Popular Government

January 1953

The Capitol of North Carolina

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
Chapel Hill

Vol. 19 | January 1953 | Number 5

TABLE OF CONTENTS

1953 General Assembly Convenes 1

General Statutes Commission 2

Report of Judicial Council 4

Commission Makes Two Major Proposals 6

Cities Request Two Measures 8

How Cities Spent Powell Bill Funds 9

Cherry Point Zoning Act Invalidated 12

Officials Meet in Chapel Hill 13

THE COVER

On January 7 the 1953 General Assembly of North Carolina convened on the second floor of the Capitol at Raleigh.

Once again this historic building is the scene of increased activity. All eyes are focused on the General Assembly and its fateful decisions for North Carolina.

POPULAR GOVERNMENT is published monthly except July and August by the Institute of Government, The University of North Carolina, Chapel Hill. Editor: Albert Coates. Assistant Editors: Vernon Lee Bounds, J. Shepard Bryan, Jr., Willis C. Bumgarner, William M. Cochrane, Max O. Cogburn, William Thomas Devine, Jr., Harper J. Elam, III, George H. Esser, Jr., Thomas B. Faxon, Philip P. Green, Jr., Donald B. Hayman, Edward Lane-Reticker, Henry W. Lewis, Roddey M. Ligon, Jr., John Alexander McMahon, Ernest W. Machen, Jr., Richard A. Myren, John Pershing, John Donald Scarlett, Basil L. Sherrill, Clifford Bruce Thomas. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: Per Year $2.00; single copy, 25 cents. Advertising rates furnished on request. Entered as second class matter at the Post Office in Chapel Hill, N. C.
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'53 General Assembly Convenes

New Governor, Lt-Governor, Council of State Inaugurated

The 1953 General Assembly convened on January 7, witnessed the inauguration of Governor William B. Umstead, Lt. Governor Luther Hodges, and the Council of State on January 8, and settled down to business. Governor Umstead's untimely illness soon after the inauguration did not slow down legislative activity following his appeal for "business as usual."

The Governor's inaugural message and the report of the Advisory Budget Commission highlighted the opening weeks of the session.

The Governor's Message

The inaugural message covered a wide range of state governmental problems, but emphasis was placed on public school system needs and the necessity for strengthening the state's role in caring for the mentally ill. Bond issues to (1) aid counties in constructing adequate and equal school facilities and (2) finance expansion of mental institution facilities were recommended. The Governor also called for a 10% pay increase, retroactive to July 1, 1952, for all state employees and public school teachers.

While the message pointed out ways in which to improve governmental services in a variety of fields, the Governor called for no new taxes, but did suggest that if additional revenue were necessary, a revision of the sales tax exemption schedule would provide more funds.

The Budget

The Advisory Budget Commission's report recommended the expenditure of over $637 million by June 30, 1955. The biennial appropriations bill provides for spending over $592 million (about $390 million from the General Fund, $2 million from the Agriculture Fund, and $200 million from the Highway Fund) during 1953-55. Other appropriations included $17.6 million to make the recommended 10% pay increase retroactive to July 1, 1952, $17.8 million to set up a permanent continuing fund to meet current state obligations at the beginning of each fiscal year, and $9.6 million for permanent improvements at state institutions (principally for completion of building projects already underway and for preservation of state properties). Appropriations from General Fund and Highway Fund surpluses, when added to anticipated revenues, enabled the Commission to present a balanced budget for the biennium, but requests for both operating funds for state agencies and for permanent improvements had to be cut drastically.

GOVERNOR WILLIAM B. UMSTEAD

Reports of Commissions

Among the programs which will be considered by the General Assembly in the weeks to come are the legislative changes recommended by the two continuing commissions (General Statutes Commission and Judicial Council) and the one special commission (Administrative Procedure Commission) charged with the duty of studying specific legislation in the interim since 1951 and of recommending improvements to the legislature. This issue of *Popular Government* sets forth the proposals of these agencies in order that they may receive wider distribution.

General Statutes Commission . . .

Recommends 17 Bills To General Assembly

Edward Hipp, Revisor of Statutes

The North Carolina General Statutes Commission was created in 1945 for the purpose of advising and counseling, with the Attorney General, in the continuous statutory research and correction necessary for the publication of the General Statutes as a modern and workable system of laws. It soon became apparent that the limited type of form revision associated with codification work would not keep the General Statutes abreast of changing conditions in the State, and in 1951 the Commission was given the additional duty of recommending substantive changes in the law to achieve this purpose.

The Commission has worked constantly, since the close of the 1951 General Assembly, on the substantive recommendations which were considered most needed, in light of the time that was available for such work. It has completed 17 bills for recommendation to the Legislature in January and has done considerable work on four additional bills which may be completed in time for introduction later in the Session. The completed bills, followed by a brief, explanatory note regarding the intended purpose and effect of the recommendation, are as follows :

#1. TO AMEND THE GENERAL STATUTES RELATING TO THE EXECUTION, REVOCATION AND PROBATE OF WILLS. The present statutes on this subject are poorly organized, sometimes ambiguous, and frequently incomplete and have been re-written and amplified to set out clearly and completely the different methods for executing the various types of wills, the acts or circumstances which effect a partial or complete revocation, and the requirements for probating the different types of wills. Separate treatment is given in each case for attested written wills, holographic wills and nuncupative wills. The bill codifies the case law on this subject and reorganizes the present statutes so that they may be more readily understandable.

