

# Popular Government

*September 1952*



*"As happy a region as on this side of heaven . . ."*

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**THE COVER**

Socco Gap on the Blue Ridge Parkway link is shown in all the grandeur a photograph can capture.

With such beauty abounding it is no paradox that the flow of tourists into North Carolina continues, and that tourism ranks as the State's third industry of importance.

Photograph obtained through the North Carolina News Bureau.

# THE CLEARINGHOUSE

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

## Powell Bill Allocation Increases

Early in August approximately 385 North Carolina cities and towns received a total of \$4,948,515.97 as their share of Powell Bill funds for 1952. This, the second allocation to municipalities from the state gasoline tax under the 1951 legislation, totalled almost nine per cent more than the \$4,543,096 distributed in 1951.

The law provides that one-half cent shall be set aside from the seven-cent state gasoline tax and that it shall be distributed to municipalities half on the basis of 1950 population and half on the basis of non-state highway system street mileage within corporate limits of cities and towns. The 1952 distribution was based on a rate of \$1.64 per person living in corporate limits and \$453.23 for each mile of street mileage. The largest share allotted was \$365,170.36 to Charlotte.

Per capita distribution had a proportionately higher increase than per mile distribution because the street mileage in the state increased from 5,213 miles to 5,459 miles in the year's period while population figures remained the same. For the average community, increases ran about nine per cent higher than in 1951. The funds allocated can be used only for the construction and maintenance of non-highway system streets.

## Institute for Employees

"The Employment Security Commission and the Public" was the theme of a two-day training institute held in Chapel Hill, June 26-28. Attended by 125 employees of the N. C. Employment Security Commission the institute was sponsored by the North Carolina Chapter of the International Association of Personnel in Employment Security, the N. C. State Employment Security Commission, and the Institute of Government.

In spite of the record breaking heat, the employees attended 16 hours of classes and heard 32 persons express their views in lectures or panel

### LOYAL PUBLIC SERVANTS

Two veteran public officials have passed away during recent weeks.

*Dr. Clyde A. Erwin*, 55, the State Superintendent of Public Instruction for the past 18 years and a national leader in public education died of a heart attack at his home on July 19, 1952.

*J. Franklin Barfield*, dynamic and colorful member of the Durham City Council for 22 years, died on July 13, 1952.

discussions on how the ESC can improve its service to employers, employees, and the public.

Two highlights of the institute were talks by Robert C. Goodwin, Director of the Bureau of Employment Security, Washington, D. C., and Dean Thomas Carroll of the School of Business Administration of the University of North Carolina.

Mr. Goodwin spoke concerning "Employment Security in the Future," and the title of Dean Carroll's talk was "Effective Human Relations—a practical necessity."

Other topics discussed included methods of informing the public of the employment security program, public relations programs, factors which determine attitudes toward the employment security commission, field visits and the public, applicant relations, employer relations, and our relations with other agencies.

Employees of the North Carolina Employment Security Commission participating in the program were Henry E. Kendall, Chairman of the Employment Security Commission; Miss Kathryn Queen, State President of IAPES; Ralph E. Miller, High Point; J. W. Beach, Raleigh; V. C. Blackwelder, Greensboro; Robert M. du Bruyne, Raleigh; Harry Gallimore, Jr., Hickory; James A. Gawthrop, Reidsville; Mrs. Fay D. Harmon, Gastonia; John G. Harris, Greensboro; Mrs. Grace M. Hartzog, Raleigh; Alden P. Honeycutt, Raleigh; Mrs. Elizabeth DeKay Johnson, Ra-

leigh; Paul Johnson, Winston-Salem; R. Fuller Martin, Raleigh; Ernest McCracken, Raleigh; Brooks Price, Raleigh; William H. Stevenson, Winston-Salem; Mrs. Evelyn F. Stirewalt, High Point; and Mrs. Eva M. Young, Charlotte.

Others on the program included City Manager R. W. Flack, Durham; A. L. Fletcher, Jefferson; Nicholas J. Frizzelle, Winston-Salem; Donald Hayman, Chapel Hill; Forrest Miller, Washington D. C.; Miss Fannie Mitchell, Durham; Robert L. Morris, Richmond, Va.; Editor Robert L. Thompson, High Point; John Scott, Jr., Rocky Mount; and Dr. Harry D. Wolf, Chapel Hill.

The institute was planned by a committee composed of Ralph E. Miller, Chairman of the Professionalization Committee of the IAPES, Mr. Ernest C. McCracken, State Director of the N. C. Employment Service Division, and Donald Hayman, Assistant Director of the Institute of Government.

## Tar Heel Light Hidden

The June issue of *Popular Government* contained an item describing a system whereby banks collected local utility bills. That spark, which originated in a press release from the Municipal Finance Officers Association, fanned a flame in Hendersonville where it develops that the State Trust Company has been collecting water, light, and telephone bills and Chamber of Commerce dues for the benefit of its customers since 1930.

## County Officials' Conventions

The State Association of County Commissioners and the State Association of County Accountants held their joint convention at Atlantic Beach on August 11, 12, and 13. Over three hundred people registered at the joint convention.

In their last convention session, the county commissioners passed a number of resolutions aimed at the improvement of county government. One recommended an amendment to

the Constitution to remove therefrom the 15 cent limitation and place in the hands of the General Assembly the complete power to limit county taxing authority. A second offered aid to the State Board of Education in the revision of the public school law to eliminate the many conflicts and inconsistencies in the present law. And a third concerned public welfare, stating approval of the lien law, recommending a study of the present allocation of the cost of welfare administration and hospitalization of the medically indigent among the federal government, the state government, and the counties, recommending a study of the present screening process for applicants for assistance, recommending that applicants for assistance sign the welfare questionnaire under oath, and recommending an investigation of the problem of illegitimate children and children in broken homes who must be supported by the welfare program.

Officers elected by the county commissioners were: C. A. Hasty, Robeson County, president; Lloyd C. Amos, Guilford County, first vice-president; A. D. Williams, Wilson County, second vice-president; and J. Henry Vaughan, who was appointed by the Board of Directors for another term as secretary-treasurer. Directors elected were: John E. Boone, Northampton County, first district; A. D. Swindell, Beaufort County, second district; L. E. Ray, Cumberland County, third district; R. P. Holding, Johnston County, fourth district; Frank Kenan, Durham County, fifth district; C. N. Castleberry, Lee County, sixth district; P. K. Dry, Rowan County, seventh district; W. G. Dunham, Forsyth County, eighth district; W. P. Carpenter, Rutherford County, ninth district; and Coke Candler, Buncombe County, tenth district.

Officers elected by the county accountants were: C. Bryan Aycock, Wayne County, president; Roy J. Moore, Union County, first vice-president; Charles M. Metcalfe, Rutherford County, second vice-president; Flora E. Wyche, Lee County, secretary-treasurer; M. L. Laughlin, representative to the Board of Directors of the State Association of County Commissioners. The accountants also voted to have a board of directors composed of one accountant from each of the ten districts. The first directors are to be appointed by the new president and then will in the future be elected by the association. The legislative committee was also

appointed, and consists of J. C. Ellis, Nash County, Lillian Ross, Burke County, and Mrs. Stella H. Spencer, Caldwell County.

On Tuesday morning, August 12, the joint convention was addressed by Dr. Ellen Winston, Commissioner of Public Welfare, A. C. Edwards, member of the General Assembly from Greene County, L. Y. Ballentine, Commissioner of Agriculture, and W. E. Easterling, Secretary of the Local Government Commission. On Tuesday afternoon, the joint convention was addressed by Keith L. Seegmiller, Executive Secretary of the National Association of County

Officials, and Brandon Hodges, State Treasurer.

J. E. Stanford, Executive Secretary of the Kentucky Farm Bureau Federation, was the main speaker at the banquet Tuesday evening and M. E. Hollowell, County Agent of Nash County, acted as master of ceremonies.

Alex McMahon, Assistant Director of the Institute of Government, spoke to the convention on Monday evening.

The associations decided to accept an invitation from Buncombe County and the City of Asheville to hold the 1953 convention in Asheville.

## Personnel Notes

### Salary Increases

Although budget information has been received from several hundred cities and counties, it is difficult to establish any definite trend as to salaries and wages. Budget totals as presented in minutes and newspaper articles do not show whether salaries will be higher or lower next year. An increase or decrease in department appropriation may be due to a corresponding increase or decrease in the number of employees or some non-recurring expenditure such as a fire truck, patrol car or filing cabinet.

The only conclusion that can be substantiated is—some county and city employees received salary increases, some did not. On the whole, fewer employees seemed to have received salary increases this year than last. Last year many cities and counties for the first time officially recognized the effect of the Korean war on the cost of living.

**Beaufort** raised the salaries of nearly all of their municipal employees. **Newton** gave all regular employees a flat 5 per cent salary increase. The raise will average \$1.75 per week per man. Volunteer firemen will get \$3.00 a call instead of \$2.00. **Salisbury** authorized a 2.4 per cent pay increase for all city employees. Some **Spindale** employees received raises.

**Statesville** adjusted many salaries. The total expenditures for salaries was increased 4 per cent. Policemen will receive approximately \$7.50 more a month. Firemen will receive approximately \$10 more a month. The increases in weekly wages amounted to 3, 4, and 5 cents an hour. The **Smithfield** Board of Commissioners raised the salaries of most department heads and several employees in the water and light department. In-

creases ranged from 1 to 20 per cent.

**Winston-Salem** policemen were granted a two-step salary increase and all of the other 1,200 classified employees and department heads received one-step increases. The salary increases granted effective July 1, will have the effect of raising police salaries 10 per cent and all other salaries 5 per cent.

Under **Winston-Salem's** position classification and salary plan each job is studied and a minimum and maximum salary and three intermediate steps are set for each class of positions. New employees normally enter at the minimum rate. After they have satisfactorily completed their probationary period they will automatically receive a salary increase of one step. Salary increases beyond the second step in any salary range are only given as a reward for outstanding service upon the recommendation of the employee's supervisor and department head and the approval of the City Manager.

Members of the police department were granted the extra 5 per cent salary increase because a number of vacancies existed and new recruits could not be hired at the previous salary. The starting salary for a **Winston-Salem** police recruit is now \$240 a month. **Greensboro** raised the salary of police recruit last fall to \$238 a month and **Charlotte** has been paying \$248 a month since July 1, 1951. A new recruit in the **Winston-Salem** fire department will receive \$220 a month under the revised plan. Before the new position classification plan was adopted in November, 1949, police recruits were receiving \$188 a month. Since the adoption of the plan, all city employees have received a two-step salary increase which was effective May 1, 1951.

The lifting of the level of all salaries will not mean that merit increases will be forgotten this year. A total of \$75,000 was appropriated for merit raises during the year.

**Mecklenburg County** employees received an 8 per cent salary increase. **Wake County** commissioners resolved that no raises would be given to Wake County employees, except those covered by the Merit System until a position classification and salary study could be completed. **Wilson County** granted all employees a \$10 a month increase.

**Vacation Leave for Appointive State Officials**

Appointive state officials were granted the same vacation privileges as other state employees according to a directive issued by Governor Scott. Effective June 1, appointive officials receive 15 days of vacation a year and are allowed to accumulate not more than 45 days of unused vacation time for which they can be compensated when they leave office. No uniform policy had been followed in the past.

**Negro Policemen**

The **Kintson** police department hired two Negro policemen during August. Both were given one week of training in firearms, law, and police procedure and then assigned to regular police work. Ninety-two Negro policemen are now employed in 25 North Carolina towns.

**Sick Leave Ordinance**

**Smithfield** adopted for the first time an ordinance covering sick leave for city employees. The ordinance as passed permits laborers to accrue six days vacation and six days of sick leave a year or one-half day of each a month. All other employees will receive one day of sick leave per month or 12 days a year. All sick leave is indefinitely cumulative. Sick leave is granted upon written certification of a doctor or in case of family quarantine. Two days of sick leave may be used in the event of a death in the employee's immediate family.

