

Several North Carolina cities have ordinances providing that subdevelopers outside the city limits may connect their water and sewer mains with the city systems, on condition that such mains become city property whenever the subdivision is annexed to the city. Does such an ordinance make the city liable to pay just compensation for the mains? A recent Supreme Court decision on this question is discussed in this article.

the city, refused to lay down a general rule concerning such situations. However, the following excerpts from the majority opinion by Chief Justice Devin and a concurring opinion by Justice Barnhill are of interest to city officials presently considering adoption of similar ordinances:

Majority Opinion

"From an examination of the cases cited and the decisions based on the particular facts of those cases, it is apparent that no comprehensive rule emerges, and that this case and others of like nature must be considered and determined in the light of the pertinent facts presented by the record in each case.

"In our case the plaintiffs in 1928 subdivided their real property adjacent to the city of Winston-Salem into streets and lots suitable for residential purposes and underlaid the streets with pipes and appliances for water and sewer services as appurtenant to the lots sold and to be sold. To procure this service for their development and to promote the sale of lots, the plaintiffs, with the consent of the city, connected their system with the city mains through an adjoining development, and the city thereafter supplied the water from its mains and furnished service through its sewer system to the residents of Konnoak Hills, making collection therefor according to the city ordinances and prescribed regulations, and since January 1, 1949, when the city limits were extended to include this area, has continued to furnish water and sewer service to residents in the same manner as during the preceding twenty years. There was no argreement or assumption of obligation for compensation on the part of the city. Numerous lots have been sold and it was stated in the complaint that 'scores of residences have been built upon the subdivision and vacant lots therein are in demand as residences sites.' The city ordinances were in force at the time advising those outside the city who were permitted to connect with the city mains that whenever the territory in which they were located was incorporated within the city limits the water and sewer lines and 'fixtures, equipment, easements, rights and privileges pertaining thereto' should become the property of the city. The plaintiffs' subdivision having been laid out within one mile of the corporate limits of the city, knowledge of its ordinances in the respects set out in G.S. 160-203 would be presumed.

"Upon these facts we reach the conclusion that the court below has correctly ruled that the plaintiffs were not entitled to compensation for the water and sewer lines in Konnoak Hills now controlled and maintained by the city of Winston-Salem, and that plaintiffs have not been wrongfully deprived of property rights therein by the incorporation of these lines in the city system consequent upon the extension of the city limits."

Concurring Opinion

"The real controversy here is as to the right of plaintiffs to compensation for the property thus acquired by the city. On this question, in my opinion, the ordinance is of no consequence. It has no bearing on the question either one way or the other, for a governmental unit may not, by legislative fiat, appropriate private property without paying just compensation therefor . . . . It may enact a law declaring that upon the happening of a certain event the title to property shall pass to and vest in such governmental unit. But this does not relieve it of the obligation to pay just compensation for the property so taken.

"The plaintiffs had the right to install water and sewer mains in the streets of their development, contract with the city for sewer outlets through its system, purchase water wholesale from the municipality, and then retail these services to the purchasers of their lots as a business undertaking independent of the land development. Had they pursued this course, the extension of the corporate limits of the defendant city so as to incorporate the *locus* might have served to vest in defendant title to the water and sewer system thus maintained by the plaintiffs under the terms of the ordinance and the terms of the contract executed pursuant thereto — assuming, of course, that the contract for sewer outlets and for the purchase of water wholesale contained the same provisions as the one actually executed. However, such was not the course pursued. No doubt the plaintiffs deemed that method of furnishing those services to the purchasers of their lots too costly.

"Instead, they installed the water and sewer mains, contracted with the city to furnish the contemplated services, and immediately surrendered possession of the mains to the defendant city. Since that time, and for more than twenty years, the city has operated the mains installed by plaintiffs as a part of its own system. In turn, plaintiffs have profited by the assurance that this valuable public service was available to all purchasers of lots in their developments. No doubt they assessed the additional expense as a part of the original cost just as they did the expense of laying out the streets, clearing the property, and developing it for sale as building lots, and priced the lots accordingly. In any event, in my opinion, the surrender of possession to the city under the contract executed by them constituted a dedication to public use and they are now estopped by their conduct from claiming compensation therefor, irrespective of the terms of the ordinance. For this reason and this reason alone, I vote to uphold the verdict and judgment."

Plaintiff's Contentions

In arguing that they were entitled to compensation, plaintiffs cited three North Carolina cases: *Abbott Realty Co. v. Charlotte*, 198 N.C. 564, 152 S.E. 686; *Stephens Co. v. Charlotte*, 201 N.C. 258, 159 S.E. 414; and *Construction Co. v. Charlotte*, 208 N.C. 309, 180 S.E. 573. In the former, the realty company agreed to construct a sewer line if the city would reimburse it for the cost; the court held, after the city had refused to pay more than a portion of the cost, that while the company could not recover on the con-

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Low Rent Public Housing In N. C.

By Thomas S. Berry, Field Office Economist,
Public Housing Administration

It is now almost three years since the Congress passed the Housing Act of 1949 (Public Law 171) amending the Housing Act of 1937 so as to restore activity in the construction of urban low-rent public housing and to extend public housing into rural non-farm areas. North Carolina city housing authorities have taken considerable advantage of the new legislation, but very little progress has been made by Tar Heels in the field of rural non-farm housing.

In 1949 there were some 263 local housing authorities in the United States, which were operating 616 urban low-rent projects totaling almost exactly 184,000 dwelling units. North Carolina had seven active urban authorities at that time and a combined program of 15 projects with a total of 2,968 units. These projects were located in Charlotte, Fayetteville, High Point, Kinston, New Bern, Raleigh, and Wilmington. Housing authorities had also been organized in Asheville, Concord, Greensboro, and Winston-Salem which executed contracts with the United States Housing Authority for about eight additional projects before the War. However, construction on these eight "deferred" projects was postponed indefinitely because of a maximum cost limitation of $4,000 per dwelling unit in the Federal law, which was changed to a maximum of $1,750 per room (outside metropolitan areas) by the Act of 1949.

By the end of 1951 all the 11 urban authorities named above had applied to the Public Housing Administration for reservation of additional units, and were in various stages of planning and construction. In addition, seven new housing authorities had been organized, as follows: Lumberton (June 1949); Salisbury and Durham (September 1949); Goldsboro (January 1950); Tarboro (April 1950); Laurinburg (July 1950); and Rocky Mount (April 1951). Mention should also be made of the Eastern Carolina Regional Housing Authority, whose headquarters are at Seymour Johnson Homes just outside Goldsboro and which has an area of jurisdiction covering ten counties. The Regional Authority filed application for low-rent units in Beaufort, Clinton, Havelock, Jacksonville, Morehead City, and Wayne County. This means that the 1949 Act has enabled the extension of low-rent housing from seven to 24 North Carolina communities to date, and the total number of units has grown from 2,968 actually in operation to a potential (including those under reservation) of 11,049. The new reservations alone bring a total of some 7,555 units. One local authority (Goldsboro) has completed construction of the 275 units in its first reservation and is now planning 325 additional units.