#2. TO PROVIDE FOR INSTRUMENTS TO SECURE FUTURE ADVANCES OR FUTURE OBLIGATIONS. Many questions still exist in North Carolina concerning the validity and effect of a mortgage given to secure future advances. The Commission's bill provides a statutory method for the use of such mortgages and other security instruments which establishes certain minimum safeguards for the protection of all parties to such instruments. The instrument must state that it is given to secure future advances, the maximum amount of advances to be covered by the instrument, and the period within which such advances may be made and for the cancellation of the instrument. The bill provides for the priority to be given such advances, depending upon whether they are optional or obligatory. The statutory provision for such instruments would expressly not exclude other methods which might be in use.

#3. TO AMEND THE STATUTES RELATING TO THE PLACE OF REGISTRATION OF MORTGAGES. The present law is not complete, and in many instances it is not clear where a mortgage must be registered in order to be valid against purchasers for value. The bill provides in detail a place of registration for mortgages of both real and personal property, whether the mortgagor is an individual, a partnership or corporation, and whether a resident or non-resident of the State.

#4. TO PROVIDE A METHOD FOR ESTABLISHING DEPOSIT ACCOUNTS IN BANKS AND OTHER DEPOSITORY INSTITUTIONS AS CO-OWNERS WITH RIGHT OF SURVIVORSHIP. The present law in North Carolina regarding the right of survivorship in joint bank accounts is not as clear in some respects as the Commission thinks it should be in a modern system of laws. A survey of the legal profession has disclosed that there are many differences of opinion on this subject. The Commission's bill would provide a statutory method of establishing joint bank accounts with right of survivorship, based upon a contract between the parties to follow the provisions of the statute. The bill codifies the prevailing majority rules on the subject. It permits withdrawal by either co-owner, provides a rebuttable presumption that the co-owners own equal shares in the balance during their lifetime, provides a method of termination, and upon the death of one of the co-owners the balance becomes the absolute property of the survivor. The provisions of the bill are not exclusive.

#5. AN ACT RELATING TO THE ATTACHMENT AND GARNISHMENT OF THE CONTENTS OF SAFE DEPOSIT BOXES. This bill is designed to amplify the previously enacted recommendations of the Commission regarding attachment and garnishment. Some question has been raised regarding the authority under the present law to attach the contents of safe deposit boxes, and this bill provides a procedure for such cases.

#6. TO CLARIFY THE LAW WITH RESPECT TO INCORPORATION OF DOCUMENTS AND WILLS BY REFERENCE. This bill codifies the prevailing liberal common law rules for the incorporation of documents in wills by reference.

#7. TO PROVIDE FOR THE REGISTRATION OF MORTGAGES, DEEDS OF TRUST AND CONDITIONAL SALES CONTRACTS OF PERSONAL PROPERTY WHICH IS AFFIXED TO REAL PROPERTY. This bill provides a method for the protection of security interests in personal property, which is affixed to real property, by requiring that such instruments must be registered in the same manner as an incumbrance on the real property to which the personal property is affixed. It is intended to codify the prevailing rule on a subject which has been a source of much litigation.

#8. TO CLARIFY THE METHODS OF PROVING SERVICE OF SUMMONS AND SERVICE BY PUBLICATION. The Commission recommends rewriting G.S. 1-102 to clarify the meaning of an "acceptance" of service as distinguished from an "admission" of service, to require that an acceptance must be acknowledged only when given outside the State, and to clarify when such acceptance shall constitute a general appearance.

#9. TO CLARIFY G.S. 75-5 RELATING TO UNFAIR TRADE PRACTICES. This bill is designed to simplify the complicated language

of an intricate law without changing its meaning, affecting its interpretation or altering its scope, except to restore the original meaning which it is believed was mistakenly changed in codifying the General Statutes in 1943.

#10. AN ACT RELATING TO THE RUNNING OF THE STATUTE OF LIMITATIONS AFTER AN UNAUTHORIZED ACT, ADMISSION OF ACKNOWLEDGMENT OF A CO-OBLIGOR, GUARDIAN OR PARTNER. To clarify; G.S. 1-27 by limiting the removal of the bar of the statute of limitations in partnership cases, where the act or admission of a partner was in the ordinary course of partnership business.

#11. TO PROVIDE THAT PARTNERS ARE JOINTLY AND SEVERALLY LIABLE FOR THE ACTS AND OBLIGATIONS OF THE PARTNERSHIP. To amend the uniform partnership act, which now provides only for joint liability on partnership contracts, by making it conform to present G.S. 1-27, which provides for joint and several liability.

#12. TO MAKE UNIFORM THE RULES RELATING TO THE DETERMINATION OF HEIRS AND NEXT OF KIN. In 1951 the Legislature enacted Chapter 104A of the General Statutes, which, as introduced, was intended to establish the same rule for determining the degree of kinship of *heirs* and *next of kin*, by adopting the civil law rule, but which, as amended, failed to accomplish this result. This bill is intended to restore the original purpose of that legislation.