**Shorter Hours**

The **Smithfield** Board of Commissioners approved a plan to place police on an 8-hour day and a 48-hour work week. Smithfield policemen have previously been working an average of 13 hours a day or 77 hours a week. According to a recent survey Smithfield was the only town over 5,000 population to require their policemen to work more than 60 hours a week. Eleven towns with less than 5,000

population still require their police officers to be on duty 77 or more hours a week. In December, 1951, 48 police departments worked a 48-hour week and 2 departments a 44-hour week.

**Public Officials Honored**

Sheriff John E. Walters of **Guilford County** was elected president of the North Carolina Sheriff's Association at their annual convention in Asheville on August 9. Sheriff Walters succeeds Sheriff Robert J. Pleasants of **Wake County**.

Sheriff Tom E. Bardin of **Edgecombe County** was named first vice president and Sheriff E. M. Logan of **Cabarrus County** was elected second vice president for the coming year. John R. Morris of **Wilmington** was elected to his 23rd consecutive term as association secretary-treasurer. Delegates chose Nag's Head as the site for their 1953 convention.

Police Chief Frank N. Littlejohn of **Charlotte** was elected president of the North and South Carolina Law Enforcement Officers Association as delegates ended a two-day convention in Charlotte on July 10. Other officers elected were Chief J. H. Jennings, **Greenville, S. C.**, first vice president; Captain Joe D. Whitley of the **Mecklenburg County** Police, second vice president; Chief Floyd E. Davis of **Bennettsville, S. C.**, third vice president, and Chief H. E. King of **Durham**, fourth vice president.

North Carolina members elected to the Board of Control were Lt. Ray Smith of **Gastonia**, Chief James I. Waller, **Winston-Salem**; Chief Jeter L. Williamson, **Greensboro**; and Chief Tom Davis of **Laurinburg**.

Fire Chief C. W. Wyrick of **Greensboro** was elected president of the North Carolina State Firemen's Association at their 65th annual state convention meeting in Greensboro on August 7th. Fire Chief Tyrus R. Bissette of **Wilson** was elected vice-president for the coming year. Chief John L. Miller of **Concord**, secretary of the association for 44 years, and Chief Ed Johnson of **Kannapolis**, treasurer, were unanimously re-elected.

**Personnel Changes**

The appointment of A. B. Uzzle Jr., as **Dunn's** new city manager was announced on July 28. The new manager reported to Dunn from Hickory on August 15 where for the past three years he has been superintendent of public works. He is a registered engineer and has had wide experience in municipal work during the last 20 years. He has been very active in the water works field during most of his engineering career.

Lt. William H. Reich, former taxicab inspector and cab ordinance enforcement officer, was appointed personnel director for the City of **Winston-Salem**, effective July 1. *(Continued on inside back cover)*



The State Highway Patrol School was conducted from June 2nd to July 25th at the Institute of Government Barracks in Chapel Hill. The class of 37 men shown above were graduated on July 24th and were sworn in the next day for immediate duty.

## Notes ...

### From North Carolina Counties

#### Schools

The question of consolidating the **Durham County** Administrative Unit and the Durham City Administrative Unit into one county-wide school system has been under discussion by the respective school boards, the board of county commissioners, and the city council since last October. In August of this year, the officials concerned decided to abandon the idea for the time being. It was generally agreed that the county schools need both a bond issue to relieve a shortage of classroom space and a supplement tax in the county unit area to supplement present current expense funds before the question of consolidation can again be considered. These two steps will help equalize the present disparity between the county and city systems. It was also agreed that while the county unit stood to gain the most there was a great deal of opposition to consolidation from people living in the rural area, and that in the face of this opposition consolidation at the present time was not politically feasible.

Following the decision to abandon plans for consolidation, the Durham County Board of Commissioners decided to submit to the voters of the county the question of a \$4,000,000 bond issue for school buildings. The issue will be voted on November 4, and if carried the proceeds will be split between the county and city units on a 50-50 basis. In the past, proceeds have been split on a 2-for-1 basis, the larger share going to the city. The county schools need the increased share in order to meet a classroom shortage that is more pressing than the city's.

**Anson County** citizens have recently voted to issue up to \$1,250,000 in bonds for school buildings. At the same time, they voted to build one consolidated high school instead of two, abandoning the present 7 high schools in favor of the one new one.

There has been some discussion in Charlotte recently of a new method of alleviating the shortage of school facilities. Under this method, schools would remain open for twelve months instead of nine, and the three months vacation would be spread throughout the year. Some students would have their vacation in the winter, some in the spring, some in the fall, and some

in the summer. The result would be, according to advocates of the system, an increase in school facilities by about a third, since the three summer months would be utilized. While many adjustments would be necessary, the advocates point out that the increase in school facilities without the expenditure of a dollar might well offset some of the disadvantages.

**New Hanover** and **Onslow Counties** will receive a total of around \$870,000 from the federal government for school construction. Because of the fact that these counties have been declared federally affected defense areas, New Hanover will receive \$405,000 and Onslow \$466,000. The money will enable them to build additional school facilities made necessary because of the increased school population resulting from nearby military installations.

#### County Development Commission

The **Warren County** Board of Commissioners decided at its August meeting to appoint a Warren County Development Commission. This commission, to be appointed at the September meeting, will consist of five men representing five different parts of the county, and it will have an executive secretary who will serve without pay.

The purpose of the Commission will be to aid in the development of the county in the Kerr Dam area and the Roanoke River area below the dam. The plan was presented to the board of commissioners by the county agent, who pointed out that other counties had taken similar steps. He also pointed out to the board that the dam would afford opportunities for the development of tourist trade and for the encouragement to industry to settle in the area and that the development commission could help to exploit these opportunities.

#### Effect of Revaluation

The recent revaluation of property in **Mecklenburg County** resulted in an increase in assessed valuation from around \$290,000,000 in 1951 to a total of around \$440,000,000 this year. The result has been a drop in the county tax rate from \$1.02 in

1951 to \$.69 this year. Similarly, the city tax rate will drop from \$2.15 in 1951 to \$1.55 this year.

#### Buildings

**Forsyth County** is constructing a new county jail just behind the city hall. The structure will cost around \$336,000, exclusive of architect's fees and furnishings. . . . **Burke County** has received approval from the North Carolina Medical Care Commission to go ahead with plans for a new health center. The building will cost in the neighborhood of \$66,000, and the county has set aside about half of that amount to meet its share. . . . **Nash County** has decided to move ahead on the construction of a health center, too, provided State and federal funds are available for the project. Final cost has been estimated at about \$66,000 and the county has set aside around \$30,000 to meet its share. . . . Voters of **Harnett County** will go to the polls on September 6 to decide on the question of issuing \$490,000 in bonds for the construction of a new courthouse.

#### Courthouse Face-lifting

**Durham County** is having the exterior of its courthouse cleaned. This marks the first time that the 37-year-old Indiana limestone and granite structure has had its face lifted. After the decision on the method of cleaning to be followed had been pending for 6 months (see *Popular Government*, January, 1952, page 3), the board of county commissioners recently decided that the contract should be let to a company that proposed to do the cleaning by the sandblasting method. The total cost, including the cost of pointing and caulking, will run around \$6,800.

Other bids for the cleaning job had been received. The highest bid was received from a firm that proposed to do the cleaning by the hydro-air method. The bid totaled \$15,500, and though the method was recommended by the architects consulted by the board of county commissioners, the price was deemed too high.

Bids ranging between \$9,750 and \$10,000 were received for cleaning by steam, with one company proposing to weatherproof the building for an additional \$3,400. One bid was received for cleaning by the use of chemical compounds and water, the bid totaling almost \$14,000.

## Bond Issues

**Mebane** voters have approved a bond issue in the amount of \$225,000 to improve the town's water and sewer facilities. . . . The **Kinston** city council has approved a bond issue proposal for \$1,750,000 which it will submit to the voters. Improvements to be made from the funds include enlargement of the municipal power plant generating facilities, extension of electric and water lines, expansion of sanitary sewer facilities, and construction of recreational facilities. Most of these improvements were made necessary by the extension of city limits in the spring.

**Chapel Hill** recently voted to purchase a new fire truck and a new garbage truck at costs of \$20,000 and \$5,000 respectively. Half of the total will be met from a \$12,500 bond issue approved by the council.

## Public Improvements— Progress Report

**Wilmington** has surveyed the improvements financed from a \$3,000,000 bond issue in 1950 and found the results gratifying. \$1,300,000 for the water system extended and reinforced the distribution system, constructed a parallel raw water line, a new 1,500,000 gallon elevated tank, three million gallon filters to raise the city's plant capacity to ten million gallons a day, and new pumping units. Another \$800,000 paved seven miles of streets or about 90 city blocks, while \$150,000 was spent on extension of sanitary sewers. \$450,000 was allocated to needed drainage and storm sewer projects, and almost \$300,000 is still on hand for needed improvements in the fire protection system. Most of the debt service on the bonds is being met from water revenues with an assist from special assessments for street paving.

A new sewage disposal plant for **Marion**, financed by a \$400,000 bond issue in 1951, has been completed and has gone into complete operation. The old plant has ceased operation. The bonds are being financed from a 30% increase in water rates at the time of issuance. . . . The last project in Albemarle's capital improvements program, approved by the voters in 1948, is now under construction. New sewer lines and expansion of the sewage disposal plant will cost a little over \$307,000 of which \$250,000 is available from the 1948 bond issue.

While **Shelby's** new \$875,000 water plant is in the process of construc-

## Notes . . .

## From North Carolina Cities

tion the old pumps are working overtime to meet repeated record demands. The new processing plant will have a capacity of 2,000,000 gallons a day, which, with the old plant, will give a total capacity of 4,000,000 gallons a day.

### Public Utilities

The **Lexington** council has voted to purchase the natural gas pipeline facilities in the city for a total of \$187,500. The purchase is conditional on the city's getting an allocation of natural gas from the Federal Power Commission and on its ability to finance the purchase price and expansion cost from the issuance of revenue bonds.

**Winston-Salem's** two municipally operated parking lots took in \$12,000 during fiscal year 1951-52. Officials expect the two lots to increase receipts during this new fiscal year because the locations are better known and because higher rates charged during the first part of the last fiscal year kept many customers away.

The city is considering the feasibility of creating a parking commission to operate the present municipally operated lots and other lots that may be established later.

### Morehead City Port Dedicated

New port terminal facilities which were constructed at a cost of two and one-half million dollars were dedicated in Morehead City on Thursday, August 14. This state-owned and operated port facility was built under a 7½ million dollar bond issue approved in 1949 for development of North Carolina ports.

The port facilities which were dedicated include wharfage of 2,500 feet, sufficient to accommodate four 10,000-ton cargo vessels and one gasoline tanker. There are two transit sheds totaling 92,000 square feet, protected from fire by a sprinkler system, two storage warehouses with 88,000 square feet, and 60,000 square feet of paved open storage space. There is ample rail facilities to accommodate inbound and outbound cargoes.

After next month, when the **Wilmington** port will be opened North Carolina can boast of two modern deep-water ports which will compare with the best port facilities along the South Atlantic coast.

### Miscellany

**Morganton** is taking extra precautions for the protection of boys and girls riding bicycles after dark. The police department is attaching bright reflection tape, silver and red in color, to bicycles without charge. . . . **Charlotte** can get the release of essential steel from the National Production Authority, construction of the proposed \$3,000,000 auditorium-coliseum will proceed late in the fall. Funds for the two-building project were voted in a bond issue by the citizens of the city. . . . Funds for operation of **Winston-Salem** city schools began operation as a complete and separate account on July 1. Until recently the funds were handled by the city finance department, but hereafter the city will merely turn over to the schools moneys received for school purposes.