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The organization of a North Carolina housing authority, which was explained by W. M. Cochrane in the September-October 1949 issue of POPULAR GOVERNMENT, is not a particularly difficult procedure; and it appears that the old North State has kept pace with the rest of the United States in this department, so far as urban authorities are concerned. Back in 1949 North Carolina had seven active low-rent programs totalling 2,968 units, or about 2.7 per cent of the programs and 1.6 per cent of the urban units in the nation. At latest report the number of North Carolina programs had increased to about 3 per cent of those in the nation, and our state's proportion of urban units promised to exceed 2.1 per cent. So far as the total new urban units under reservation are concerned, North Carolina ranks fifteenth in the nation, behind New York (30,640), Illinois (28,840), Pennsylvania (23,010), California (21,687), Ohio (19,720), Texas (16,775), New Jersey (15,776), Georgia (14,235), Michigan (12,655), Alabama (10,383), Missouri (10,100), Massachusetts (9,975), Tennessee (9,374), and Virginia (8,354), in that order. Although Texas, Georgia, Alabama, Tennessee, and Virginia rank ahead of North Carolina in this respect, Florida (5,923), Maryland (5,795), Kentucky (5,423), South Carolina (3,457), and Mississippi (1,931) are further down in the list of 40 states reported. The movement has apparently just begun in Montana (150

Aerial view of new housing project in Greensboro.

units) and Maine (50 units), which are at the bottom of the list.

As mentioned above, it is in the field of rural non-farm public housing where North Carolina has tended to lag behind some of her sister states. This is housing designed to serve communities with a population less than 2,500 and is best handled by county or regional housing authorities as provided for in North Carolina law. The Eastern Carolina Regional Housing Authority serves ten counties in North Carolina, and a second regional housing authority was formed in March 1950 to serve Richmond and Anson Counties (with special reference to the Town of Rockingham). However, no county in North Carolina has yet organized a county housing authority. The same thing is true of counties in a number of other states such as Virginia, West Virginia, Kentucky, and Tennessee. Georgia, on the other hand, had over 125 such county authorities by the end of 1951 which had filed 71 applications with the Public Housing Administration and secured 54 reservations. Alabama had 43 rural non-farm applications on file on December 31, 1951; Texas had 36; California and Illinois had 32 each; and South Carolina had 21. A host of these smaller rural projects are already in construction in various parts of the South, and some are ready for initial occupancy.

It is worthy to note that the rural non-farm provision of the Housing Act of 1949 was inserted at the behest of Southern representatives in the Congress, who sensed that the housing problem in the South is by no means confined to urban areas. In 1940, for instance, North Carolina had more (165,667) substandard dwelling units in the rural non-farm classification, than substandard dwelling units in cities and towns over 2,500 in population (123,348). In other words, North Carolina had slightly more than two per cent of the urban substandard units in the nation, but almost four per cent of the rural non-farm substandard units. The same relative need is seen in Kentucky, Virginia, West Virginia, and a number of other neighboring states.

Although the United States Government, acting through the Public Housing Administration, acts as banker, adviser, and auditor to local housing authorities, the latter organizations own and operate all those new projects. Since the average urban program embraces property worth several million dollars, and is an important aspect of local government, the five commissioners in each authority ordinarily occupy leading positions in their community. North Carolina has been particularly fortunate in the selection of authority members. Among the new authority chairmen we may cite Mr. Stahle Linn in Salisbury, Dr. Daniel Rose in Goldsboro, Mr. William Muirhead in Durham, and Mr. Hyman Battle in Rocky Mount, leaders in the fields of law, medicine and surgery, construction, and manufacturing, respectively.

How do we stand on the actual construction of these units and occupancy by families of low income heretofore crowded into quarters either dilapidated or lacking in decent plumbing facilities? This involves submission of a "Development Program" by the local housing authority to PHA giving all essential facts and figures on the proposed project, execution of a long-term contract for financing the construction and the annual Federal contributions towards operating expenses over the next 40 years, drafting plans and specifications and advertising them to private contractors and construction companies for bids, as well as actual work in brick and mortar or concrete.

Asheville opened the first new project in North Carolina on April 30, 1951, and Concord followed with two projects in July and August, respectively. These three were "deferred" projects planned largely before the War. Kinston opened her first project in October, which was entirely new in planning under the Housing Act of 1949, and followed that with a second project in December. Goldsboro also made a splendid record by opening two projects in October 1951, and Winston-Salem and Fayetteville opened a project apiece in December 1951 and January 1952, respectively. These nine new projects already available have a total of 1,071 units. The one in Asheville, 96 units for nonwhite occupancy, is notable because it stands upon a fairly high hill not far from the center, which was sliced off at the top somewhat like the hills supporting low-rent projects in Pittsburgh, Pennsylvania. The projects in Kinston involved a considerable amount of actual slum clearance but most of the other new projects are being constructed upon vacant sites.

The "pipe lines" of actual building construction are now by way of getting filled, so that we may expect a steadier rate of completions from now on. At latest report seven North Carolina authorities had nine projects well under construction which should be ready for occupancy in the next few months, as follows:

Project No.	Locality	No. Units
NC-7-3	Asheville	262
NC-11-1	Greensboro	400
NC-3-3	Charlotte	400
NC-1-3	Wilmington	250
NC-12-4	Winston-Salem	160
NC-12-3	Winston-Salem	240
NC-11-2	Greensboro	400
NC-2-4	Raleigh	86
NC-5-3	New Bern	102
NC-2-3	Raleigh	64
	Total	2,364

With 16 projects totaling 3,435 units either finished or well under way to-

A view of a new project in Asheville which opened April 30, 1951.

wards occupancy, North Carolina occupies a favorable position among the states in the nation. As of February 1, 1952, some 630 projects totaling 105,078 units were reported either completed or under construction in the whole country (including Puerto Rico and other possessions) but a good many of these are concentrated in large centers such as New York and Chicago.

Another batch of North Carolina low-rent projects is slated for commencement of construction before the end of June 1952, which will come within the quota of 50,000 units in the entire nation for this fiscal year. Proceed orders have been issued to the building contractors for ten projects totaling 905 units which will be ready for occupancy in the autumn or early winter. They are as follows: Charlotte, 200 units; Wayne County, 90 units; Clinton, 70 units (two projects); Fayetteville, 220 units; Lumberton, 125 units (two projects); Wilmington, 150 units; and Morehead City, 50 units (two projects). In addition, bids are due to be opened for six additional projects totaling 678 units as follows: Durham (240); Winston-Salem (263); Tarboro (100, two projects); and Laurinburg (75 units, two projects). The extent of participation by the new housing authorities is a noteworthy feature of the records, which may be summarized in this way:

	No. Projects	Total No. Units
Projects complete	9	1,071
Projects well under construction	9	2,364
Projects just begun	10	905
Projects out to bid	6	678
Total	34	5,018

In this connection, recent experience suggests that bids will be suitably furnished on the six projects just mentioned. North Carolina has been fortunate in this respect in that construction bids have generally come in at figures at or below the estimates of cost made during the planning stage.