#13. TO PRESCRIBE WHAT PERSONS MAY ADMINISTER OATHS OF OFFICE. On several occasions it has not been clear who may administer the oaths of certain offices in North Carolina. This bill clarifies the point, setting out in detail who may administer such oaths.

#14. TO AMEND G.S. 28-16 BY REDUCING FROM 60 DAYS TO 30 DAYS THE PERIOD AFTER WHICH AN EXECUTOR MAY BE CITED TO SHOW CAUSE WHY HE SHOULD NOT BE DEEMED TO HAVE RENOUNCED. The period of 60 days now required for the appointment of a substitute executor is thought by the Commission to cause undue delay in the administration of estates, and it is recommended that the period be reduced to 30 days.

#15. TO PROVIDE FOR THE CONFIRMATION AND IMPEACHMENT OF COMMISSIONERS' REPORTS OF THE PARTITION OF PERSONAL PROPERTY. The present rules for the partition of real property provide that if no exception is filed to the Commissioners' report within ten days, it shall be confirmed. The rules for the partition of personal property are silent on this point. This bill is designed to provide the same rule for confirmation in both types of partition proceedings.

#16. TO AMEND THE LAWS RELATING TO PROOF OF ATTESTED INSTRUMENTS BY SUBSCRIBING WITNESSES. G.S. 47-12 permits proof of an attested instrument by subscribing witnesses but does not provide *what* the witness must testify to in proving the instrument. This bill requires the witness to swear the maker signed in his presence or acknowledged the signature to be his own. Related sections and statutory forms are similarly amended.

#17. COMMISSION'S OMNIBUS BILL. (To clarify and re-codify miscellaneous minor provisions of the statutes.) To recodify G.S. 44-38.1, relating to liens created in another state, by transferring it to the chapter on mortgages; to include actions by the State among those not required to furnish prosecution bond under G.S. 1-109; to provide identical language in Chapter 104A where different modes of expressing the same thought are now used.

* * *

The following four bills have been considered at some length by the Commission and may be recommended in the 1953 Session, although they have not yet been approved in final form.

#1. TO AMEND THE STATUTES RELATING TO SERVICE OF PROCESS BY PUBLICATION AND SERVICE OF PROCESS OUTSIDE THE STATE. The Commission recommends a re-writing of G.S. 1-98, in light of the many cases which have been decided under the section, and in view of the more advanced views now prevailing on constructive service of process. The bill spells out in detail the kinds of actions in which such service may be had, the persons upon which such service may be made, and the requirements of the affidavit upon which such service must be based.

#2. TO CLARIFY THE STATUTES RELATING TO THE CONVEYANCE OF REAL PROPERTY OF A DECEDENT BY A DEVISEE OR HEIR-AT-LAW. This bill rewrites G.S. 28-83 to set out the provisions of a complicated statute in a more understandable form, and to include the rules from certain cases construing the statute which are necessary to a proper interpretation of the section as it now stands.

#3. AN ACT TO REPEAL AND AMEND CERTAIN SECTIONS OF THE STATUTES DEALING WITH COUNTY FINANCE. The General Statutes now contain many outmoded sections dealing with county finance which are in conflict with or inconsistent with the County Fiscal Control Act of 1927. As potential sources of trouble and embarrassment to the counties, the Commission, acting upon the suggestion of the county commissioners, the county accountants and the Institute of Government, recommends their repeal.

#4. TO CLARIFY THE LAW RELATING TO THE EXAMINATION OF ADVERSE PARTIES AT TRIAL. The 1951 Act dealing with examination *before* trial is thought by some to place a question upon the right to examine adverse parties *at* the trial. To remove any such doubts, the Commission recommends a bill spelling out the rules for the examination of adverse parties at trial.

* * *

A major project of the Commission for 1953 will be a continuation of work already begun on a general revision of the corporation law. The Commission is considering the advisability of recommending a North Carolina Business Corporation Act and a Non-Profit Corporation Act, based to a considerable extent upon an adaptation of the present North Carolina corporation law to fit the American Bar Association's Model Business Corporation Act and Model Non-Profits Corporation Act. A preliminary draft of the Business Corporation Act is being studied by the Commission, and will be distributed as widely as the limited means of the Commission permit, for study and criticism by those interested in the corporation law. If general support and agreement on the recommendations can be secured in time, it is hoped the bills can be introduced in the 1955 Session.

The Commission is presently composed of the following nine members: Robert F. Moseley, Chairman, appointed from the State Bar; Henry A. McKinnon, appointed from the

(Continued inside back cover)

Report of Judicial Council . . .

Contains Legislative Recommendations For Courts

To:

The Honorable W. Kerr Scott
Governor of North Carolina

The Judicial Council presents herewith its report for transmittal to the 1953 General Assembly. Attached are copies of bills we are submitting for consideration.