### Fire Pump Operators School

The **Charlotte** Fire Department will hold a fire pump operators school in Charlotte on September 22 and 23. Outstanding experts in this field of the fire service have been secured as instructors in a program to consist of lectures, round table discussions, and demonstrations. All fire departments have been invited by Chief Donald S. Charles to send as many men as possible to the school. Classes will be held at the Charlotte Fire Tower and School Building located at 2601 E. Seventh Street. Classes will meet from 9:00 A.M. to 5:00 P.M. on both days.

The **Raleigh** City Council granted all employees a minimum salary increase of \$5.00 a month. Policemen were given \$17.50 more per month and police captains and sergeants were given \$25.00 more a month.

Captain John Beasley of the **Burlington** Fire Department has been made the new Assistant Chief of the department.

Dr. William L. Norville, former director of the Rutherford-Polk County Health District, is the new **Alamance County** health officer. Dr. Norville replaces Dr. R. E. Coker who resigned January 1 to accept the position of assistant director of the local health division of the N. C. State Board of Health.

A serious limitation on the power of the governing board of a municipality to refuse to license a retail beer outlet within the town limits was forcefully brought home to the City Council of Greensboro by the recent case of Miltiadis Pepelis, operator of the N. C. Diner in that city.

On April 30, the State Board of Alcoholic Control renewed Mr. Pepelis' retail beer permit, but the City Council refused to renew his municipal beer license. The Attorney General was of the opinion that the city had no alternative but to issue the license after the state beer permit had been obtained. Mr. Pepelis took his case to the superior court where Judge Burgwyn, being of the same opinion, so decreed. The city appealed the decision to the Supreme Court of North Carolina. However, the question has now become academic so far as that appeal is concerned. The ABC Board, having been convinced that the N. C. Diner is an unsuitable location for the sale of beer, has revoked Mr. Pepelis' beer permit.

At the hearing, the chairman of the ABC Board, Robert W. Winston, was inclined to agree with Greensboro City Councilman Mack A. Arnold that the law should be amended to give municipalities the power to refuse to license undesirable beer outlets within the corporate limits. Chairman Winston later reversed his position, however, on the ground that the same result may be accomplished under the existing law.

Actually, if indirectly, local licensing authorities have more control over the licensing of beer outlets now than they did prior to the enactment of the 1949 statute upon which Mr. Pepelis relied. It is the purpose of this article to clarify the law on the subject in order that such control may be more fully understood and more effectively exercised.

In order to avoid confusing the terms "permit" and "license," it should be understood that our present law requires each retailer of beer to have a state ABC retail beer permit, a state retail beer license, a county retail beer license, and, if his establishment is within a municipality, a municipal retail beer license. If such retailer also sells unfortified wine, he must meet parallel permit and license requirements as to that beverage.

#### Beverage Control Act of 1939

The Beverage Control Act of 1939, which is our basic law concerning beer and unfortified wine, set out the state and local license requirements

for retail beer and wine outlets and specified the procedure for making application to the municipal and county governing boards for the municipal and county licenses. If the proposed outlet was located within a municipality, the qualification of the applicant to be licensed was to be determined by its governing board; if not, the determination rested with the county board of commissioners, no municipal license being necessary.

However, G.S. 18-77, a part of the Beverage Control Act, provided that, with the exception of certain designated counties and towns which could decline to issue "on premises" wine licenses, the issuance of local beer and wine licenses to applicants meeting the statutory qualifications was mandatory, unless the local governing body concerned found upon a hearing that the applicant had committed some act during the preceding license year for which his license might have been revoked.

#### 1941 Fortified Wine Act

In 1941, the General Assembly removed "fortified wines," containing more than 14% of alcohol by volume, from the Beverage Control Act and made it an ABC store product, exclusively, except that certain other designated establishments in ABC counties were permitted to sell "sweet wines," containing from 14% to 20% of alcohol by volume. Since our present law prescribes no license fees for "sweet wines," the Attorney General has ruled that counties have no power to require a license for the sale of fortified wines. On the other hand, his opinions indicate that towns, having general taxing power under G.S. 160-56, may exact a privilege license tax for the sale of such wines.

In 1945, the legislature subjected persons selling wine, fortified or unfortified, to the supervision of the State ABC Board by requiring that all such persons apply for and obtain a wine permit from that authority. Although no wine license is valid unless the licensee also has the ABC wine permit, and although the applicant for a wine permit is required to make application for the municipal and county licenses at least ten days prior to applying for the permit, it does not appear that the issuance or denial of either the licenses or the permit requires or precludes the issuance of the other. In other words, even though the local wine licenses are issued, the ABC Board may refuse to issue the wine permit, and the statute purports to place such denial

# Whiskey, Beer

## The

within the absolute discretion of the Board by inhibiting judicial review of its decision. Similarly, even though the state ABC permit is issued, the local authorities may decline to issue the wine licenses if the applicant fails to meet the statutory requirements, or as a result of the hearing provided by G.S. 18-77.

#### 1947 Local Option Law

Our beer and wine local option law, enacted in 1947, modified the mandatory provisions of G.S. 18-77 only insofar as it applies to territory voting against legal beer and wine sales. In such territory, it is made unlawful to sell or to offer for sale the beverage concerned. However, in case of a vote in favor of a particular beverage, the local option law does abrogate prior special acts giving local governing bodies the power to prohibit the sale of that beverage. It provides that, when an election goes in favor of legal beer or wine, county and municipal licenses must be issued as provided by the Beverage Control Act of 1939 "notwithstanding any public, special, local or private act to the contrary." This requirement should not abrogate the exceptions as to "on premises" wine licenses contained in G.S. 18-77, since that statute is a part of the Beverage Control Act pursuant to which the licenses must be issued. After a county has voted a beverage out and a municipality therein has voted it back in, the Attorney General has ruled that a retailer within the municipality must not only obtain the municipal license but the county license as well.

#### 1949 Beer Amendment

By the act of 1949, the General Assembly placed persons selling beer and ale within the jurisdiction of the State ABC Board. All such persons are required to apply to the Board

#### Cliff Bumgarner,

*Assistant Director of the Institute of Government, explains the effect of the liquor control acts upon the authority of cities and counties to license outlets.*



## and Wine

# Status of Local Control . . .

for a malt beverage permit. At least ten days prior to making such application, the applicant is required to give written notice of his intention to the governing boards of the county and municipality in which he proposes to do business and to publish such notice either in a newspaper or by posting it on the front door of his establishment. The governing boards of the county and municipality or any interested person may contest the issuance of the permit by filing written objections with the ABC Board. The Board may not deny the permit without affording the applicant an opportunity for a hearing, but if the permit is issued, and the sale of beer is lawful in the area, the law requires that the state and local beer licenses be issued to the permittee upon payment of the statutory license fees.

The local authorities did not have the arbitrary power to refuse to issue a beer license prior to the passage of the 1949 law. If the applicant met the minimum requirements of the law and was arbitrarily denied a license, he could enforce his right to the license by applying to the superior court for a writ of mandamus. If, upon a hearing as provided by G.S. 18-77, a local governing body found that the applicant had committed a violation of the alcoholic beverage laws during the preceding license year, he had a right to appeal to the superior court for a decision as to whether such finding was sustained by the evidence.

While the 1949 act did shift the ultimate responsibility of decision from the local governing bodies to the ABC Board, it also imposed more stringent requirements on an applicant for a permit and invested the Board with a much broader discretion than was theretofore enjoyed by the local authorities. It is entirely conceivable that an applicant could have obtained a license as a matter of right under the minimum requirements of the prior law and yet, due to some additional circumstance concerning the individual or his establishment, might be denied an ABC beer permit under the present law. At the recent hearing before the ABC Board, it appeared that the N. C. Diner fitted into this category. In such a case, the local governing boards are at liberty to

allege such circumstance as an objection to the issuance of the permit and to support it with evidence if the applicant demands a hearing before the ABC Board. The nature of the parties to such an adversary proceeding insures that the Board will give weighty consideration to the objections. Judicial review of the Board's decision to deny a permit is limited to the discretionary writ of certiorari, and if its action is based on reasonable grounds and supported by substantial evidence the courts should not interfere.

In practice, when an application for an original beer permit is filed with the State ABC Board, a malt beverage inspector conducts an investigation of the applicant and of his establishment, giving the applicant three copies of a form notice. One notice is required to be posted at the establishment and a copy must be sent to each local governing board. The ABC Board then delays action on the application for at least ten days pending receipt of any written objections. If no objections are received and the Board's own investigation reveals none, the permit will be issued. Since the notices to the local governing boards are required by law, the ABC Board could undoubtedly proceed to revoke a permit if it later appeared that the permittee had neglected to give such notice.

Malt beverage permits are renewable annually on May 1st. No new application or notice is required, and the new permits are actually delivered a few days prior to May 1st. Objections to the renewal of a permit should be filed sufficiently in advance of the renewal date so that the permit may be withheld pending a hearing on the objections.

### Local Power of Revocation Unimpaired

It should be understood that the 1949 law does not affect the power of a local governing body to revoke or suspend a license issued by it. Either a permit or a license may be revoked or suspended by the issuing authority at any time during the license year for a violation of the malt beverage laws or regulations, and the revocation or suspension of either automatically revokes or suspends the

other. In either case, however, the licensee is entitled to notice and an opportunity to be heard as is provided by G.S. 18-135, in the case of municipal or county action, or by G.S. 18-137, where action is taken by the ABC Board.

### Summary

In view of the foregoing discussion, it appears safe to draw the following conclusions:

1. The alcoholic beverage laws do not provide for the issuance of local wine licenses to persons selling fortified wine in ABC territory, but a municipal tax may be levied on such businesses under G.S. 60-56.

2. The issuance of an ABC permit authorizing the sale of unfortified wine at retail does not of itself make mandatory the issuance of municipal or county retail wine licenses.

3. When an applicant for a municipal or county license to sell unfortified wine at retail meets the statutory requirements, the governing body concerned must issue such license, unless upon a hearing pursuant to G.S. 18-77 it finds that he has committed some act during the preceding license year for which his license might have been revoked. Such finding is subject to review by the superior court.

4. When an ABC retail beer permit has been issued or renewed, municipal and county authorities must issue retail beer licenses upon payment of the statutory license fees, if the sale of beer is lawful in the area.

5. The issuance or renewal of either a retail wine permit or a retail beer permit may be prevented by filing a written objection with the State ABC Board. Such objection should allege a good reason why the applicant should not be permitted to sell the beverage concerned, and the objector must be prepared to support his allegation with substantial evidence at the hearing before the ABC Board.

6. A municipal or county governing board may revoke or suspend a retail beer or wine license issued by it at any time during the license year for a violation of the beer and wine laws or regulations. The licensee must be given reasonable notice of the proposed action and an opportunity to be heard in his defense.

## Judicial Council Drafts Bill For More Judges

**J. FRANCIS PASCHAL**

Executive Secretary  
N. C. Judicial Council

There can be no doubt that North Carolina needs additional superior court judges. The population of the State has increased by more than half a million without any increase in the number of judges. Moreover, in those factors which make for activity in the courts such as wealth, the development of industry and agriculture, and proportion of urban population, there has been in recent years a remarkable growth. At the present time, despite a strong attempt to eliminate terms of court that are not needed, the judges of the state must hold court on the average of nearly forty-five weeks a year. When one remembers that the burdens of a judge are many even when he is not holding court, that often he works longer hours during "vacation" than when he is in court, and that a judge requires some period for rest and relaxation, it is clear that nearly forty-five weeks of scheduled court is too much.

The question then is not whether we need additional superior court judges, but rather, how shall we get them? Fortunately, in November 1950, the voters approved a constitutional amendment which helps immensely in the solution of the problem. Prior to that time, the only way the State could add to its judicial manpower was to redistrict the entire State, or increase the number of special judges. The first method, that of redistricting, is for all practical purposes unavailable since it raises so many political complications. Well-settled arrangements are threatened with the result that strenuous opposition can nearly always be expected. The second method, that of adding to the number of special judges, does not solve the problem as this method does not guarantee that the additional judges will come from the districts where they are most urgently needed. But the new judges will come from such districts if the amendment approved by the voters in 1950 is utilized. This amendment authorizes the election of "one or more" judges from a district whenever the General Assembly so decides. Thus judges can be added where they are needed without

disturbing other areas of the State. It is this amendment which is the basis of the proposal of the Judicial Council.