The construction record summarized above is one to which North Carolina housing authorities and civic leaders can well point with pride. It represents a tremendous amount of hard work against obstacles of one kind or another. Minimum requirements of the Federal government embracing all kinds of legal, technical, and economic matters must be complied with. Suitable land must be acquired in countless parcels—frequently only after condemnation proceedings. Negotiations must take place for school facilities where necessary, and for utilities at reasonable rates. Although the projects provide their own facilities for public services on the site, the utility services leading to the site must be provided by the cities or utility companies. This involves the execution of a "Cooperation Agreement" with the city in question, whereby the city agrees to furnish essential services and offsite utilities and the Housing Authority commits itself to pay a voluntary annual "Payment in Lieu of Taxes" (although low-rent housing projects are tax-exempt, they commonly return a handsome sum to a city or county treasury by these payments). Then we have the problem of designing buildings which will be economical to maintain in future years and which provide the maximum commodiousness yet meet the cost requirements in Federal legislation.

This unit (in Goldsboro) is typical of housing being built for needy tenants all over North Carolina.

One bright spot in recent public housing experience is in the field of long-term financing. By law a housing authority can borrow up to 90 per cent of the capital cost of a project from the Federal Government but it must pay 2½ per cent interest at the present time. Largely because an authority's bonds are tax-exempt as to income and are guaranteed as to debt service by the authority's contract with the Public Housing Administration, these securities are selling for as low as two per cent in the New York bond market. Asheville, Concord, Kinston, and Goldsboro housing authorities sold a total of $9,829,000 in bonds at 2⅛ per cent last year, whereas Greensboro, Winston-Salem, and Raleigh accepted a bid of two per cent in January 1952 on bonds bearing a total face value of $15,243,000. In other words, public housing is calling upon private enterprise not only in the field of construction but also in the finance department.

In conclusion, we may point to the fact that the need for public housing in North Carolina continues to be strong. The 1950 Federal Census indicated that the number of substandard units in selected communities was rarely less than the number reported in 1940. Although a considerable amount of rehabilitation has taken place, and improvement through the laying of water and sewer mains, this is offset in the statistics by physical depreciation, by differences in the definition of "substandard," and by the extension of city limits. We summarize herewith the figures for a number of North Carolina communities on which 1950 figures are available:

	No. of Substandard Dwelling Units	
Locality	1940	1950
Asheville	4,737	5,651*
Charlotte	10,683	10,914
Clinton	521	650
Durham	8,774	9,050
Fayetteville	2,468	6,378*
Goldsboro	2,883	3,355
Greensboro	6,102	6,494
Kinston	2,250	2,576*
Lumberton	591	1,149
Raleigh	4,570	5,218
Tarboro	1,035	947
Wilmington	4,093	4,770*
Winston-Salem	11,460	11,672
Total	69,167	68,824

* Selected slum areas only.

Schools

Which have been recently held

County Accountants, Jail Officials and Sheriffs Meet in Chapel Hill to Discuss Their Problems

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COUNTY ACCOUNTANTS' SCHOOL

The annual school for County Accountants was held in Chapel Hill from February 20, 1952, to February 22, 1952. Following registration at the Institute of Government, the sessions were held in one of the classrooms at the Law School.

The first three sessions were devoted to a discussion of the various sources of county revenue and the purposes for which such revenue may be spent. In the discussion, a recently completed guidebook entitled "Sources of County Revenue" was used. The guidebook contains a discussion of the various special purpose taxes which may be levied by counties, either under the general law or under a special act, to supplement the General Fund 15-cent limit; a discussion of those taxes which may be levied for non-necessary expenses with a vote of the people; a discussion of non-property taxes which may be levied; and a discussion of the various non-tax revenues available to finance county government. Copies of this guidebook are being distributed to county commissioners, county accountants, and county attorneys throughout the State.

At the fourth session, Mr. W. E. Easterling, Secretary of the Local Government Commission, spoke on the various reports required to be submitted to the Commission. Mr. Easterling made a most interesting talk, going into the reasons why the various reports are required.

The final three sessions were devoted to the discussion of a number of problems facing accountants, including (1) accounting for school funds, (2) transfers of appropriations, (3) countersigning of county vouchers, (4) competitive bid procedures, and (5) disposing of old accounting records. The basis for the discussion was a thirty-page mimeographed statement prepared for the school. This statement is being mailed to all county accountants not present for their information.

This picture was taken during the School for County Accountants showing some of those who attended the school.

JAIL OFFICIALS' SCHOOL

Twenty-three jail officials were present for the 1952 Jail Management course held at the Institute of Government March 12-14—eighteen county jailers, two county jail matrons, one city jailer, and two jail inspectors. Two of the county jailers were also serving as city jailers.

This year's school for jailers was the fourth annual jailers' course conducted by the Institute of Government with the cooperation of the State Board of Welfare. It was held concurrently with the annual school for sheriffs, with the final morning's session being a joint one for sheriffs and jailers, on problems of mutual interest to the two groups.

The program included the following lecturers and topics: Dr. Ellen Winston, State Commissioner of Public Welfare, "Welfare Department Responsibilities in Connection with Jail Operation"; John Morris, Secretary-Treasurer of the North Carolina Sheriff's Association, "Salaries and Fees in Jail Operation"; W. M. Cochrane, Assistant Director of the Institute of Government, "Review of the Law Governing Jail Operation"; Robert Pleasants, Sheriff of Wake County, "Admission and Release Procedures"; Murray Linker, State Board of Health, "Food Sanitation" and "Jail Sanitation"; Miss Sallie Mooring, State Board of Health, "Nutrition and Food Preparation in Jails"; Dr. Lee Brooks, Professor of Sociology, University of North Carolina, "Who is the Criminal?"; Walter Anderson, Director of State Prisons, "Cooperation Among Jail, State Prison System, Law Enforcing, Judicial, Probation, Parole, and Welfare Officers"; T. A. Early, Inspector of Correctional Institutions, State Board of Welfare, "Report on Jail Conditions in North Carolina" and Ivan Creel, Jail Inspector for the Federal Bureau of Prisons, "The Relationship between the Federal Bureau of Prisons and Local Jails." Movies produced by the Bureau, entitled "Jail Operations" and "Jail Security," were shown to the group.

The following officials attended the course: George C. Wallace, Randolph County Jailer; C. D. Simpson, Pamlico; I. T. Wilkinson, Cabarrus; C. T. Phelps, Bertie; Bernice Cameron, Moore; H. C. Brisson, Bladen; W. G. McLeod, Lee; Burgin J. Scronce, Lincoln; E. T. West, Buncombe; L. R. Cobb, Wayne; John L. Barbour, Jr.,

Jail officials who recently attended school at Chapel Hill.

Guilford; Hubert E. Taylor, Onslow; W. L. King, Person; Mack D. Wallace, Richmond; J. A. Holmes, Wake; and A. H. Kallam, Stokes.

D. R. Hunt, Columbus County Jailer, and Mrs. Hunt, Matron; D. F. Cook, Davidson County Jailer, and Mrs. Cook, matron; Lt. E. C. Massey, City Jailer, Raleigh.

SHERIFFS' SCHOOL

The 1952 School for Sheriffs was conducted at the Institute of Government building in Chapel Hill on March 12, 13, and 14, with a total of forty-two sheriffs and deputies in attendance. Twenty-four counties, from Onslow in the east to Macon in the west were represented, there being fifteen sheriffs, twenty-six deputies, plus Mr. John Morris, Secretary-Treasurer of the North Carolina Sheriffs' Association, present. The President of the Sheriffs' Association, Sheriff Robert J. Pleasants, of Wake, the First Vice President, Sheriff John E. Walters, of Guilford, and the Second Vice President, Sheriff Tom P. Bardin, of Edgecombe, were also present. Seven counties that did not send anyone to the 1951 school had men present this year, the counties being Buncombe, Davidson, Edgecombe, Granville, Macon, Onslow, and Randolph. For the years 1951 and 1952 one hundred and thirteen sheriffs or deputies from forty-eight counties have been registered.