Foreword

Before discussing the new proposals of the Council, we wish to refer briefly to two measures previously adopted. We speak of the transfer to the Chief Justice of the Supreme Court, of the administrative direction of our Superior Courts and of the inauguration of pre-trial procedure in some of our courts. It seems appropriate to remark that the assumption by the Chief Justice of this new responsibility has clearly resulted in a gain for the administration of justice which is already apparent and will become more so in the years ahead. Judges have been assigned in accordance with a recognizable pattern. Needless terms of court have been cancelled, almost always with the consent and advice of the lawyers in the counties involved, and the difficulties basic in the fact that we have too few judges have been skilfully minimized. Indeed, we are ready to affirm that the wisdom of the change has already been proved and that we may expect continued benefits from the informed direction of our court system which our Chief Justice can surely be expected to supply.

As for pre-trial, we must confess that it has not been employed as widely as we had hoped. But we should like to take this opportunity to reiterate our confidence in this procedure as an aid in expediting the administration of justice. We heartily renew our recommendations to the bench and bar that the full values of pre-trial be exploited. We know from experience now that it will shorten trials, eliminate wasteful delays and save the time of witnesses and jurors. Some of our courts have already tried pre-trial with these results. We think such results are available for all who familiarize themselves with this procedure and cooperate fully to make it effective.

Additional Regular Superior Court Judges

In 1950 sec. 10 Art. IV of our Constitution was amended so as to permit the election of "one or more" resident superior court judges for each judicial district. The primary objective of this amendment is to provide a method by which adequate relief may be afforded those counties in the state which require more courts per year than can be assigned to any one judge and at the same time retain our rotation system. The immediate necessity now is to implement that amendment by legislation which will afford this contemplated relief for those counties which come within the primary purpose of the amendment. Therefore, for the past eighteen months, the major concern of the Council has been the problem of selecting the method, devising the means and drafting the bills best suited to meet this pressing and almost indispensable need for relief in our judicial system. After lengthy consideration within the Council and extensive consultation with those most vitally affected throughout the state, we have selected the 10th, 12th, 14th and 19th judicial districts as the districts which new clearly come within the prime objective of the constitutional amendment. Those districts include Durham (10th), Guilford (12th), Mecklenburg (14th), and Buncombe (19th). Thus each of these districts includes a single county that now has a sufficient number of weeks of Courts to constitute more than a single schedule of courts and each district requires a sufficient number of weeks of court to constitute two full separate schedules of court. We therefore strongly recommend that an additional regular resident judge of the superior court be provided for each of these four districts.

The Council is conscious of the fact that four additional regular superior court judges will not provide adequate man-power for the trial bench. However, we are convinced and strongly recommend that the bills submitted receive first consideration.

The method to be pursued to provide additional judges, whether by creating other two-judge districts or by re-districting, involves a question of policy exclusively within the discretion of the General Assembly. Therefore the Council is reluctant to make any recommendations in respect thereto without a positive directive. If the Legislature desires to refer this matter to the Council for further study and recommendation, it will be pleased to submit alternate plans at the 1953 session. In the meantime we are recommending only the relief which cannot be adequately provided by re-districting. The General Assembly may supplement this plan in such manner as it deems advisable either at the approaching, or some later, session.

Creation by Deed of Future Interests in Personalty

A recent decision of our Supreme Court has called to our attention the fact that North Carolina is the only state that still adheres to the old common law rule prohibiting the creation of future interests in personalty by deed. Of course, such interests can be created by will even in North Carolina. Whatever justification this distinction may once have had, it seems to have disappeared. Accordingly, we think it should be eliminated. Our proposed bill provides simply that the same estates can be created by written instrument of transfer as by a last will and testament.

Elimination of Appeals from Interlocutory Orders and Rulings in the Discretion of the Trial Judge Not Affecting a Substantial Right

Our statute grants an almost unlimited right of appeal and there is increasing evidence that appeals are often taken to the Supreme Court merely for the purpose of delay. We wish to preserve the right of appeal whenever a substantial right is involved but we can see no justification for permitting appeals from interlocutory orders or orders made in the discretion of the trial judge when no such right is affected thereby. Accordingly, we submit a bill which denies the right of appeal in these cases. However, if a party should wish to contend that an interlocutory order or ruling in the discretion of a trial judge has deprived him of a substantial right, then, under the bill pro-

posed, such party may petition the Supreme Court in thirty days for a writ of certiorari. The proposed amendment will fully protect the rights of a litigant and at the same time prevent unnecessary delay in obtaining a review by the Supreme Court. It will also discourage unwarranted appeals.

Alias and Pluries Summons

We are submitting a bill which would eliminate unnecessary formalities in the issuance of alias and pluries summons. A simple endorsement by the clerk should be sufficient. It would certainly be a convenience when contrasted to the present rather cumbersome procedure.

Amendments Relating Back

We propose that amendments to pleadings which perfect a defectively stated good cause of action, claim or affirmative defense, relate back to the date of the original pleadings as if such amendatory allegations had been included in the pleadings when first filed. This bill, if enacted will not affect pleadings which attempt to state a bad cause of action, claim or defense, or permit the allegation of a new cause, claim or defense. It will merely permit the correction of a defectively stated cause, etc. as of the date the original pleading was filed. Thus justice to the pleader, without substantial prejudice to his adversary, will be afforded.