The problem of how best to add judges to the superior court was lodged with the Judicial Council by a committee of the 1951 General Assembly. The committee was then considering bills for more judges under the 1950 amendment. The committee decided that the question needed further study and asked the Judicial Council to prepare a bill for the next session. The Council has now prepared a tentative draft and is submitting it to the people of the State for discussion and suggestions.

Under this bill, five judicial districts—the 4th, the 10th, the 12th, the 14th, and the 19th—would be entitled to two resident judges instead of only one. In naming these districts, the Council used as a guide the number of weeks of court scheduled in the various districts. By this standard, or any other for that matter, it is quite clear that the 12th and 14th districts each should have an additional judge immediately. In both of these districts there are more than ninety weeks of court a year. Obviously, at least two judges are needed in each. The next districts in point of number of weeks of scheduled court are the 10th (72 weeks), the 19th (70 weeks), and the fourth (67 weeks). While these districts have scarcely enough court to take the time of two judges, they almost do, and the judges, since they are subject to assignment elsewhere, are not likely to have any spare time on their hands. They, together with the special judges, would hold the numerous conflict and special terms.

In the drafting of the proposed bill, many problems arose. It was necessary to work out a scheme whereby the additional judges would fit easily into the rotation system. This was done by providing that judges, on reaching a two-judge district in the course of rotation, would remain within the district one year rather than the customary six months. The terms of court in the district would be divided into two schedules, a judge moving from the first to the second schedule at the end of six months. Another problem was the possibility of a conflict of authority between the two judges. For example, the Constitution empowers the resident judge of the superior court to fill a vacancy in the clerk's office. The proposed bill makes clear that the judge senior in point of service would exercise this power and all other power "not related to a

case or controversy or judicial proceeding." Again, there was the problem of the manner of selection of the new judges. The proposed bill gives the Governor the authority to appoint, his appointees serving for the relatively brief period from July 1953 to November 1954, at which time the persons chosen in the regular election would assume office. Thus an expensive special election would be avoided.

I should like to emphasize one final point. While the Judicial Council has prepared its bill with great care, the Council considers the present draft only tentative. The Council realizes that valid considerations may have been overlooked. Consequently, it is hoped that all who have suggestions on any phase of the bill will communicate with the writer at the office of the Council in Raleigh. Not only will the Council be glad to receive suggestions but it will be happy to forward copies of the proposed bill on request.

## Dog Days Deemed Darned Difficult

BILL COCHRANE

"Tuesday, July 29, a strange . . . hound dog started biting all dogs on both sides of Highway 109 (north) from Pee Dee river to within two miles of Wadesboro.

"This dog was traced from near Mt. Gilead to Stanback Ferry road and then back to Montgomery county after that. Over 100 dogs were known to have been bitten in Anson county and several hundred in Montgomery and Richmond counties, says Dr. W. D. Carter, county health officer."

This item from the Wadesboro *Messenger and Intelligencer* fits into a statewide pattern of reports. If one judges from the news stories of the past year, North Carolina's dog population is breaking all records, and a sizeable but unknown proportion of the dogs are ownerless strays.

"Folks in Sedgefield and Smallwood Homes don't need a calendar to remind them that the 'dog days' are here," reports Donald MacDonald in the *Charlotte News*. "They need only look around at the number of stray dogs in their neighborhoods. And they need only try to sleep at night when howling canines make evening rest practically impossible."

Orange County, according to the *Chapel Hill Weekly*, is plagued with packs of "wild" dogs. "In a few places

these vagrant animals have even tended to band together like packs of wolves, it is said," the Wadesboro paper reported in a story last April, which succinctly put the problem facing the public and its officials:

"Even at the best, wandering dogs are a nuisance. They cause a notable amount of damage, despoiling chicken flocks and small game, and messing up property in various ways. Some of the most frequent wailing here in Wadesboro is from householders whose shrubbery, flower beds and even truck gardens are scratched up by venturesome ittitnerant canines . . . people have been attacked and bitten . . . which has caused some to fear that a mad dog outbreak might occur since it was suspected that the stray dogs are likely to escape vaccination.

"It is recognized that enforcement of the dog control law is a ticklish business, one not apt to be entered into by the officers with much relish. The slaying of just one desirable animal, taken for a stray because of having slipped the collar, can make enough unpleasantness to cool the zeal of even a very determined policeman. It is a familiar quip, and one with some basis, that a dog owner may pass lightly over some one beating his wife or child, but woe be to anyone who mistreats his puppy. In the May 13 term of Anson county criminal court, one person was tried on a warrant charging him with unlawfully killing a dog; he was found not guilty, and we have not inquired into the full particulars of the case, but it does show that a dog owner will take steps to protect his or her animal." It should be noted that in spite of these difficulties, according to the news story, Anson County's health department and rabies inspectors have given the county "just about as thorough a program of rabies vaccination as any county we know of . . ."; and the county "has a remarkably good record of comparative freedom from mad dog scares . . ."

A number of developments over the past year or so reflect this growing concern of the authorities with the stray dog problem. For example, the State Board of Health, long active in the fight against rabies, added a full-time veterinarian to its staff. The legislature of 1951 added another statute to the vast amount of dog law already on the books, in one more effort to solve the problem legislatively, by an act authorizing counties to create the office of county dog warden and establish and operate dog pounds (Ch. 931, Session Laws of 1951; G.S.

67-30 et seq.). A number of counties have already acted on this authorization, among them Catawba and Gaston.

Ownerless and stray dogs, as has been noted, are the cause of a large part of the problem. But an additional factor is the ancient and continuing unwillingness of a large segment of the dog owning population to vaccinate, tag, and list and pay taxes on their canine companions. Health departments throughout the state every year conduct their vaccination clinics, and many, perhaps most dog owners, bring their dogs in to be immunized against rabies. But so long as one stray and unvaccinated dog is able to bite a hundred others in one foray, the rabies danger is not met.

**N. C. Voters  
Ignore Privilege  
HENRY LEWIS**

Two recent studies indicate that only a small fraction of the potential voters exercise their privilege of voting in North Carolina. In the 1948 general election both Dr. George Gallup and the Legislative Reference Service of the Library of Congress estimate that a mere 38% of the potential voters cast ballots in North Carolina. This compares unfavorably with the national average of 52% for the same year. In the general election of 1950, according to the Library of Congress estimates, only 22.6% of North Carolina's potential voters went to the polls, while 41.5% of the potential voters of the nation cast their ballots. The contrast in 1948 and 1950 figures reflects the normal differences in voting interest in presidential elections and non-presidential elections.

Southern states consistently show poorer voting records than any others; they all fall consistently far below the national average. In comparison with other southern states, however, North Carolina does not show up badly. The following statistics illustrate the point:

PERCENTAGE OF POTENTIAL VOTERS VOTING.

	1942	1944	1946	1948	1950
United States	33.6	59.7	38.1	52.1	41.5
Alabama	4.6	17.3	11.7	15.7	8.7
Arkansas	9.3	21.8	14.1	22.0	26.5
Florida	8.5	39.8	12.9	39.4	13.9
Georgia	3.6	18.8	9.2	21.8	12.6
Louisiana	6.2	26.9	7.3	27.7	14.3
Mississippi	4.3	16.5	4.4	16.6	7.3
North Carolina	16.3	43.5	22.7	38.6	22.6
South Carolina	2.4	11.1	2.7	13.9	4.4
Tennessee	9.2	31.9	11.0	30.0	13.3
Texas	7.2	31.2	8.4	26.6	7.6
Virginia	5.5	25.2	14.5	23.7	10.5

For additional purposes of clarification,

however, the record of several "border" states might be added:

	1942	1944	1946	1948	1950
Delaware	47.6	72.0	59.5	70.9	61.4
Kentucky	22.0	60.8	37.2	50.8	28.0
Maryland	27.3	50.9	33.9	43.0	37.5
Missouri	36.7	67.7	42.8	60.0	47.3
Oklahoma	29.7	64.3	36.8	50.0	44.0
West Virginia	43.8	76.2	51.7	64.8	56.6

Often North Carolina's apathy about voting in general elections is explained by the fact that the Democratic Party Primary is considered to be the decisive contest. In this connection the following total voting figures in a few recent North Carolina primaries and general elections have interest:

Year	1st Dem. Primary	2nd Dem. Primary	General Election
1942	320,755	.....	314,927
1944	321,757	.....	790,554
1946	286,828	.....	452,222
1948	423,125	400,304	791,209
1950	618,479	542,903	522,200
1952	564,505	200,071	?

In the recent primaries the League of Women Voters, various civic organizations, and almost all campaign workers made consistent and diligent efforts to increase registrations and voting. Looking forward to November the major political parties are emphasizing the same thing. Radio and television "spots" urging citizens to participate in the electoral process are familiar to listeners and viewers.

Despite the state's low voting record the election officials in many precincts in North Carolina are hard-pressed to handle the crowds at the polls and equally hard-pressed to count and record the votes promptly. High Point has been using voting machines for several years. After experimenting with machines in the first 1952 primary, Durham County has decided to acquire 70 machines for use by the November election. The plan anticipates that Durham County will bear three-fourths of the cost and that the City of Durham will bear the remaining one-fourth. In Mecklenburg County the local elections board has devised a novel system for tallying votes. The tabulators are provided with a printed sheet showing numbers running from one to 500. At each precinct the tabulators use such a form for each candidate. As the results are called off, a tabulator for each candidate simply marks progressively the printed number which corresponds to the number of votes attained by the candidate at that moment. No counting of tally marks is needed. After all ballots have been tabulated, the last number marked represents the candidate's total precinct vote. Proponents of voting machines still see this system as a temporizing measure, but it offers considerable advantages for counties not ready to make the investment required to obtain machines.

## Where are we going?

# City Planning and Zoning Moves Ahead

PHILLIP P. GREEN, JR., Assistant Director  
Institute of Government

A remarkable burst of activity in the fields of city planning and zoning has taken place in North Carolina cities and towns since World War II, according to a recent survey by the Institute of Government. The most impressive evidence of this activity is the number of City Planning Boards, Zoning Commissions, and Zoning Boards of Adjustment which have been formed since the war. Of the 34 City Planning Boards and Zoning Commissions from which information was secured, 24 have been established since 1946. Thirteen of the 25 Zoning Boards of Adjustment also date from that year or later. Almost equally impressive are the varied programs of activities carried on by these boards and commissions. The survey gathered details of such programs and also information concerning board members, meetings, and finances.

### City Planning Boards

The oldest of the City Planning Boards and Zoning Commissions for which data was received is the Greensboro Planning and Zoning Commission, established in 1920. Other old-timers are the Goldsboro Planning Commission (1925), the High Point Planning and Zoning Commission (1926), and the Durham Planning and Zoning Commission (1927). The Elizabeth City Planning Commission was originally established in 1925, but it was abandoned in the 1930's before being reconstituted in 1948.

### Planning Programs

By statute, City Planning Boards in North Carolina have the duties "to make careful study of the resources, possibilities, and needs of the city or town, particularly with respect to conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the municipality" (G.S. 160-22). In carrying out these duties, Planning Boards have undertaken a number of specific types of studies and plans.

The most popular activity is preparation of a so-called "master plan" for the long-term physical development of the community. Seventeen Planning Boards reported that they have prepared such a plan, while six more reported their intention to prepare such a plan in the future. Ten

boards consider this one of their most important functions.

As background for this and other plans, thirteen boards have made studies of basic aspects of their communities, such as population growth and economic development, while one more plans to make such studies. Only one board, however, considers this to be one of its major functions.