Basil Sherrill was the director of the school, and along with Ernest W. Machen, constituted the teaching staff. Both are Assistant Directors of the Institute of Government.

The sheriffs having indicated that the most troublesome part of civil process is an execution, primary emphasis in the school was centered on this subject. After preliminary explanation of the law dealing with the nature and content of an execution, the subject of what property is subject to seizure under an execution came up. Then came the first of many interesting questions. Not all of the questions asked can be set out here, but some are included for purposes of illustration.

Can a life estate in real property be seized under an execution?

Can the sheriff seize a bank account under an execution?

Suppose the sheriff goes to a man's home and tells him that he levies on all the personal property which he (the debtor) owns under the authority of an execution. Is that enough to constitute a valid levy?

If there is a judgment and an execution against the husband only, can the sheriff get at any real property which the man and wife own in their names together as husband and wife?

Suppose the sheriff has an execution against a man. He goes to the man's home, and finds a house full of furniture, including a television set, and an automobile outside. The man says that he rents, and tells the sheriff who his landlord is. He says that the household furniture belongs to his wife, who agrees. The television set, he says, was bought by his oldest daughter, who lives at home. The title to the car is in his wife's name. What can, or should, the sheriff do?

After dealing with these questions and others like them, the school studied the personal property and homestead exemptions. These were some of the questions raised:

If the sheriff has an execution against a man who owns only a car, and the debtor immediately asks for his personal property exemption in the car, should the sheriff go ahead and make a levy on the car?

If a man works for the federal government and has been sent to another state (from North Carolina) to work, but is still owner of a house and lot here, could the sheriff sell this house and lot under an execution without first laying off the homestead exemption?

If the debtor can't be found to select his personal property exemption, can the exemption be laid off anyhow?

Suppose a debtor has only a car subject to levy, and the car is worth $900. The debtor asks for his personal property exemption in the car. Can the car be sold under execution and $500 in cash given to the debtor?

What constitutes a valid levy was the subject next in order on the program. About all of the different types of personal property and the different ways in which that property can be found by a sheriff wanting to levy under an execution came up for discussion. Some typical questions:

Must the sheriff put his hands on property in order to make a valid levy?

Does the sheriff have to take property into his actual possession, if possible to do so, in order to make a valid levy?

If the sheriff has an execution against a man who operates a business establishment with an office in the building, and keeps going to see the man, but is always told by the secretary that the man is out, and is refused admission into the office, what can the sheriff do in order to make a levy?

The liability of a sheriff for his acts or failure to act under an execution raised such questions as these:

If the sheriff levies on property and then leaves it in the hands

of the debtor, who disposes of it afterwards, would the sheriff be liable to the plaintiff in the case? If so, what remedy has the sheriff against the debtor for disposing of the property, or what can be done to recover the property from the person who bought it or otherwise got it from the debtor?

If the sheriff delays for several days before taking action on an execution, and the debtor disposes of the property between the time the sheriff received the execution and the time he first acted upon it, is the sheriff liable?

If the sheriff doesn't seize enough property to satisfy an execution, and there was enough property there for seizure to have satisfied the entire judgment when the levy was made, is the sheriff liable for the difference?

How much force can be used in order to make a levy under an execution, and what is the liability of the sheriff?

The subject of Claim and Delivery papers provoked about as much thought and comment as Executions, and nearly as many questions. Sample questions:

Is it all right for the bond put up by a furniture store in a claim and delivery case to cover just the amount left owing to the furniture store, or must it cover the full value of the furniture?

If the sheriff doesn't think the bond given by the plaintiff in claim and delivery is sufficient, can he refuse to serve the claim and delivery?

Suppose a jewelry store has a claim and delivery issued for a ring on which payments are overdue. The sheriff is told that the ring was bought by the defendant in the civil action accompanying the claim and delivery, and is believed to have given the ring to a girl whose name is stated. Could the sheriff seize and take the ring from the girl?

If the sheriff goes to a house with a claim and delivery and no one is at home, can he go in and remove the articles called for? Could the sheriff break in? If the sheriff did take property while the occupants of the house are gone, how would he serve copies of the order, affidavit, and bond on the defendant?

When the subject of Attachment came up, the question put by Sheriff Cahoon, of Dare County, at last year's school, was stated again by Mr. John Morris to provoke thought. If the sheriff has an attachment against a truck, and seizes the truck, but finds that the truck is loaded with fish, ready for an interstate shipment, what will the sheriff do with the fish?

Ernest Machen, author of the *Law of Arrest* and the *Law of Search and Seizure*, discussed these two subjects, and also the subject of extradition. The floor was opened for questions on criminal procedure generally, and the following questions are samples of those asked.

Can a person arrested in this state for a felony committed in another state be held without bail pending the completion of extradition proceedings? If an officer enters a home under a search warrant issued for the seizure of liquor, would the officer, while in the house, have authority to seize gambling paraphernalia, or make arrests for other crimes (such as prostitution) committed in his presence?

How does the 1951 law regarding enforcement of support orders operate as to defendants living in other states? Under what circumstances, if any, may a search of a dwelling be legally made without a warrant?

Can a law enforcement officer be appointment a deputy clerk of court or a justice of the peace and thereby be given the power to issue warrants? Can such an officer serve his own warrants?

Can a clerk of superior court issue search warrants?

Can clerks of other courts issue search warrants?

Can a bondsman be a special deputy?

If land is posted, and a law enforecement officer goes on this land without a warrant, is he liable in any respect?

What is the maximum penalty for giving a worthless check? If a sheriff has a search warrant for liquor and goes to the suspect's home, where the man of the house comes to the door and demands that the warrant be read to him, must the sheriff read the warrant if he reasonably suspects that the wife is pouring the liquor down the kitchen drain all the while?

Laws of special interest to sheriffs passed by the 1951 legislature were discussed after Mr. John Morris had explained to the sheriffs that a proper return on any civil paper would be one that set out exactly the steps that the sheriff had taken. In addition to clearing up the question of whether or not various counties were included or exempted from the operation of some of the 1951 laws, such other questions as these were raised:

Who can set bail in a capital case?

Is a sheriff authorized to swear sureties on a bond?

When if ever, can a sheriff take bail bond?

Is it legal for a church group to have fortune telling at a church social?

Is a court order required to get a "souped up" car, which was consfiscated for use in transporting liquor, turned over to the sheriff for his use?

The final session of the school was a joint meeting of the sheriffs with the jailers, who were having a separate school, but conducted during the same three days as the sheriffs' school. At this joint session the sheriffs heard Mr. Walter Anderson, Director of State Prisons, Mr. T. A. Early, State Jail Inspector, and Mr. W. M. Cochrane, Assistant Director of the In-

Classroom scene showing some of the sheriffs who attended school.

stitute of Government and director of the Jailer Management School.