Exhibit Testimony

We are convinced that there are certain cases in which the jury should be permitted to take exhibit testimony with them on their retirement. We are unable to list all such cases or to include them under some rigid statutory description. We believe, however, that the trial judge can safely be trusted in this matter. Accordingly, we recommend that the jury be permitted to have exhibit testimony whenever the trial judge so decides.

Repeal of G.S. 15-171

The Legislature by an Act which is now codified as G.S. 15-171 made provision for a life sentence in first degree burglary cases. This Act permits a jury, upon finding that the defendant is guilty of first degree burglary, to render a verdict of second degree burglary. The reason for this, of course, was that a verdict of guilty of burglary in the first degree carried with it a mandatory sentence of death. Nevertheless the method adopted is cumbersome and renders it difficult for a judge to instruct the jury thereunder in a manner they can fully understand. Furthermore the reason for the law no longer exists. G.S. 14-52 which now permits a jury to recommend mercy, upon which a sentence of life imprisonment is to be imposed, is much more simple and direct and provides the desired change in the law. Unfortunately the legislature in enacting the latter statute did not repeal the former. G.S. 15-171 should now be repealed. The bill submitted will accomplish this end.

Notice in Cases of Forfeiture of Cash Bonds

Where a defendant has posted a cash bond for his appearance and later fails to appear, our law at present requires a rather needless attempt to notify the defandant before his bond can be forfeited. Actually, such notice is seldom served but nevertheless, the attempt must be made. This is a useless gesture. The defendant knows his failure to appear works a forfeiture of his bond. When it is in the form of a cash deposit, requiring no execution, formal notice to him should not be a prerequisite of forfeiture. We therefore recommend that G.S. 15-113 be amended so as to dispense with the necessity of notice in all cases where the defendant, by his failure to appear, has forfeited a cash bond.

Penalties for Refusal to Grant Application for Writ of Habeas Corpus

We, of course, regard the writ of habeas corpus as probably the greatest bulwark of liberty and would countenance nothing which would render it less effective. We do not believe, however, that our judges should have to labor under the threat contained in the present law of a personal liability of $2500.00 for failure to grant an application for the writ. Neither do we believe, we hasten to add, that one should be without remedy when a judge wrongfully refuses an application. Accordingly we propose an abandonment of the present "penalty" remedy and ask for a new statute which would require a judge to put his reasons for the refusal of the application in writing and immediate review by the Supreme Court by a writ of certiorari. This would protect the rights of all and at the same time remove from the judge a threat to which no man of judicial stature should be subject.

A remedy now exists when, on final hearing, the judge denies the writ. Our proposal affords a judge the right, without threat of penalty, to deny the original application when it is made to appear to him from the application or other source that there is no merit in the application, and at the same time, provides the applicant a method for obtaining an immediate review of the order by the Supreme Court.

Determinations of Paternity

In bastardy prosecutions, it frequently happens that a defendant will have the charges against him dismissed or that he will be declared not guilty although it clearly appears that he is the father of the illegitimate in question. This is not improper since it may well be that the other ingredient of guilt - failure to support - was not made to appear. Even so, in such cases it is possible to settle once and for all the question of paternity. It ought to be settled specifically because the responsibility of the father will continue. We suggest therefore a bill which so provides.

Statute of Limitations in Misdemeanor Cases

A situation particularly needful of attention has to do with the statute of limitations in misdemeanor cases. Under present law, an indictment tolls the statute of limitations. But, if the prosecution is on a warrant in an inferior court, and there is an appeal to the superior court, apparently the statute continues to run. Thus, where a docket is congested and there is delay in bringing the offender to trial in the superior court, the defendant must be discharged although the prosecution has been as prompt as conditions would permit. We think the statute of limitations should not continue to run in such cases, and have presented a bill which will cure this defect in our laws.

Membership of the Judicial Council

Our experience leads us to propose modifications of the Act Creating the Judicial Council. We have felt the need for the assistance which Solicitors of the Superior Court can give us. Also, in view of the many duties of the Attorney General, it seems advisable that he be permitted to designate from his staff his representative on the Council rather than be required to attend personally. We propose appropriate amendments to accomplish these suggested changes.

Our final recommendation is not to the General Assembly but to the judges of the Superior Court. We

(Continued inside back cover)

Administrative Procedure

Commission Makes Two Top Proposals

ERNEST MACHEN, Assistant Director, Institute of Government, Explains Commission's Work

The General Assembly in its 1951 session called for a new study into the problem of procedure before administrative agencies in North Carolina. This matter of administrative procedure has been the subject of legislative study and action for over fifteen years. While considerable progress has been made in that time, a number of basic problems have remained and a special commission was established to study them and to make recommendations for their solution.