More specialized studies have been undertaken by a number of boards. Sixteen boards have made studies of specific municipal problems, such as traffic congestion, parking, recreational needs, and housing needs, and four more intend to do so. Nine boards regard such studies as among their most important functions. In addition, six boards have studied the need for various public facilities and made recommendations as to the best locations for such facilities, while two boards plan to make such studies in the future.

Most Planning Boards perform some functions related to local ordinances, notably the zoning ordinance and the subdivision-control ordinance. Fifteen Boards reported that they have studied ways and means by which existing ordinances regulating the physical development of the town may be revised so as to operate more efficiently and equitably, three boards regarding this as one of their most important functions. Three more boards plan to make such studies.

Virtually all Planning Boards have had experience with the zoning ordinance, the best single legal instrument for carrying out their plans. A total of 28 boards have prepared such an ordinance, under the provision of G.S. 160-177 which authorizes the City Council to appoint a Planning Board as the Zoning Commission. Nine boards rate this function as one of their most important. Twenty-four boards have participated in the administration of the zoning ordinance by screening proposed amendments and making recommendations to the City Council. Ten other boards have fulfilled the role of a Zoning Board of Adjustment, hearing and deciding zoning cases appealed from the Building Inspector's decisions.

Another usual function of a Plan-

ning Board is to supervise the creation of new subdivisions. Fourteen boards have prepared and recommended to the City Council new subdivision-control ordinances, while 18 boards review subdivision plats under such ordinances and make recommendations concerning them to the Council. Seven boards report the latter to be one of their major functions.

An administrative device for carrying the board's plans into effect—the so-called "capital expenditures budget," has not yet been widely adopted by North Carolina cities. Only seven boards reported that they have developed long-range capital improvements programs, although six more plan to do so in the future.

### Membership

Mr. Steve Clark of the High Point Planning and Zoning Commission apparently has served longer in his position than any other Planning Board member in North Carolina. Mr. Clark has served continuously for 26 years since the commission's creation. Apparently only the members of the Goldsboro Planning Commission, most of whose members have served 17 years, can report similar lengths of service.

The most popular size for Planning Boards is five members, with 24 boards reporting that membership. Two boards apiece have seven and nine members, with the membership of other boards being scattered. Nine boards have women members, and nine boards have ex officio members who also hold another public office.

By far the greatest number of Planning Board members are merchants—41 in all. Fifteen members are manufacturers or manufacturing employees, 11 are in the construction or building-supply business, 11 are realtors, and nine are city, county, state, or federal employees. Other professions and occupations represented are attorney (8), architect (8), banker (7), teacher (6), housewife (6), insurance agent (5), engineer (4), newspaperman (3), hospital superintendent (2), funeral director (2), retired businessman (2), utility manager (1), accountant (1), dentist (1), farmer (1), surveyor (1), and transfer company owner (1).

**Meetings**

Only thirteen Planning Boards hold regular meetings; the others meet on call. Of those holding regular meetings, 11 hold monthly meetings and two (Charlotte and Greensboro) hold bi-weekly meetings.

The number of meetings held by individual boards during the past year varied widely. Six boards met five or less times; one board met between six and ten times; four boards met between 11 and 15 times; five boards met between 16 and 20 times; six boards met between 21 and 25 times; and 12 boards did not report their number of meetings.

**Finances**

Exactly half (17) of the Planning Boards reporting receive some type of appropriation from the city government. The largest 1951-52 appropriation which was reported was Greensboro's \$22,929. High Point appropriated \$9,365, in addition to \$11,800 for its Inspection Division. Charlotte divided \$9,000 between its Planning Board and its Zoning Board of Adjustment. Elizabeth City appropriated \$7,250; Hickory, \$4,000; and Chapel Hill, \$1,500.

**Boards of Adjustment**

The Durham and High Point Zoning Boards of Adjustment, both established in 1926, are the oldest of these boards which reported. The Goldsboro and Wilson boards were formed in 1930 and the Winston-Salem board in 1931.

**Programs**

As might be expected, all 25 of the Zoning Boards of Adjustment reported their major function to be that assigned them by statute (G.S. 160-178): the duty of hearing and deciding zoning cases appealed from the Building Inspector's decisions. Six Boards of Adjustment have the further duty of screening proposed amendments to the zoning ordinance and making recommendations concerning them to the City Council. Two boards review plats of proposed subdivisions, one has prepared subdivision regulations for its community, and one has prepared a "master plan" for the long-term physical development of the community.

**Membership**

The honor of being the oldest Zoning Board of Adjustment member in the state, in terms of service, seems to be divided among three men: Chairman W. P. Budd of the Durham board

and Messrs. Haworth and Cox of the High Point board. All three have served for 26 years since their boards were established.

Fourteen boards reported their membership as five, as required by the statute (G.S. 160-178). Three have the basic membership plus one alternate member, while three have two alternate members, as authorized by the statute. Five boards did not report their membership. There is only one woman member of a Zoning Board of Adjustment in the state, and there are no ex officio members.

The most popular sources of members are merchants (22) and manufacturers and their employees (22). Eight members are engaged in the construction and building supply business. Other occupations and professions represented are realtor (7), insurance agent (7), banker (5), newspaperman (4), doctor and dentist (4), attorney (3), teacher (2), city, county, state, or federal employee (2), printer (2), utility manager or employee (2), architect (1), housewife (1), and engineer (1).

**Meetings**

Nine Zoning Boards of Adjustment reported that they hold regular meetings, six scheduling monthly meetings and three holding bi-weekly meetings. Five boards met five or less times during the past year; three boards met between six and ten times; five boards met between 11 and 15 times; two boards met between 16 and 20 times; one board met between 21 and 25 times; and nine boards did not report their number of meetings.

**Finances**

Only seven Boards of Adjustment reported that they receive an appropriation from the city government. All are minor appropriations except in the case of the Charlotte board, which shares a \$9,000 appropriation with the Planning Board. The Asheville board receives between \$125 and \$150, and the Winston-Salem board receives \$100. Two boards reported their members receive \$5.00 per meeting.

# Books of Current Interest

*Standard Code of Parliamentary Procedure*, by Alice F. Sturgis, McGraw-Hill Book Company, Inc., 268 pp., \$2.75.

This handbook covers the intricacies of parliamentary procedures in a manner which will be of service to all presiding officers who are vexed with a tangle of motions from the floor. The first part of the book discusses principles of procedure and general rules (such as order of business, presentation of motions, etc.). Part two shows the way in which new organizations are set up, and the way to write constitutions, by-laws, and standing rules. The third section of this book deals with the purpose, form, and effect of various motions plus an explanation of the relationship of the particular motion to other motions and the time when such motion is allowed. The inside front cover is devoted to a chart which presents, at a glance, the answers to many procedural problems which will arise within a meeting.

Anyone who is faced with the problem of directing a business meeting will be relieved to have this compact

source of procedural information close at hand.—W. T. D.

*North Carolina's Natural Resources*; prepared by the North Carolina Department of Conservation and Development, George R. Ross, Director; North Carolina Resource Bulletin Series; 54 pages.

This is the fourth bulletin to be printed which was sponsored by the North Carolina Resource-Use Education Commission. Its purpose as stated in the preface of this latest bulletin is to "help all the people of North Carolina, and especially the school children who are studying the resources of the State, to understand how the Department of Conservation and Development is organized and the means it uses in conserving and developing the resources under its supervision."

The goal as stated is admirably met in the finished product of this latest pamphlet. The material set forth gives the reading layman an opportunity to discover a few of the more important jobs being carried out by this vital State agency and to understand a

*(Continued on next page)*

little better its organization and duties. Another desirable attribute of this publication is the obvious care and intelligence which was used in preparing it. There are a multitude of inspiring and informational pictures used to illustrate the text which is itself clearly and sensibly written. It should be of great assistance to teachers in their preparation and teaching of the North Carolina Resource-Use program, and it should develop in students and citizens a well deserved pride in their State resources and administration.—W. T. D.

*The Unfinished Business of Civil Service Reform.* William Seal Carpenter. Princeton University Press, Princeton, N. J., 1952. 126 pp. \$3.00.

Some North Carolina law makers, state officials, and local civil service commission members will receive little comfort or reassurance from this book. State officials may claim that it is not pertinent to North Carolina. City managers in towns having civil service commissions may agree with every word of it; city managers in other towns may claim they have already followed its advice.

Dr. Carpenter's message is simple. The author forcefully presents the argument that (1) competitive qualifying examinations and (2) executive control of administration are essential if greater economy and efficiency are to be achieved at any level of government. In his opinion those groups interested in good government have developed effective methods of examination and recruitment; he now urges them to unite and support reorganizations which will permit the executive to fire the incompetent and inefficient, to set standards of performance, and to discontinue programs which are no longer required.

He believes that economy and efficiency would be promoted if the governor or city manager were authorized to appoint all policy-making officials and if all other employees were required to pass reasonable qualifying examinations. While criticizing the independent civil service commission of the past, he asserts that where the merit system has been given a fair trial no responsible person would today argue for a return to unrestricted spoils system.

Dr. Carpenter, a professor with years of administrative experience, points to Maryland as having the best civil service law. He favors a single commissioner directly responsible to the chief executive for personnel matters. Of the 12 local civil service com-

missions now operating in North Carolina, only Lumberton's Personnel Board would escape the author's vigorous indictment of the traditional bi-partisan civil service commission.

Some may suggest that this book is more pertinent for North Carolina cities and counties than for state government. The author certainly assumes an active civil service system; something which has never existed in North Carolina. Only the agencies receiving federal grants-in-aid and isolated agencies such as the Highway Patrol and the Wildlife Commission have ever advertised job openings and made appointments on the basis of mental, physical, and oral examinations. It may be difficult to explain to an official who has lived with Boss Hague that North Carolina's lack of concern for a merit system is due to the fact that in the last 50 years all the governors have been fairly competent, there has been no major scandals, and no wholesale dismissal of state employees.

On page 54, Dr. Carpenter warns that "the responsible heads of the government must not be thwarted in its execution by some career employee who does not agree with the policy." Whether the governor, county and city managers and mayors have adequate power to meet this problem is difficult to say.

Other topics of interest which are discussed are the history of the civil service reform movement in the U. S., the inequity of across-the-board salary increases, bureaucratic empire building, veterans' preference, loyalty programs, employee organizations, anti-strike legislation, arbitration of disputes, and education for the public service.—D. H.

*Selected Writings of Benjamin Nathan Cardozo*, Edited by Margaret E. Hall, Fallon Publications, 456 pp.

Included in this volume are four books of Cardozo's: *The Nature of the Judicial Process*, *The Growth of the Law*, *The Paradoxes of Legal Science*, and *Law and Literature*; plus some addresses which were given by this eminent jurist during his lifetime. Cardozo, a shy and retiring student of law, gave early promise of his talents and abilities which were to place him in the fore of his chosen profession. His commencement oration at Columbia University in 1889 and his essay on the Moral Element in Matthew Arnold are written with the grace and persuasion of his later works in philosophy and on the bench.

This ability to be readable as well

as thought provoking is one which makes his writings a source of pleasure not only to the student but to the layman who enjoys good writing. This was among Justice Cardozo's ideals. It was he that said "Style is not an evil in the Sahara of a judicial opinion," and he worked to perpetuate his progressive thoughts in a manner which would display them to best advantage with all readers.

While this book is of main interest to those in the legal profession, it is indeed, an asset to any library.—W. T. D.

*Administrative Law*, by Reginald Parker: The Bobbs-Merrill Company, Incorporated. 1952. \$8.00. Pages iv, 344.

Until Professor Kenneth Culp Davis got out his textbook on Administrative Law in 1951 there was no one book to which one could turn for a composite exposition of the principles of administrative law. Professor Parker's book has the misfortune to stand in the reflected glory of Davis' book.

The Parker book is a useful one and would, I dare say, have been quite widely acclaimed had it been published four or five years ago. As it is the Davis book had filled the pressing need before the Parker book came out.