Those attending the sheriffs' school were S. J. Perkinson, James P. Bonham and James Dayton, Jr., Deputies, of Buncombe; E. M. Logan, Sheriff, Carl R. Cline, R. L. Ketchie, Deputies, of Cabarrus; G. D. Greer, Sheriff, E. T. Kirby, Deputy, of Caldwell; Austin E. Smith, Sheriff, W. P. Pitts, Deputy, of Catawba; J. W. Emerson, Jr., Sheriff, J. A. Farrell, Jr., Deputy, of Chatham; H. Hugh Nance, Sheriff, of Columbus; L. L. Guy, Sheriff, Elmer Arnett, J. C. Tyson, W. C. Brown, Deputies, of Cumberland; W. G. Fritts, Sheriff, of Davidson; Tom P. Bardin, Sheriff, H. W. Alderman, Deputy, of Edgecombe; Jack Gough, C. M. Lancaster, Deputies, of Forsyth; Otis L. Harrison, Deputy, of Granville; John E. Walters, Sheriff, of Guilford; W. G. McCall, Sheriff, of Henderson; W. L. Quidley, Deputy, of Lee; J. Harry Thomas, Sheriff, Newell Pendergrass, Deputy, of Macon; John R. Morris, Secretary-Treasurer of the North Carolina Sheriffs' Association, of New Hanover; A. R. Brown, Jr., G. W. Hill, Deputies, of Onslow; S. T. Latta, Sheriff, F. C. Maddry, Deputy, of Orange; C. C. Holeman, Sheriff, of Person; R. L. Cooper, Deputy, of Randolph; R. A. Yates, Deputy, of Richmond; Malcolm G. McLeod, Sheriff, of Robeson; H. G. Johnson, Sheriff, of Stokes; C. C. Doan, J. G. Fish, C. L. Holmes, W. P. Jones, Deputies of Wake.

The following is a copy of the program:

Executions, Attachment, and Claim and Delivery

The principal part of this discussion will be the law on Executions, but at each step the points of difference in Claim and Delivery and Attachment papers will be brought out. Execution sales will be included in the discussion.

The Law of Arrest and the Law of Search and Seizure

The subject matter will concern primarily arrests made under a warrant and when arrests may be made without a warrant, and in the field of search and seizure, the law relating to stolen property, liquor stills, and illegally transported liquor. The 1951 law relating to the admission into evidence of the fruits of an illegal search will be discussed.

Sheriff and Jailer Problems

This will be a joint meeting with jailers, to discuss with the state jail inspector and other prison officials the problems connected with county

(Continued on inside back cover)

Books of Current Interest

LEVIATHAN AND NATURAL LAW by F. Lyman Windolph, Princeton University Press, $2.50.

Here is a well written book which attempts to clarify the differences between the legal positivists and the advocates of the natural law theory. Mr. Windolph, a practicing attorney with some forty years of experience, reviews this age old dispute within the confines of a slim book, but manages to compact his writing skillfully so as to include the salient conflicts of the rival theories.

In his attempt to marry the conflicting theories Mr. Windolph admits that the sovereign has the power (either actual or potential) to pass any kind of law, and this law is "law" for the citizenry. This "law," however, is insufficient whether the sovereign is a king, a majority, or an aristocracy. The moral rightness of the law is then to be determined by each individual in the state where the statute was enacted.

A democratic government raises a number of questions which Mr. Windolph attempts to cover. As the sovereign is the party who grants certain legal rights to his subjects do we find the citizens in a democracy granting themselves legal rights? Are the citizens of a democracy both sovereign and subject? Mr. Windolph finds that the democratic citizen has delegated certain of his sovereign duties to a legal order (or hierarchy) which is called government and which passes laws and administrates these laws. The Constitution is the means whereby the sovereign (the people) have limited the authority of the government as well as delegated authority to the government.

No matter what source the law springs from it must find confirmation in the minds of the people. Morals are not determined by the majority nor are they determined by sovereign king or aristocracy. "If we are to defend democracy as our fathers conceived it, we must do more than deny that justice is only the interest of the stronger. We must affirm that the distinctions between good and evil and justice and injustice depend on objective reality, and that men are endowed with the capacity to draw these distinctions. . . . we must add to these affirmations a special and optimistic article of faith: that where popular sovereignty and civil liberty exist, the people, even if at long last and at great cost in blood and treasure, will choose wisely and well."

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NATIONAL SECURITY AND INDIVIDUAL FREEDOM, by Harold D. Lasswell, McGraw-Hill Book Company, $3.50.

The problem which Professor Lasswell of the Yale University Law School deals with in this volume is that of maintaining a proper balance between national security and individual freedom in a continuing crisis of national defense. He is not attempting to solve the world problems which face us, but merely attempts to outline procedures and methods whereby a democratic country can live through the era of problems and emerge with some recognizable remnant of its liberal heritage.

The era, as seen by the author, is a dark and gloomy one. He sees a continued increase in military expenditures and in military strength (both in arms and politics); continuing international anarchy without a strong centralized organization; continuing attempt to relate every event by its actual or supposed effect either upon Russia or on the United States, and a continuing willingness of many leaders to take a chance with the bringing about of World War III. These factors plus the fact that distance is no longer a valuable defensive asset and that today the United States is in the center of world affairs places a democratic government in direct competition with a despotic regime whose energy and agressiveness are a constant threat to coexisting countries.

These conditions in the world may undermine and eventually destroy our free institutions at home. The continuing crisis may lead to a garrison-police state whereby freedoms are eliminated one by one under the guise of protecting the country from dangers, real or pretended, from abroad. This is the threat which this book attempts to circumvent.

In order to preserve our democratic ideals we must keep them before us at all times. Security must not be the excuse for lessening individual freedoms any more than is absolutely necessary. Some freedoms are more vulnerable and require special vigilance and the executive, legislative, and judicial bodies of our government should be ready to protect the principle of civilian supremacy, of freedom of information, of civil liberty, and of a free rather than a controlled economy. This is not the complete answer, however. The people should also be vigilant to defend these freedoms, and each person should maintain the "civilian spirit, the citizen spirit" in these times of increased military preparedness and influence.

Clearinghouse

(Continued from page 1)

New City Ordinances

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

Edenton. Prohibiting the issuance of any permits for construction or repairs on any land owned or in the custody of the town except with the express permission of the city council.

Greensboro. Regulating the conduct of professional bondsmen. Prohibits professional bondesmen licensed to do business in the city from staying in police headquarters except between 8:00 P.M. and 11.00 P.M. on Saturdays and holidays designated in city code. Permits professional bondsmen to report to police desk at 8:30 A.M. on days during which no court is held and to be escorted to the jail by a police officer for the purpose of executing bonds. At all other times bondsmen may come to police headquarters only in response to telephone call from a prisoner or from a person acting in behalf of a prisoner.

Hickory. Transferring from the chief of police to the city council the responsibility for causing parking meters to be installed, indicating the hours when the meters were to be used, and fixing the time limitations for legal parking in metered zones.

Raleigh. Changing the taxicab rates to be charged in the city from and after March 1, 1952. New rates are 45c for the first mile or fraction thereof, and 10c for each additional half mile or fraction thereof; 10c for each two minutes of waiting time or fraction thereof; and a flat $2.00 for each one-way trip to the State Fairgrounds, regardless of the number of passengers. Rates are also fixed for handling baggage and packages.