Commission Organization

The seven members appointed to the commission were exceptionally well qualified to conduct such a study. Mr. Arch T. Allen of Raleigh, the commission chairman, Mr. Claude L. Love, Assistant Attorney General, the commission secretary, Senator Alton A. Lennon of Wilmington, Representative William B. Rodman of Washington, and Representative Paul G. Stoner of Lexington, all are attorneys who have served as members of the General Assembly. Mr. Julius C. Smith is an attorney with wide experience in administrative procedure studies, having served as a member of a similar commission created by the 1941 General Assembly, and as a member of Administrative Law Committees in both the American and the North Carolina Bar Associations. Dr. Roma Sawyer Cheek has also had considerable experience with problems in state government both as an official and as a teacher of political science at Duke University.

Nature of the Study

Basically, the purpose of the commission was to examine the present law governing proceedings before administrative agencies and to recommend such changes in the law as might be found necessary to insure fairness in such proceedings and a reasonable amount of uniformity in the rules of practice.

The problem of administrative procedure has become more acute in recent years as more and more agencies are given power to make rules, determine cases, and issue orders directly affecting the rights and duties of private persons. These are functions ordinarily performed by the legislature and the courts, where highly formal procedures have been developed over the years to safeguard the rights of all concerned. But largely because of the fact that legislative and judicial procedures are so elaborate and costly, it has been found necessary to create specialized agencies to administer many of our modern legislative programs, and to give these agencies power to make rules, determine issues, and render decisions in controversies arising under these programs.

With such agencies the procedures must necessarily be less formal and more expeditious, but there always remains the necessity for retaining sufficient procedural regularity to prevent ill-advised, arbitrary, or irresponsible action. Such is the purpose of administrative procedure legislation. Where the legislature fails to set out adequate procedural requirements in the law creating and defining the powers of an agency, or where such procedures are unnecessarily lacking in uniformity, the matter can be handled either by amendments or additions to the law of the agency, or by general uniform legislation made applicable to all agencies, or to particular activities of all agencies, or to certain groups of agencies having similar functions.

Beginning the Study

In order to ascertain the present state of the law in this connection it was necessary first to make a complete survey of the statutes to obtain a full listing of agencies having quasi-legislative or quasi-judicial powers, and next to make a thorough study of the procedures employed by each of the agencies listed. For this the commission turned to the Institute of Government whose services and research facilities the General Assembly had authorized the commission to utilize in carrying out its work. Since the Institute of Government had already underway a number of studies in this and related fields, the commission received at the outset much of the background material needed in developing its findings on the present state of the law.

The study which the commission thus undertook centered around three major points: (1) the procedure used by administrative agencies in formulating and issuing general rules and regulations, (2) the procedure used by agencies in making decisions that fix or directly affect the rights and duties of private persons, and (3) the procedure available to persons who may seek to have the actions or decisions of an administrative agency reviewed by a court.

The Commission's Approach: Tailoring the Proposals to Meet the Situation

Those who have been studying these problems in other states are in disagreement as to whether it is feasible to attempt in a single act to set up detailed procedural requirements for all agencies in state government. Because the functions and activities of most boards, departments, and commissions are quite diverse, it is difficult to frame a detailed code that would not be frequently inappropriate in practice. For such agencies a uniform procedure act should be couched in broad terms designed merely to establish certain minimum procedural standards that are clearly applicable to all.

But in order to determine precisely what provisions in a general act of this sort would, in every conceivable situation, encourage and not hamper the most desirable agency practices, it is necessary to know in detail the workings of every agency in the state. To gather this information the Institute of Government has for some months been conducting for the commission comprehensive and detailed studies and field work, and the material necessary to frame a general code is largely complete. However, in the time available to the commission it was not possible to complete drafts of proposed legislation covering procedures for all phases of the problem including rule-making, decision-making, and judicial review. The studies revealed that the most pressing need was for a basic law on judicial review, and accordingly, a proposal for such a law was completed with the idea that in the future a corresponding law will be prepared,

keyed to this judicial review proposal, establishing basic procedural requirements concerning such matters as notice and opportunity for hearing, procedure at the hearing, the record of the hearing, rights of the parties, and methods of arriving at agency decisions. In the meantime, the judicial review measure, if enacted, would be extremely helpful in safeguarding against any failure to achieve due process in proceedings before the agencies.

In addition to these diverse state agencies whose procedures are most appropriately dealt with in a general code, we have one group of boards whose administrative functions are quite similar, namely, those agencies that have been created to examine and license persons in regulated trades and professions and which for that reason are usually composed of members of the occupation concerned. As to these boards a more detailed code of procedure would be appropriate, and accordingly the commission is recommending for them a procedure act which is separate from the more general code needed for the great variety of other agencies.

What the Commission Proposes

This summary of the work of the commission explains why the commission has included in its report to be presented to the governor prior to the convening of the 1953 General Assembly two major legislative proposals: the first, a uniform code of procedure for professional and vocational licensing boards; the second, an act providing a method of obtaining judicial review of administrative action of all agencies which are not included in the first proposal and which do not have adequate provisions for such review written into their own laws.