Parker divides his book into six parts. Part One entitled "The Fundamentals of Administrative Law" is devoted to definitions, a consideration of the application of the doctrines of due process of law and separation of powers to administrative agencies, and a brief sketch of the history of the Federal Administrative Procedure Act. Part Two, "Establishment, Organization and Jurisdiction of Administrative Agencies" is concerned with just what the title indicates. Part Three, "Administrative Functions and Process" deals with investigatory, rule making, and adjudicatory functions of administrative agencies. Part Four, "Judicial Remedies" treats the significance of judicial review, methods of seeking judicial remedies against administrative action and some problems involved in obtaining such relief. Part Five, "Execution of Administrative Decisions" goes into methods of enforcing administrative decisions and Part Six, "Damage Claims for Wrongful Administrative Acts," is a very brief section which is concerned with the possibility of obtaining relief against the government or against an official for a wrongful administrative act. In the Appendices are reprinted the Federal Administra-

tive Procedure Act and the Federal Tort Claims Act. The book concludes with a List of Books and Articles, a Table of Cases, and an Index.

While this book is not as thorough as Davis on Administrative Law, yet it brings together within a brief space many useful materials and ideas. The attorney who must frequently meet administrative law problems may find this book a useful one to have on his shelf.—M. O. C.

*Party and Constituency Pressure on Congress*, by Julius Turner, The Johns Hopkins Press, 190 pp, \$2.50.

Through use of The Congressional Record and The U. S. Census, the author has compared voting records and constituency make-up of members of Congress with their party affiliation. He then measures the effect of party pressure upon congressional voting and follows this with the effect of constituent-pressure upon congressional voting. Constituency pressure appears to be the less effective pressure of the two. Within the parties the problems of rural v. metropolitan, foreign v. native, and sectional differences come a variety of voting problems which the party is forced to work out in its program. The party in the United States is not as regular in its voting as parties in foreign countries, however the author feels that the party still offers more regularity in its voting than the "synthetic groups" within parties (such as rural v. metropolitan, North v. South, etc.)

This book discusses many other interesting problems such as: Is there any difference between Republicans and Democrats? On which issues do parties differ? What is the effect on voting when interests conflict? Readers in and students of government should enjoy this book very much.—W. T. D.

*Personnel Standards in Tax Administration*. Ben Eaton, Jr. North Carolina Department of Revenue, Raleigh, 1952. 18 pp. Free.

This pamphlet is a speech delivered by Mr. Eaton, North Carolina's Assistant Commissioner of Revenue, at the 20th annual conference of the National Association of Tax Administrators meeting in Asheville, June, 1952. It is an interesting and forceful review of the general principles of good personnel administration plus a suggested adaptation of the recommendations of the Senate Subcommittee on Ethical Standards in Government to state tax collection agencies.

(Continued on inside back cover)

# The Attorney General Rules

## ALCOHOLIC BEVERAGES

**ABC Stores.** X County ABC Board operates ABC Stores in three towns within that county. The citizens of one town will vote on a bond issue in the near future. What ABC stores, if any, must close the day of the referendum?

To R. L. Hefner

(AG) It is the opinion of this office that G.S. 18-45(f) requires the store in the town in which the referendum is to be held to be closed, but it would seem that it is not necessary to close the stores in the other towns. Mr. Robert W. Winston, Chairman of the State ABC Board concurs in this opinion.

## CORONER

**Interim Appointments.** In 1950 a county elects a coroner for the usual four year term of office. The man elected subsequently resigns and a new coroner is appointed to hold office, in accordance with G.S. 152-1, "until his successor is elected and qualified." Is the appointment for the remainder of the term of office or until the next General Election?

To J. D. Carr

(AG) Article 4, Section 24 of the Constitution of North Carolina provides that in case of a vacancy in the coroner's office, the County Commissioners may appoint to such office for the unexpired term. G.S. 152.1 and G.S. 153-9 (12) are statutory enactments to carry out the constitutional mandate. In my opinion these statutes are not in conflict with the constitutional provision referred to; if they were the statutes would be void. Our Supreme Court has held that a vacancy in a county sheriff's office may be filled by an appointee to serve the unexpired portion of the term of four years. *Frecman v. Board of Elections*. 217 N.C. 63. It is my opinion that the appointment of coroner is for the unexpired portion of the four year term beginning on the first Monday in December 1950.

## COURTS

**Resignation Privilege of Clerk of Superior Court and County Court.** May a salaried Clerk of the Superior Court of the county resign his ex-officio duties as Clerk of the County Criminal Court while retaining his office as Clerk of the Superior Court?

To: Messrs. Warlick and Ellis

(A.G.) G.S. 7-390 provides in part that "The Clerk of the Superior Court shall, ex officio, be Clerk of the County Court, and in all counties in which the Clerk of the Superior Court is paid fees, the Clerk of the Superior Court shall have the right and privilege to resign as Clerk of the County Court. . . . In all counties in which the Clerks of the Superior Court are

paid salaries the board of commissioners are authorized, in their discretion, to provide additional compensation to such clerks for their services rendered as Clerk of the County Court." Under this statute, you are advised that it is the duty of the Clerk of the Superior Court of your County, as a clerk on a salary basis and not on a fee basis, to serve as Clerk ex officio of your County Criminal Court, and he may not resign from this position so long as he remains Clerk of the Superior Court. He is not holding office as Clerk of the County Criminal Court: He is simply performing additional duties, ex officio, by virtue of the fact that he is Clerk of the Superior Court.

## ELECTIONS

**Elections—Eligibility to Register and Vote.** A town annexes additional territory; When does the four months period required by law, (G.S. 160-45) for the citizens of the annexed territory to become eligible to register and vote, begin?

To J. A. Johnson

(A.G.) I assume you refer to an extension of corporate limits under G.S. 160 Article 36. G.S. 160:445 provides that from and after the date of the final adoption of the ordinance, unless an election is required, the citizens of the territory shall be entitled to the same privileges and benefits as other parts of said city or town. Thus it would seem that, in case no election was held, the four months period would begin on the date of the final passage of the ordinance annexing the territory. G.S. 160:449 provides that in event an election is held, and the majority of the votes cast are "for extension" then from and after the date of the declaration of the result of such election the citizens of the territory shall be entitled to the same privileges and benefits as other parts of said city or town. Thus in case an election was held the four months period would begin on the date of the declaration of the result of the election.

**Authority to Purchase Voting Machines.** A county board of commissioners is considering the purchase of voting machines. 1) May the county board of elections prohibit the use of these machines? 2) Could the State Board of Elections pass a valid regulation requiring the county board of elections to use the machines upon the commissioners' purchase?

To: Clyde M. Roberts

(A.G.) 1) I do not think that the County Board of Commissioners, without the request of the County Board of Elections, would have any authority to purchase such machines for use in the county, and I am also of the opinion that if they did so, it would

not make it compulsory on the County Board of Elections to use them in conducting any election. See G.S. 163-14, subsections 5, 6, and 8. The usual and proper procedure in matters of this kind would be for the County Board of Elections to present to the County Board of Commissioners under the County Fiscal Control Law, Art. 10, c. 153 of the General Statutes, its annual request for funds sufficient to carry on the duties imposed upon them by law and in accordance with the Fiscal Control Act. The approval would or would not be made by the County Board of Commissioners in providing for the annual budget of the county.

2) It is my opinion that the State Board of Elections would not have any authority to require County Boards of Elections to use voting machines when they were purchased and made available by the Board of County Commissioners without the prior authorization and request of the County Board of Elections.

### JUSTICE OF THE PEACE

**Jurisdiction Concurrent with Municipal Courts.** A special act creates a Municipal Court. What are the resulting limits of the respective jurisdictions of the newly created municipal court and a Justice of the Peace whose jurisdiction, prior to the creation to the Municipal Court, had included the municipality?

To Col. L. C. Rosser.

(A.G.) In the case of *State v. Doster*, 157 N.C. 634, the Supreme Court held that a Justice of the Peace cannot be deprived of jurisdiction over offenses committed outside of a municipality and otherwise within his jurisdiction. The Legislature may create a Municipal Court and confer upon it exclusive jurisdiction over misdemeanors committed in the municipality.

**Holding Commission in More Than One Township.** A. was elected a Justice of the Peace in X Township. He has a place of business in Y Township in the same county. He desires to perform his duties in Y Township in all respects just as he does in X Township. Can he upon proper application to the Governor be commissioned as Justice of the Peace for Y Township?

To: Sam W. Miller

(A.G.) I am inclined to the view that the statutes do not contemplate that a justice of the peace elected for one township could set up his office and perform a large portion of his duties in some other township. Indications of this are found in the statute: G.S. 7-127 specifically provides that he shall not be compelled to try a cause outside of the Township for which he was elected or appointed. G.S. 7-116 provides that when any justice of the peace removes out of his township and does not return for the space of six months, he thereby forfeits and loses his office. The Governor's office advises that when the Governor makes appointments under the provisions of G.S. 7-115, the appointment is for a particular township. While I find no Supreme Court decision directly in point (*see Davis*

*v. Sanderlin*, 119 N.C. 84, 87), it is the opinion of this office that A. could not legally serve under the two commissions at the same time and that the Governor is probably not authorized by law to commission him a Justice of the Peace under the circumstances outlined in your letter. Even if he should resign his office in X Township, it would seem he would not be eligible for appointment as a Justice of the Peace for Y Township unless he should establish residence in Y; for N.C. Const., Art. VI, § 7, requires an office holder to be a voter, and § 2 lists residence as a qualification for a voter.

### LABOR LAWS

**Anti-Closed Shop Statute.** Striking workers refuse to move from plant gates so that cars with non-striking workers can pass through. Is the Anti-Closed Shop Act (G.S. 95-78) being violated?

To L. R. Hughes

(A.G.) Violation of G.S. 95-78 is a criminal offense, punishable as a misdemeanor, even though the statute is silent as to any penalty. *State v. Bishop* 228 N.C. 371. However, we have been unable to find in this statute any implication or interpretation which leads us to think that it can be used to support an indictment where the gravamen of the offense is some physical action such as assaults, trespasses, riots, and obstructing workers by physical force or the threat of physical force. The dominant sense of the statute relates to certain conditions of employment or conditions relating to the contract of employment which are forbidden.

### LIQUOR LAWS

**Illegal Transportation of Liquor—Disposal of Automobiles Seized.** 1. When the operator of a seized automobile escapes arrest, and when no one claims the automobile within ten days after the last publication of its description (as required by G.S. 18-6), who should start sale proceedings?

2. When the operator of a seized automobile escapes arrest and it appears that the automobile engine has been equipped or modified so as to increase its speed, may a court order that the engine be removed prior to sale?

3. When the operator-owner of the seized car is arrested, who should receive a bond for the return of the automobile on the date of trial executed by the operator-owner?

4. When the owner of the seized car fails to appear and claim the car as prescribed by law, who has jurisdiction to honor a bona fide lien prior to sale?

To J. C. Rumble

(A.G.) 1. I see no reason why a court order should be obtained. The officer who seized the automobile should start the sale proceedings or advertisements.

2. Under chapter 850 of the Session Laws of 1951, G.S. 18-6 is amended so that the court can order the engine restored (not removed) to its original manufactured condition, unless such restoration would be impractical, in which case the court may order the

vehicle turned over to a governmental agency or public official within the jurisdiction of the court for use in the performance of official notices only, and not for re-sale, transfer or disposition other than as junk.

3. The statute says that the bond "shall be approved by said officer," and we have constructed this to mean that the bond should be approved by the officer making the seizure and arrest.

4. As we construe the statute, a person claiming a lien must establish the bona fides of his lien in a judicial proceeding brought for that purpose or in a hearing before the court in the criminal case where the lien holder comes in and sets up the validity of his lien, because the statute says that after the sale is made, the officer shall pay the costs of sale and "shall pay all liens according to their priorities, which are established by intervention or otherwise at said hearing or in a proceeding brought for said purpose, as being bona fide—"

### MUNICIPALITIES

**Criminal Ordinances.** Would an ordinance, making it unlawful for any person to possess within the corporate limits of the city, a Federal Wager Stamp issued under provisions of the Federal Revenue Act of 1951, be a valid ordinance?