————. Authorizing the city manager to enter into contracts for the removal of waste paper, paper boxes, and other paper waste from city streets. Contract may be made either privately or after advertisement for bids, shall apply to a specific area within the city, and shall be conditioned upon filing $500 bond to ensure faithful performance. Limit upon contract is one year. No person may collect paper waste without a contract unless he obtains a permit from the Director of Public Works, and no permit may be issued for an area covered by a contract.

Rocky Mount. Regulating peddling and soliciting orders for the sale of merchandise at private residences. Makes peddling without permission from home-owner unlawful except upon securing permit from chief of police, who may refuse to issue permit if he determines that solicitor is not a person of good moral character or does not propose to engage in a lawful commercial or professional enterprise during hours reasonably convenient for residents. Upon refusal to issue permit, solicitor may appeal to board of aldermen. Permits are to be good for no more than 12 months and may be revoked for cause. Ordinance does not apply to sale of farm or dairy products by producer or to organizations organized and operated exclusively for educational, religious, charitable, or civic purposes.

Wilson. Prohibiting the keeping of cows within the city limits.

National Model Ordinance Service Announced

The National Institute of Municipal Law Officers has initiated a *Model Ordinance Service,* the first national model ordinance service to be published. The first volume of the new service, released on March 1, contains 33 model ordinances prepared by NIMLO on the basis of the experience of its member cities and counties and on the basis of independent research.

The service is bound in a looseleaf binder to permit revision, amendment, and addition as new ordinances are developed and as court decisions and new problems necessitate changes in municipal laws. The thirteen chapters contain ordinances on such subjects as city council organization and procedure; civil defense; transient merchants; peddlers; solicitors; canvassers; refrigerated locker plants; vending machines; juke boxes; circus structures; curfew of minors; handbills; sound trucks; unncessary noises; smoke control; auto trailer and tourist camps; dogs; parking meters; taxicabs; airport zoning; and demolition, vacation or repair of substandard buildings.

Municipalities who are members of NIMLO will receive the new service as a part of the services to which they are entitled. To others the service is available on a yearly subscription basis of $42.50 per year. For full information about the service write to National Institute of Municipal Law Officers, 730 Jackson Place, N. W., Washington 6, D. C.

Subdivision Use of Water

(Continued from page 6)

tract, it was entitled to recover the reasonable value of its services. The *Stephens* case was more closely similar to the present situation but was found by this court to rest upon the *Abbott* decision. The *Construction Co.* case appears to have been a fairly clear-cut case of the exercise of eminent domain to take an existing water line in the city. All three of these cases were distinguished by the court in the instant case.

Defendant's Contentions

The city argued that plaintiff should not recover for three reasons: (a) that at the time of the city limits extension the plaintiffs had no private property rights remaining in the water system; (b) that the plaintiffs had by their actions dedicated the water and sewer lines to the lot owners and to the public; and (c) that plaintiffs' act of connecting the mains with the city systems, with knowledge of the ordinance, constituted a waiver of the right to recover compensation for those lines at a later date.

Although it is not clear as to which of these arguments carried the most weight, it would appear that the court was swayed primarily by the third argument.

Four cases from other jurisdictions were discussed in the course of the majority opinion. Among the reasons advanced by those cases for refusing relief to the real estate company in this situation were the following:

(1) The actions of the company constituted a dedication of the water and sewer lines to the lot owners and the public.

(2) Having sold the lots on the representation that water would be furnished to them, the company was estopped to claim ownership of the mains to the extent that it could sell or remove them.

(3) There was no real conversion of the water and sewer system by the city in this situation: it merely continued to furnish services through them as it did before extension of the city limits.

All of the courts seem to have been influenced by the fact, mentioned by Justice Barnhill, that the pipes were laid to enhance the value of the lots and doubtless were included in the price to the purchasers.

The Attorney General Rules

Digest of Recent Opinions by the Attorney General of Particular Interest to City and County Officials

PUBLIC HEALTH

Duty of Health Officer. A town passed an ordinance requiring all property owners along sewer lines to install water closets, bathtubs, lavatories, etc., and necessary pipes connected with the city sewer line. The ordinance required the property owners to use the water furnished by the city for the purpose of keeping these fixtures and installations in sanitary condition. May the city-county health department be required to enforce the ordinance?

To: W. H. Lee

(A.G.) I have been unable to find any statute which would require the public health officer to carry out these duties. The duties of public health officers are fixed by law. G.S. 130-22; 130-23; 130-32. None of the statutes require the county health officer, as such, even though he be a health officer of a city-county health unit, to be responsible for the enforcement of water and sewer installations. I do not think G.S. 130-25 was intended to tie in with the enforcement of the installation of sewerage facilities and it seems to me the enforcement of an ordinance based on G.S. 160-240 belongs to the governing authority of the city.

Tax Levy for Public Health Purposes. *Idol v. Street*, 233 N.C. 730 held that a public-local statute which purported to create a joint county-city health department was unconstitutional and void as being in conflict with Article 2, Section 29 of the State Constitution. Can a city and a county jointly maintain and operate a board of health and if necessary levy a special tax therefor?

To: Romulus A. Nunn

(A.G.) Irrespective of the illegality of the organization under the public-local statute, a county and city can combine together under a contract to carry on public health matters under the provisions of G.S. 153-246. It is doubtful that the city can make a direct grant to the county without participating in the administration of the health authorities. I am inclined to think that G.S. 130-30 is broad enough to authorize the levy of taxes for a special health purpose where a city and county operate under a joint agreement but it would take a decision of the Supreme Court to put the matter at rest.

Requiring TB Treatment. Article 19A of Chapter 130 of the General Statutes (Cumulative Supplement of 1951) deals with persons who have tuberculosis and in certain cases permits the courts to sentence people to the prison section of the State Sanatorium if examinations are not made or if such person refuses to enter a sanatorium or some place for the treatment of tuberculosis. Can a fourteen-year-old child be sentenced to the prison department of the Sanatorium if found guilty?

To: Dr. C. P. Stevick

(A.G.) A child fourteen years of age comes under our juvenile law and G.S. 110-30 provides that in no case can a child coming under the provisions of the juvenile act "be placed in any penal institution, jail, lock-up, or other place where such child can come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime." I would say, therefore, that under no circumstances could this child be confined in the prison department of the Sanatorium. The health officer can, however, file a petition before the juvenile judge and ask the child to be adjudged to be a delinquent because of the violation of a state law and because the child is neglected. I think that upon such a petition with proof of the allegations, the juvenile judge would be warranted in committing the child to the state sanatorium for treatment but not in the prison department.

PROPERTY TAXES

Personal Property Exemption for Household Goods. If a person owns a permanent residence and also a seasonal or temporary residence, is he entitled to an exemption of three hundred dollars with respect to household goods, both at his permanent residence and at his summer residence?

To: W. L. Daniels

(A.G.) The language of G.S. 105-302 (Sec. 800, Machinery Act), and G.S. 105-297, Subsection (8) (Section 601(8), Machinery Act)), must be read in the light of the constitutional authority for the exemption, which is set forth in Article V, section 5, of the Constitution. which reads in part as follows: "The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, . . . or any other personal property, to a value not exceeding three hundred dollars." Construing the statute in the light of the constitutional provision, it is my opinion that only one exemption totaling three hundred dollars would be authorized.