Uniform Procedure Act for Licensing Boards

We now have in North Carolina a law passed in 1939 for the purpose of establishing uniform procedures for licensing boards. Although it establishes the right of license holders to have notice and a hearing before a license can be suspended or revoked by certain boards, and provides for judicial review of board decisions in such cases, this measure has been too limited in its application to achieve its purposes. First, it applies only to about one half of the licensing boards now functioning in North Carolina, and second, it applies to but two of the several forms of board action that may be used to deprive a person of a license. Furthermore, the act has not succeeded in achieving uniformity in procedures even among the boards to which it does apply because conflicting provisions remain in the individual licensing acts.

The measure proposed by the commission would not only take the place of the present "uniform" act, now Chapter 150 of the General Statutes, it would also in specific terms amend the individual licensing acts to remove all conflicting provisions.

Agencies covered. — The proposed act is made applicable to all of the state's twenty-two professional and vocational licensing agencies whose members are practitioners of the occupaton concerned and whose functions are primarily those of licensing and regulating persons in the particular occupation.* This, of course, does not include regular state agencies having an incidental licensing power, such as the Wildlife Resources Commission which licenses hunting guides, the board in the Labor Department that commissions boiler inspectors, the State Board of Health which issues permits to midwives, and the Insurance Commissioner who licenses insurance agents, adjusters, brokers, and others. The procedures of these agencies would, as already indicated, be governed by the more general code of administrative procedure.

Types of board action covered.— The act requires that licensees and applicants for licenses be given notice and an opportunity to be heard in connection with any action of the board that suspends, revokes, or denies renewal of a license, or that denies permission to take an examination for which application has been duly made, or that denies issuance of a license after passage of an examination. This is accomplished by having the board notify the person of the contemplated action and requiring the person to make written request to the board if a hearing is desired.

Procedure before the board. — In cases involving initial licensing, the hearing is to be conducted by the board in the county where the board maintains its office, unless the board and the applicant agree on another place. In cases involving suspension, revocation, or renewal of a license, the hearing is to be conducted by the board or by one or more of its members, in the county either where the licensee resides or where the act or acts complained of occurred. Again, however, the board and the licensee may agree that the hearing be held in some other county. It will be noticed that the board is permitted to assign a hearing officer to a case where the locality of the hearing is inconvenient to the full board. But since decisions can be made only at a meeting of the board at which a majority of the members are present, in these cases members participating in the decision must either have been at the hearing or must have thoroughly familiarized themselves with all of the evidence taken at the hearing.

The act would provide certain basic rights to the person being heard, such as the right to be represented by counsel, to present evidence, to examine opposing witnesses, and to have subpoenas issued for witnesses or documents in his behalf. The board is given enumerated powers necessary to conduct the hearing and is required to keep a full record of the proceedings. Within a stated time the decision containing the board's findings, conclusions, and order must be rendered and served upon the person concerned.

Judicial review.—If the decision of the board is adverse to the person who sought the hearing he may obtain a review of the decision in the superior court by filing a notice of appeal with the board. A copy of this notice and a $200 bond must be filed with the clerk of the reviewing court. The board then must file with the clerk a copy of the record including a transcript of the testimony taken at the hearing. Upon review, the judge considers the case without a jury. He may hear oral arguments and receive written briefs, but will take no evidence not offered at the hearing, except as to errors or omissions in the record. If new evidence is discovered the case may be remanded to the board. If the judge finds that substantial rights of the petitioner may have been prejudiced because the board's determination was defective for any one of several reasons (specifically stated in the proposal), the decision of the board may be modified or reversed by the court. Otherwise the court may affirm the board's decision or remand the case for further proceedings, as the situa-

* Actually there are 23 such agencies, counting both the Council of the North Carolina State Bar and the State Board of Law Examiners. This proposed act would apply to the Council and not the Board, but decisions of the Board would, under a separate commission recommendation, be made subject to full hearing before the Council and to review by the courts.

tion may require. Any party to the review proceedings, including the board, may appeal to the supreme court from the decision of the superior court judge.

An Act for Judicial Review of Administrative Decisions

Outside of the present Chapter 150 of the General Statutes, which, as we have seen, applies to only twelve licensing boards, there is no act of general application in North Carolina establishing a uniform method for obtaining judicial review of decisions of administrative agencies. Such provisions as we have are found in the laws of the individual agencies, and they vary considerably in their form and fullness. In some instances a particular agency such as the Utilities Commission will have a single provision in its law applicable to all of its various types of decisions, establishing the right to review and indicating in detail the procedure to be followed and the scope of the review. In other instances where a particular agency has decision-making power in connection with several different laws, the right to review will frequently be provided as to some of these decisions and not as to others. Very often the statute will make it clear that certain decisions of an agency will be subject to court review but will give no indication as to the procedure to be followed.

Purpose of the act.—The commission was anxious not to interfere with presently established review provisions that have been found satisfactory in practice. Its purpose in the proposed judicial review act is (1) to make clear the right to review in all cases where the administrative decision complained of is of a sort that is required by law (constitution or statute) to be issued after agency hearing, and (2) to establish a procedure for carrying out the judicial review in those cases where adequate procedural provisions do not already appear in the particular law involved.