To Irving Carlyle

(A.G.) The State Legislatures may not declare to be a crime an act which in its nature is and must be under all circumstances innocent. Any ordinance which would have the effect of making criminal an act which the Federal Government has declared to be permissible, would be considered in the same category as a State law in this respect. There is no State-wide statute broad enough to grant authority for the enactment of such an ordinance. The constitutionality of G.S. 18-32 (1) and G.S. 18-132 on the same general subject, has not been passed upon by our courts. Therefore, my conclusion is that it is very doubtful that such an ordinance would be valid.

### MUNICIPAL FINANCE

**Sale of City Hall.** In order to raise sufficient funds to erect a new City Hall a town proposes to sell its present City Hall. Must such sale be authorized by the Legislature?

To H. M. Currin

(A.G.) I very much doubt the authority of the City to sell a City Hall, without a Special Act of the General Assembly authorizing such a sale, in view of the very positive statement contained in the case of *Southport v. Stanly*, 125 N.C. 464:

"in no case can the power be extended to the sale or lease of any real estate—held in trust for the use of the town, or any real estate with or without the buildings on it which is devoted to the purposes of government, including town or City Hall—"

G.S. 160-19 gives the power to sell any property belonging to the town. However, in the *Southport* case our Supreme Court held that it was not the legislative intent in this statute to give the authority to municipalities to sell property necessary to carrying



on the essential functions of government, saying that the legislature must authorize such a sale by special act.

**Powell Bill Funds.** Must a town spend all its year's Powell Bill allocations during the current year, or may it carry a balance over to a subsequent year?

To J. C. Stanton

(A.G.) There is no provision in the Powell Bill which would require the expenditure to be made within the year or be returned to the State if not expended. However, all municipal expenditures and appropriations must be in accordance with the Municipal Fiscal Control Laws which would be applicable to funds received from this source.

**Public Purpose—Public Bidding.** A town is anxious to obtain a doctor for the community but there is no building available for his use. May the town construct such a building with town funds without submitting bids to contractors?

To E. Lamm

(A.G.) The town would have no right to expend public funds for the purpose of erecting a building to be used as an office for a doctor or physician. The town could, under authority of G.S. 131-126.22, erect a medical or health center as defined in G.S. 131-126.18. No building can be constructed which will cost in excess of \$2500.00 without letting it to contract after public bidding, with the exception as provided in G.S. 143-131 that a building costing not to exceed \$15,000.00 may be built without letting it to contract by a municipality "through duly elected officers or agents."

**Special Assessments Against Railroads.** A railroad owns in fee simple a 60 foot right-of-way along its truck bed. A town paves a street which crosses the 60-foot strip and bills the railroad for its proportionate part of the 60-foot strip. The railroad claims that under G.S. 160-83 the town can only assess it for the space between the tracks and 18 inches outside the tracks. Who is to pay for paving the 60-foot strip?

To A. A. Webb

(A.G.) I am unable to give you a citation to any authority which directly decides the question. It is my thought, however, that where the railroad owns a fee simple title to the property, that it could be assessed for improvements to such property to the same extent and in the same way as the other abutting owners and in addition, would be subject to assessment for the cost of paving between the rails and 18 inches on each side as provided in G.S. 160-85. I think you would be justified in contending for such assessments as here-in suggested.

**Special Assessments to Build County Health Center.** Can County Commissioners levy a special tax to cover the cost of a health center?

To: J. M. Sharp and J. T. Arledge

(A.G.) (1) G.S. 153-77(d) as amended in 1949 authorizes the levy of property taxes for the purpose of "erection and purchase of hospitals, housing or quarters for public health departments; hospital facility as the term is defined in paragraph (c) of G.S. 131-126.18." The definition in

G.S. 131-126.18(c) includes "public health center, housing or quarters for local public health departments." The first question that arises is whether a public health center is a necessary expense under N.C. Const. VII, 7, and thus one that may be incurred without a vote of the people of the county. In my opinion, in spite of *Palmer v. Haywood County*, 212 N.C. 284, in which it was held that the building maintenance, and operation of public hospitals is not a necessary expense, the courts would likely hold in construing the statutes as amended that a public health center is a necessary expense.

(2) Assuming that it is a necessary expense, I see no difficulty in the special levy. G.S. 131-126 (see especially 131-126.18 and -.22) authorizes the levy of taxes in excess of the constitutional limitation (N.C. Const. V, 6) of fifteen cents on the hundred dollar of property value for the construction, housing, and maintenance of "hospital facilities," defined as noted above as including "public health center, housing or quarters for local public health departments."

For these reasons I am of the opinion that the Board of County Commissioners may under the North Carolina Constitution and the statutes levy a special tax to cover the cost of the health center.

**Paving Streets Not Owned by Municipality.** A town owns a cemetery located 100 yards outside of the corporate limits of the town. The street leading to the cemetery is paved to the corporate limits of the town, but is unpaved from thereon through the cemetery proper where the town owns the land on both sides of the street. Has the town legal authority to pave the street located outside the corporate limits of the town?

To L. V. Phipps.

(A.G.) A municipality may not assess abutting property owners for the costs of paving streets not owned by the municipality. *Efrid v. Winston-Salem*, 159 N.C. 33. In fact there may be some doubt as to the authority of the municipality to expend public funds for paving said street even if no assessments are made against abutting property owners, since the street is located outside the city limits. However I am inclined to the view that the town has the implied authority to pave this street with public funds without an assessment, provided, the right of way is furnished by others in order to connect the municipally-owned cemetery with the city.

I am of the opinion that the town has ample authority to pave with public funds that part of the street located within the limits of the cemetery. G.S. 160-2 (3), 200 (22), 203.1, 258-260.

**PERSONNEL**

**Employees Under Merit System and Hatch Act.** Is the service of a Merit System employee on an executive board or committee of the League of Women Voters a violation of the so-called Hatch Act?

To: Dr. de Vyver

(A.G.) Generally speaking, state employees in agencies receiving Federal grants cannot engage in partisan

political activities. Membership in active committees of political parties and serving on committees and boards of parties, generally speaking, falls within the realm of prohibited activities. The same would apply to political clubs and various types of political organizations.

I have discussed the status of the League of Women Voters with Mrs. H. W. Walters, who is State Vice-President and also with Mrs. James Odom, who is President of the Durham League of Women Voters. We have gone thoroughly into their program, examined their manuals and various types of information issued. It appears to me that the League of Women Voters is educational in character; the League does not take any position in partisan elections nor does it favor any particular candidates of any particular party; the League does not directly or indirectly promote any candidate or any particular issue which would indirectly reveal that it is supporting a particular candidate.

The Civil Service Commission is, of course, the final authority on these matters, as the Hatch Act is a Federal Statute. Under the present information, however, I am of the opinion that a Merit System employee, serving on an executive board or committee of the League of Women Voters, would not be violating the Hatch Act on account of the bare fact that she is serving on such a board or committee.

**PUBLIC HEALTH**

**Trash Along State Highway.** Who has authority to enforce G.S. 14-128 which prohibits the placing of trash, garbage, etc., along State Highways?

To: Dr. N. T. Ennett

(A.G.) I am unable to find as to this section, appearing in our general criminal statutes, that there is any statute making it the specific duty of any official or individual to inspect and prosecute for violations of this section. It is, of course, the duty of either the solicitor of a recorder's or county court or of the solicitor of the district to prosecute violations of this section when brought to his attention or returned in a Grand Jury presentment. A Health Officer can swear out a violation of this section just as any other citizen could do. It is altogether probable that a Health Officer of the county could proceed under G.S. 130-25 although I never thought that this statute was very effective.

**County Board of Commissioners: Delegation of Authority to Trustees of County Hospital.** A County Board of Commissioners appoints, by resolution, a board of trustees to manage the affairs of the county's hospital. The resolution provides that the trustees are to elect a treasurer, who is to furnish a security bond approved by the Board of Commissioners and who is to maintain an accounting system, make monthly reports and disbursements to the trustee and have custody of hospital funds. The resolution further provides that tax expenditures are to be presented to the finance committee or its representative for authorization, and that an annual audit, by a C.P.A. selected by the Board of Commissioners, be made

available to that Board, the Board of Trustees, and be published in condensed form in the newspaper. Did the Commissioners exceed their authority in delegating the above powers to the trustees?

To: J. L. George

(A.G.) I am of the opinion that this delegation of authority is authorized by G.S. 131-126.21. The first section of this article defines "municipality" as any county, city, town or other political subdivision of the state. Therefore, a municipality under this section may delegate any authority that it has in the maintenance and operation of hospital facilities to an officer or board or other agency by resolution of the governing body. The Supreme Court of North Carolina has inferentially approved of this type of delegation of authority in the case of *Hospital v. Commissioners of Durham*, 231 N.C. 604. See the last paragraph of the opinion on p. 616.

#### PUBLIC WELFARE

**Illegitimate Child as Stepchild.** A woman with an illegitimate child, born in 1948, married a man in 1949. This man has supported the illegitimate child since marriage and desires to adopt the child. The welfare department insists that the interlocutory decree and the probationary period can be waived under the authority of G.S. 48-A-21(c) permitting waiver "when the child is by blood a grandchild, nephew or niece of one of the petitioners or is the stepchild of the petitioner. Would this illegitimate child be considered a stepchild so as to permit such statutory waiver?"

To: Frank B. Aycock, Jr.

(A.G.) The general rule is that a stepson is a son of one's wife by a former husband or one's husband by a former wife. There are cases interpreting workmen's compensation statutes, inheritance tax statutes, statutes determining the liability of counties for poor relief, and insurance contracts that hold that an illegitimate child may be a stepchild; in these same areas there are many cases that reach the opposite result. While I regret to give this sort of opinion because I personally feel that there is no reason why an illegitimate child should not be a stepchild, I think I am compelled to say, by the weight of authority, that in this statute dealing with adoption, the illegitimate child is not a stepchild.

#### REGISTER OF DEEDS

**Correction of Marriage License Records.** In 1914 a marriage license was issued to J. S. and P. W. The first name, J., was erroneously entered on the marriage record, E. H. being the correct first name. H. S. appears on the individual's birth record and social security card. In order to secure railroad retirement benefits it is necessary that a marriage record show the same name as do the social security records. May the register of deeds, upon review of the evidence, correct the marriage records?

To: C. P. Stevick

(A.G.) The statutes governing the records of the register of deeds simply

### The Attorney General's Rules

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do not authorize or provide for any method of correction. If I were in this man's position I think I would bring a suit in the Superior Court and ask the court to order the register of deeds to correct the record. If the court did so and no appeal was entered, then the register of deeds can make the correction.

#### SCHOOLS

**Compulsory School Attendance.** Does the statutory requirement that a minor under sixteen attend school apply to such a minor if he be married?

To: W. H. Childs

(A.G.) The fact that a person is married will not *disqualify* him from attending school if he is otherwise eligible. Your question, however, is more difficult. G.S. 115-302 and G.S. 115-305 seem to indicate that only the parent, guardian or other person having charge or control of the child is subject to punishment for failure to cause such child to attend school. It would seem that a child is emancipated by marriage. See *Jolley v. Telegraph Co.*, 204 N.C. 136, and *James v. James*, 226 N.C. 399. While there is no North Carolina case in point, it seems to me very doubtful that a jury would ever convict the parent or other spouse of the child for failure to cause the married infant under sixteen to attend school. However, it would seem that the attendance officer might be able to do some good missionary work in persuading such a married child to continue in school if the situation was such that the child would profit by such attendance and would not be a disturbing influence on other pupils.