Government Gift Auto Traded for New Car. The Federal Government gave a disabled veteran an automobile in 1947. The veteran traded in this car for a 1950 car. Is the new car subject to ad valorem property taxation?

To: Ernest H. Dixon

(A.G.) The only exemption with respect to automobiles owned by veterans relates only to the vehicle originally donated by the Federal Government, so the new car would not be exempt. See G.S. 105-297(13).

Applying Condemnation Proceeds to Back Taxes. A person owns a tract of land upon which he owes taxes to the county. A strip of the land is condemned for a right of way by a public utility. An award of $700 is paid into the clerk of the superior court. Is the county entitled to collect the back taxes on the entire tract of land out of this award or only that part which would be attributed to the twenty-five foot strip actually condemned?

To: Marcellus Buchanan, III

(A.G.) Article 2 of Chapter 40 of the General Statutes provides that such utility would be entitled, upon a successful prosecution of its condemnation proceedings, to secure title to a right of way which would be free from tax liens. On the other hand, G.S. 105-340 (Sec. 1401, Machinery Act) provides, in part, as follows: "The lien of taxes levied on property and polls listed pursuant to this act shall attach to real estate as of the day as of which property is listed, regardless of the time at which liability for the tax may arise or the exact amount thereof be determined."

All penalties, interest and costs allowed by law shall automatically be added to the amount of such lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. *"Said lien shall attach to all real property of the taxpayer in the taxing unit."*

Thus, pursuant to the above section, the lien for taxes with respect to the ten-acre tract attaches to all of that tract, and title free and clear of the tax lien could be obtained only by discharging the tax lien upon the entire tract. In my opinion the county is entitled to be paid its entire claim out of the award.

COUNTY POWERS

Sale of Land by County. A county board of commissioners wishes to sell to the state a tract of land on which is located the county jail and other county activities. What procedure would have to be followed?

To: John R. Jenkins, Jr.

(A.G.) G.S. 153-9(14) authorizes the board of county commissioners to sell or lease any real property owned by the county, and there is no requirement that such property be sold at public sale as is provided for the sale of municipal property. See G.S. 160-59. In the case of *Southport v. Stanly*, 125 N.C. 464, our court said in construing G.S. 160-59, that this statute did not authorize the sale of real estate which is devoted to the purpose of government and in order to sell such property there must be a special act of the General Assembly authorizing such sale. In view of the decision of the court in the case of *Southport v. Stanly*, if the county proposes to sell the jail itself which is located on this tract of land, I would have some hesitation about saying it had the right to do so in the absence

LIENS FOR OLD AGE ASSISTANCE

Chapter 1019 of the 1951 Session Laws (G.S. 108-30.1 to 108-30.3) imposes a lien on the real property of recipients of old age assistance for total amounts paid beginning October 1, 1951, and all recipients of aid since that date agree that the payments will constitute claims against their estates. The Attorney-General has recently issued several rulings interpreting this law.

1. G.S. 108-30.2 requires the county attorney to file a claim within a year after the death of a recipient, if reimbursement of old age assistance payments has not been made. Where the recipient owned no property of any consequence and no administrator or executor of the estate qualifies, must the county attorney see that a personal representative is appointed for the purpose of administration if in his opinion the cost of administration would consume the estate or diminish it to such an extent that there would be nohing left to apply on the county claim?

To: Ira T. Johnson

(A.G.) I think a county attorney, under such circumstances, should make a careful investigation, and if he comes to the conclusion that the estate is so insolvent that the cost of administration would consume the estate or, in fact, that it would be a loss of money to attempt the collection, then he should make a report to the welfare department, giving his reasons therefor.

2. A widow conveyed a house and lot to her daughter in 1946 and reserved a life estate to herself. She is now receiving old age assistance payments. Would the lien apply to either the life estate of the widow or the remainder of the daughter?

To: Katharine Boone Bridgers

(A.G.) I am of the opinion that upon the death of the widow, her life estate would be extinguished and the daughter would own the entire estate free and clear of any lien based on old age assistance. I think that as long as the widow is alive and the life estate is in existence, and assuming she becomes ineligible for old age assistance payments, the life estate could be subjected to the lien, but this would not affect any rights of the daughter who owns the remainder in fee. (*Mizelle v. Bazemore*, 194 N.C. 324, 328; G.S. 1-315.)

3. A husband and wife own property as tenants by the entirety. The husband receives old age assistance payments. Does the lien created by Chapter 1019 attach to the estate by the entirety?

To: Zeb V. Turlington

(A.G.) It is my opinion that where the recipient of assistance is a tenant by the entirety and dies, the surviving wife who is not a recipient would take the property relieved of any lien under this act.

4. Does Chapter 1019 require the filing of statements of lien for all recipients of old age assistance after October 1, 1951, or only for those having or acquiring real property? Should the recipients already approved prior to October 1, 1951 be required to sign a lien agreement before receiving any other checks, or does this provision apply only to subsequently approved applicants for old age assistance.

To: Joseph W. Grier

(A.G.) It is my opinion that statements of lien should be filed for all recipients of old age assistance after October 1, 1951, regardless of whether these recipients did or did not own real estate on that date.

It is my opinion that the statute applies to all recipients of old age assistance, whether their eligibility was approved prior to October 1, 1951, or subsequent to that date.

5. Three recipients of old age assistance tender sums of money equal to their October old age assistance checks and request that the liens already created under G.S. 108-30.1 be cancelled or removed from their property. Is there any method of satisfying or cancelling this lien while the recipient is alive?

To: Bernard B. Hollowell

(A.G.) The impression gained by us is that the lien can be cancelled or extinguished during the lifetime of the recipient. G.S. 108-30.1 states that: ". . . The lien thus established shall take priority over all other liens subsequently acquired *and shall continue from the date of filing until satisfied.*" I think you would be safe in accepting the funds and in causing it to be shown on the lien docket that the lien is cancelled and extinguished because the assistance debt has been paid off and payment of the debt discharges the lien.

6. A recipient has been paid certain payments of old age assistance and then for some reason becomes ineligible to receive further payments. May an action be brought during the lifetime of the recipient to foreclose the lien established by Chapter 1019, Session Laws of 1951?

To: Ellen B. Winston

(A.G.) There are two limitations as to bringing actions to enforce this lien. The first provides that no action may be brought more than ten years from the last day for which assistance was paid, and the second is tied in with the first one and is to the effect that irrespective of the first limitation, no action may be brought more than one year after the death of any recipient. It seems to us the first limitation contemplates that an action may be brought to foreclose a lien during the lifetime of the recipient.

of direct legislation giving authority. If the sale does not include the jail or the property used as a part of it, under the general statutory provision, I believe the county would have a right to sell without public auction.

Authority to Convey Land for Schools. A county board of education wishes to secure certain property for school purposes. The property belongs to the county. May the county commissioners sell this property privately or should it be advertised and sold to the highest bidder?

To: J. C. Roberson

(A.G.) Since it is the duty and responsibility of the board of county commissioners to provide the sites for county school buildings, it is my opinion that the board of county commissioners has a clear legal right to convey to the county board of education to be used for school purposes any land which the county may already own either for a price or without consideration, provided the land so conveyed is not necessary for some other public county use.

Authority to Contribute to Stock Show. Does a board of county commissioners have authority to appropriate county funds to what is known as a "Fat Stock Show"?

To: Thos. J. White

(A.G.) G.S. 106-520 reads as follows: "Any city, town, or county may appropriate not to exceed one hundred dollars to aid any agricultural, animal, or poultry exhibition held within such city, town, or county." This statute appears to be both an auhorization to contribute to such an exhibition and a limitation on the amount to be contributed.

Power to Abolish Farm Census. A county feels that the farm census survey is of no value to the county government and has decided not to have the survey for 1952. Is this matter discretionary with the board of county commissioners?

To: Jennings A. Bryson

(A.G.) Under the statute as written the board of county commissioners are required to take the farm census, and it is not a matter left to them and their discretion. See Chapter 1014 of the Session Laws of 1951.

Authority to Pay Sheriff's Attorney's Fees. As a result of a fire in the jail in which several persons died, the sheriff was sued and upon a settlement was required to pay $500 in damages. The sheriff has requested the county to pay his attorney's fees in the amount of $1,000. Has the board of county commissioners authority to reimburse the sheriff for this expense?

To: Junius C. Brown

(A.G.) Under the circumstances outlined above, it is my opinion that there is no authority for the board of county commissioners to appropriate public funds to reimburse the sheriff for expenses incurred by him in defending the lawsuit against him.

WORKMEN'S COMPENSATION

Farm Laborers. Two men employed by the county were injured when a tractor turned over while they were working on a farm operated by the county in connection with its county home. Would these employees come within the coverage of the Workman's Compensation Act?

To: James P. Bunn

(A.G.) It is my opinion that the injuries thus sustained would be compensable within the meaning of the Workman's Compensation Act. In the case of *Barber v. State Hospital*, 214 N.C. 515, the court indicated that the statute's exemption of farm laborers was intended for the protection of farmers as an occupational class, and that a farm laborer within the meaning of the statute was one hired to till the soil or do other agricultural work by one whose occupation was that of a farmer.

CITY POWERS

Preferential Power Rates for Schools. Can a city fix a lower rate for electric current for the use of city schools than that charged the average consumer where the schools permit the city to use school property for general recreational purposes?

To: Grover Hilton Jones

(A.G.) I think that the rate fixed for electric current for the use of city schools might be at a price less than that charged general commercial and domestic consumers based upon the consideration of the use of the school property for purposes of playgrounds for the people generally in the city when such property is not in use by the city schools. I believe the rate could be made effective as of the time the city began having the use of the school property for recreational purposes.

Prohibiting House Trailers. A town desires to pass an ordinance prohibiting the use of house trailers or other vehicles as a dwelling within the corporate limits of the town. Is such a prohibition constitutional?

To: D. M. McLelland

(A.G.) It would seem that a house trailer would not constitute a nuisance *per se*, but if there is no provision for water and sewerage connections the same would very likely constitute a sanitary nuisance. G.S. 160-55 and G.S. 160-200(26) grant to municipal corporations rather broad powers for the prevention and abatement of nuisances. G.S. 160-172 *et seq.*, grant municipal corporations the authority to pass reasonable zoning ordinances. From the foregoing it would seem that the town has two courses of action open to it: (1) It may comply with the provisions of G.S. 160-172 *et seq.*, and pass a comprehensive zoning ordinance prohibiting the use of trailers within certain restricted areas, or (2) it may enact a health ordinance declaring that the use of house trailers for residential purposes within the corporate limits constitutes a sanitary nuisance unless such house trailer is provided with water and sewerage facilities.

Authority to Remit Assessment. Does a municipality have authority to correct, cancel or remit an assessment for a local improvement?

To: R. Lewis Alexander

(A.G.) The first sentence of G.S. 160-90 reads as follows: "The governing body may correct, cancel or remit an assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment." G.S. 160-246 is identical with the language used in the first sentence of G.S. 160-90 but deals with sewer assessments while G.S. 160-90 deals with street and sidewalk assessments.

On the other hand the Constitution of North Carolina, Article 1, section 7, reads as follows: "No person or set of persons are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public service." In view of this section the constitutionality of the first sentence of each of the statutes G.S. 160-9 and G.S. 160-246 is questionable. My final conclusion is that since the statutes in question were enacted several years ago and their constitutionality has not yet been passed upon, your governing body has the right to assume that the statutes are constitutional and is justified in acting upon them.

Acceptance of Gift on Condition. A city acquires a building by gift with the reservation in the deed that the property is to be used for "Recreational, Religious, Educational and Cultural Purposes" and that upon failure of use for these purposes the property shall revert to the donor. Can the city accept the building under these conditions and if so may the city use money received from tax levy for the purpose of preserving the property? (*i.e.*, insurance, repairs, etc.)

To: J. Roy Proctor

(A.G.) It is extremely doubtful in my mind if your city has any authority to accept a building as a gift for "religious, educational or cultural purposes."

In my opinion revenues from tax levies may not be appropriated for the above purposes. See *Purser v. Ledbetter*, 227 N.C. 1.

Use of Powell Bill Funds. A city desires to use Powell Bill funds for the entire cost of paving a street and allow the property owners to reimburse the city for two-thirds of the total cost by way of assessments over a ten year period. All assessments when paid are to be placed in a special account and used by the city only for the purposes permitted by Chapter 260 of the 1951 Session Laws. Would this amount to a misapplication of the funds?

To: Staton P. Williams

(A.G.) The end result is a use of the entire funds for purposes of street surfacing, repairing and maintenance. This would, therefore, not be a diversion or misapplication of such funds but would be a use of the funds which is entirely in accordance with the Powell Bill and in furtherance of the objects set forth in this act.

Use of Powell Bill Funds. Can the funds be placed in a savings account or a postal savings account pending the determination of the actual use of the money?

To: H. H. Smith

(A.G.) Under G.S. 153-135, which is made applicable to municipalities by G.S. 160-409, the town is required to deposit in some bank or banks designated by the town commissioners each day all funds collected for the municipality. The statute requires that such deposits be secured. See G.S. 159-28. The daily deposit act requires that deposits be made in some bank, banks or trust company designated by the board.

PUBLIC CONTRACTS

G.S. 143-132 provides that no contract shall be awarded "unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective line of endeavor, when the estimated cost of the project exceeds the sum of fifteen thousand dollars. . . ." Is this requirement for three bids mandatory or merely directory?

To: Henry L. Kiser

It is my opinion that where it has been reasonably demonstrated that the required number of bids under G.S. 143-132 could not be secured, that the municipality would be justified in awarding the bid to the lowest responsible bidder. The public interest would require that the projects be constructed after a reasonable effort had been made to comply with the statute and to that extent I would consider it as only directory and not mandatory.

Sheriffs' School

(Continued from page 13)

jails, as related to the sheriff and his deputies.

Laws Passed by the 1951 Legislature Affecting Sheriffs Directly

This will be a summary of important legislation passed by the last legislature which directly affect the sheriff. There will be an opportunity for questions concerning the application of these laws in the various counties.

Returns on Civil Papers

The proper return under varying conditions of service and non-service on all civil papers will be discussed.

Other Civil Papers

As time will permit such subjects as summons, complaints, ejectment, civil arrests, notices, widow's years allowance, and dower will be discussed. An opportunity for questions on these subjects will be given.

Justice J. Wallace Winborne
Supreme Court of North Carolina
Raleigh, N. C.

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