#### STATE LICENSE TAX

**Privilege License Tax—Rural Business.** A plumber having no master plumber's license, maintains a shop adjoining his residence within a municipality but does business solely in rural areas. A municipal ordinance prohibits engaging in plumbing within the town limits without obtaining a master plumber's license. Is the plumber required to pay the State License Tax (G.S. 105-91) for those engaging in the plumbing business within a municipality of less than 2000 population?

To: G. W. Ball

(A.G.) Irrespective of whether one who maintains a plumbing shop within the town limits is engaged in the business of a plumber in the town so as to require such person to obtain a master's plumbing license, such person probably would be engaged in the business of a plumber within the meaning of G.S. 105-91, so that such person would be liable for the State License Tax provided by G.S. 105-91.

However, it is not actually essential to determine that question because Subsection (d) of G.S. 105-33 provides in part:

"Whenever the tax is graduated with reference to the population of the city—in which the business is to be conducted—the minimum tax provided shall be applied to the same business. . . . When conducted . . . outside of the municipality, unless such business is conducted . . . within one mile of the corporate limits . . . in which event the same tax shall be imposed and collected as if the business conducted . . . were inside the corporate limits . . ."

In view of the above quoted subsection, the person you describe would be liable for a State License Tax.

#### STREETS

**Traffic Ordinances: State or Municipal Enforcement.** May the police officers of a town issue citation tickets or swear out warrants for the following traffic violations on streets maintained by the State Highway Commission: illegal parking, turning around in the middle of the block, crossing double lines, and round turns at intersections under a traffic signal?

To: H. W. Hood

(A.G.) The fact that the streets are constructed and maintained by the State Highway Commission does not take them from under the police authority and jurisdiction of the municipality.

Unless you have already done so, it would be in order for your town to adopt ordinances prohibiting the traffic infractions you mention, as those matters are not regulated by State Statute. Violation of such ordinances would constitute a misdemeanor for which a warrant might be issued. Although there is no general statute, and in some cases no local statutes permitting it, many towns permit a person cited to pay usually \$1.00 and in such case no warrant is issued. The municipality gets the \$1.00 and it is not divided between the State and the city.

#### TORT LIABILITY

**Municipality's Contract of Indemnity.** A railroad's spur track leads into a municipal power-plant yard and the municipality proposes to run a water main across the main line right of way of the railroad. The railroad insists that the municipality enter into a contract of indemnity; as to the spur track, saving the railroad from loss in all cases except where the railroad was solely negligent; as to the water main, saving the railroad from any and all damages and losses caused in any manner from the said pipe, howsoever resulting. May the municipality enter into such a contract?

To: H. H. Taylor, Jr.

(A.G.) I have very serious doubt whether or not a municipality could enter into a contract of any kind to indemnify any person, firm or corporation against acts of negligence on

the part of its employees, or to indemnify a corporation from liability for damages suffered by any person, firm or corporation when such damage did not result from the negligence of the municipal employees.

There would be, in my opinion, a different situation in a case which involved the exercise of a proprietary function by a municipality and which involved a governmental function. In both instances, however, it would seem to me that it would be beyond the power of a municipal corporation to enter into indemnity agreements of either sort.

We have always advised that in our opinion the State had no right to enter into such contracts as this without express legislative approval, and that the signing of same might result only in making the officers who executed it liable for having executed a paper beyond their authority.

**School Board's Contract of Indemnity.** A school Board wishes to purchase town land for the erection of a school building. The land is very close to a water tank, pump house and cistern owned by the town. The Board of Aldermen of the Town insist that the School Board agree to relieve the town of any liability with respect to school children going on the town property. May the School Board legally relieve the town of this liability?

To: Dr. C. A. Erwin

(A.G.) I am of the opinion that the school board has no authority to enter into such a contract of indemnity. Such a contract would be clearly ultra vires and therefor wholly void and of no legal effect. *Jenkins v. Henderson*, 214 N.C. 244.

### Books of Current Interest

(Continued from page 13)

After warning that the importance of high quality personnel was frequently underestimated by tax administrators, Mr. Eaton stressed five facets of a good personnel program—selection, training, standards of conduct, compensation, and leadership. The assistant commissioner stated that an atmosphere of freedom in selecting and terminating employment was essential to a personnel program worthy of the name. He believed "that the selection of personnel should be removed from (1) pressures, political and otherwise, outside of the department, (2) pressures and influences inside the department, and (3) the practice of appointment on the basis of rewards, friendship, political background or relationships."

He considered a training program containing both orientation training for new employees and periodic refresher courses for all employees imperative. He believed good job de-

scriptions and written operating procedures a necessary prerequisite of any training program. He also stressed the desirability of periodic written and oral progress reports for the purpose of work improvement as well as a part of a program of promotion.

In discussing standards of conduct, Mr. Eaton suggested 12 principles or danger zones which should be discussed with employees in training programs. (1) Absolute honesty in handling all public funds and in audit determinations. (2) Separation of tax administration from politics. (3) Gifts, favors or meals from taxpayers should be prohibited. (4) Gifts within the organization to superiors is believed undesirable. (5) An employee who lives beyond his means should be a warning signal. (6) An employee's attitude toward his financial obligations is significant. (7) Tax collecting employees should not be permitted to keep books for taxpayers. (8) Tax department employees engaging in outside business activities should be required to file a statement of the nature of the business and how it is operated, particularly in reference to tax liability. (9) State tax department employees should not charge for assisting taxpayers to file Federal tax returns. (10) Tax collecting employees should be discouraged from borrowing money from taxpayers, other than banks or lending agencies. (11) Extensive social contacts which arise solely out of tax relations are areas of potential danger and embarrassment. (12) The confidential nature of the individual citizen's tax return must be preserved.

In conclusion, Mr. Eaton warned that poorly paid government employees usually means correspondingly poor public service and that there is no substitute for dynamic leadership.

Although scandals in North Carolina have been infrequent and the vast majority of public officials are completely honest, no experienced state or local official will doubt that greater efficiency and greater public confidence in government would result if Mr. Eaton's suggestions and if the report of Senator Douglas's subcommittee were seriously studied and followed by all local governmental officials.—D. H.

### Personnel Notes

(Continued from page 3)

nel Director Reich will continue to be in charge of the city's safety pro-

gram which he directed while serving as taxicab inspector. Traffic Sergeant Hilary Ledwell has succeeded Lt. Reich as taxicab inspector.

Dr. L. E. Kling, **Beaufort County** health officer will serve as district health officer for a new district to consist of Beaufort, Pamlico, and Hyde counties. Dr. Benton Van Dyke Scott of Jackson, Michigan has been appointed director of the Catawba-Lincoln-Alexander Health District. Dr. Donald Evans, former assistant health officer, became **Sampson County** health officer on July 1. Dr. Walter Humbert of Webster Groves, Missouri has been appointed **Pitt County** health officer.

Dr. Edward N. Pleasants, former superintendent of Dix Hill, has resigned to accept a position in New Jersey.

### Personnel Conference

The 11th annual Southeastern Industrial Personnel Conference will meet at Duke University, September 10-12. More than 100 personnel executives from business and industry are expected to attend the three-day conference. One session will be devoted to training with an address and group sessions on job training, safety training, and human relations training for employees. Persons desiring additional information should write Dr. Frank T. de Vyver, secretary to the conference and Duke University professor of economics.

"He that won't be counselled  
can't be helped."

—Benjamin Franklin

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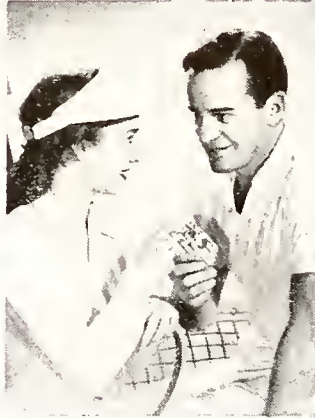
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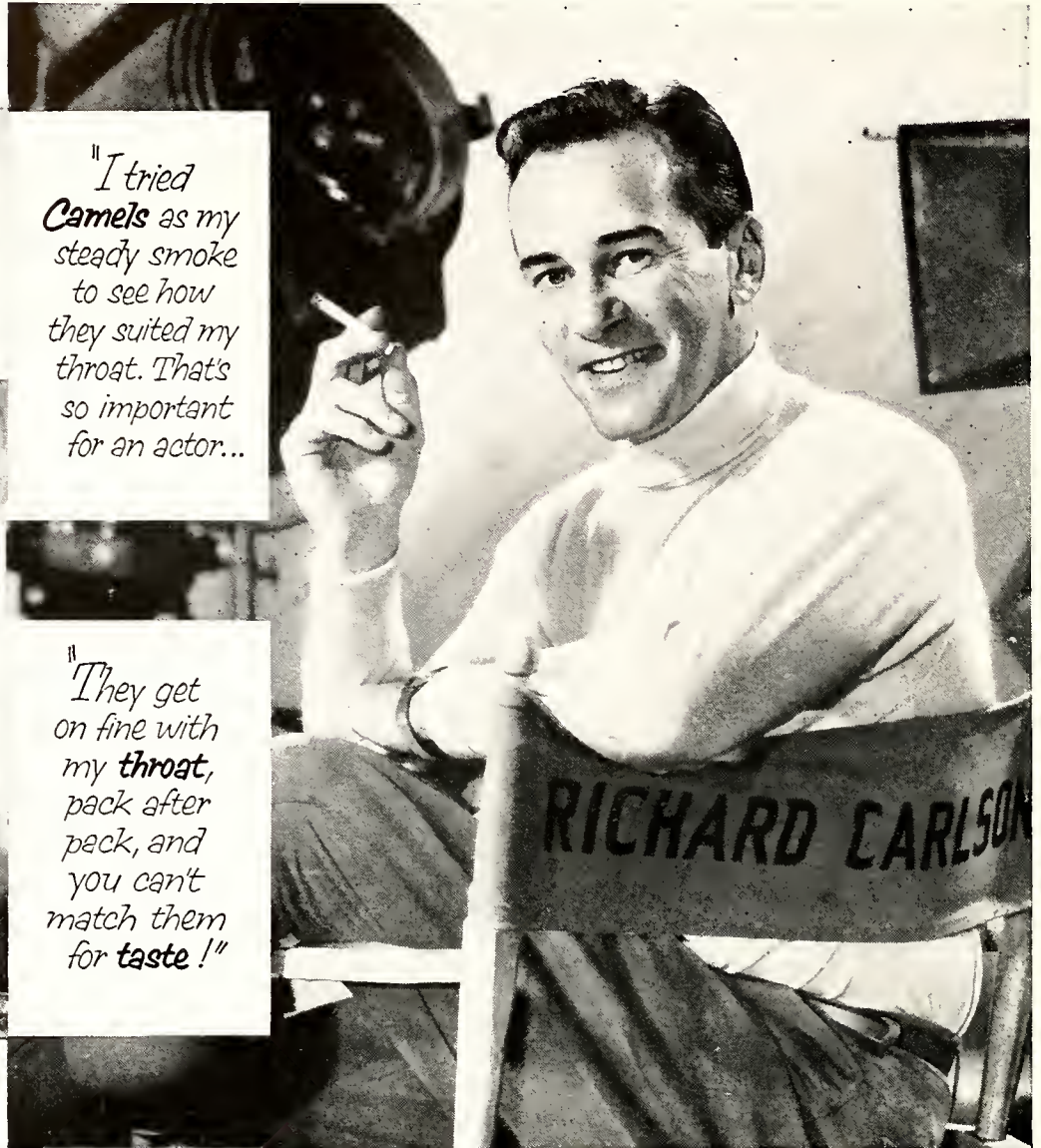


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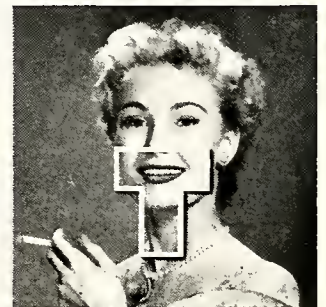


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