Coverage of the act.—To achieve this, the act does not name the agencies to which it applies, but gives to every person aggrieved by a final administrative decision a right to judicial review of the decision under the act (1) if the person has exhausted all of his administrative remedies, (2) if the decision is one which is required by law to be rendered after agency hearing, and (3) if adequate procedure is not otherwise provided by statute. The act would not prevent a person from invoking any other

(Continued inside back cover)

Cities Request Two Measures

North Carolina's cities and towns, meeting in session at the annual convention of the League of Municipalities, adopted a limited but important legislative program to be offered to the 1953 General Assembly.

Enforcing Parking Regulations

Traffic surveys over the past few years have pretty well established that congestion in downtown areas can be relieved if there are parking facilities to accommodate the driver. Because few cities have adequate off-street facilities, the main effort of most municipalities is directed toward a constant turnover of the limited number of parking spaces in and near the business district. That is the object of restricted parking areas —one and two-hour zones for example.

No law is effective, however, unless it can be enforced. Parking regulations will not be effective unless parkers know that they will be penalized for violations. Under the law as it now stands, no parker can be convicted for violating a parking ordinance unless there is direct evidence that he himself parked his car and allowed it to remain in violation of posted time limits. The only way in which the police department can now secure this evidence is for a member of the department to observe the driver parking or removing and to confirm that the car is permitted to remain overtime. It is financially impossible for a city to employ enough policemen to actually observe the use of all parking spaces in the downtown area in order to secure this kind of evidence.

In order to enforce parking ordinances without increasing the size of the police force at a cost unfair to the average taxpayer, the cities have proposed legislation which they hope will solve the problem of enforcement. If the bill is approved by the General Assmbly, evidence offered in any court that any motor vehicle was found parked in any public place in violation of some municipal ordinance limiting the time in which vehicles may be parked or otherwise regulating parking, will consititute *prima facie* evidence that the vehicle was parked by the person in whose name the vehicle is licensed or registered by the state.

Municipal officials emphasize two things about the bill. (1) If the owner did not park the car, he can be relieved of liability by proving that he did not park the car in violation of the ordinance. (2) The legislation will apply to *all parking regulations*, not to metered parking alone.

Issuance of Warrants

The second piece of legislation which will be offered by the cities will be a corrective act confirming and specifically stating the power of desk sergeants in police departments to issue warrants.

Alex McMahon, Assistant Director, Institute of Government, speaks to clerks and tax collectors at League of Municipalities November convention in Raleigh.

How Cities Spent Powell Bill Funds

Highway Commission Report Analyses Expenditures for Fiscal 1951-52

by
Earl H. Tyndall, Jr.
Research Analyst
and
James S. Burch
Engineer of Statistics and Planning, North Carolina State Highway and Public Works Commission

Chapter 260 of the 1951 Session Laws, commonly known as the "Powell Bill," provided that one-half of one cent of the State motor fuel tax revenue should each year be allocated to eligible Municipalities in North Carolina for the maintenance and construction of local streets. It also provided that all streets inside Municipalities which form a part of the State System should be "wholly constructed, reconstructed, and maintained by the State Highway and Public Works Commission."

Section three of the above Act provided that each Municipality receiving funds by virtue of the Act be required to file a statement under oath showing in detail the expenditure of funds received and balance on hand. Accordingly, each Municipality filed such a statement with this Division for the fiscal year which ended June 30, 1952, that being the first fiscal year in which "Powell Bill" benefits were available for expenditure.

For the benefit of the Legislature, the various Municipalities, the Highway Commission, and the public at large, this report is being presented to show how much of the first allocation was spent and for what purpose it was expended during the first fiscal year. Also, since the circumstances and conditions vary so violently among the cities and towns of different size, the information was further analyzed according to population groups. The figures used are those which were filed by the Municipalties, the only data supplied by this Division being some interpretation of "purpose of use" for grouping and simplicity.

Procedure

As stated above, each Municipality which received funds by virtue of the Act was required to file a statement regarding disbursements of monies from the allocation. Accordingly, such statements were filed and somewhat roughly audited by this Division. Some statements were returned as they were not "in detail," as required by the Act. Still others were returned for miscellaneous reasons. Those statements which were returned were corrected by Municipal officials and re-submitted. Since these statements were filed at the same time as the qualifying data for the current fiscal year, only a perfunctory check could be made of each statement. The final examination and analysis of expenditures was made at a later date. No audit or comparison with Municipal records was undertaken.

Much preliminary investigation was required, both on the part of the Municipality and the Highway Commission, to determine what classes of expenditure were permissable under the Act. From the outset it was obvious that the Act was lacking in clarity as regards the purposes for which this allocation could be used. The Act stated that the funds could be spent only "for the purpose of maintaining, repaving, contructing, reconstructing, or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenaces." Of course this definition was too broad. Technical and quasi-technical terminology varied from place to place regarding this subject. What was reported as "maintenance," and permissable, in one Municipality might be given a different, and apparently illegal terminology in another town's report.

The only course of action available to interpret and clarify the reports was to rely upon opinions of the Attorney-General. Thus, through the process, most misunderstandings and conflicts of opinion were avoided. Many Municipalities requested opinions from the Attorney-General on specific items, and by the time for filing reports, most of the discrepancies had been clarified. Those items of a perplexing nature which still persisted were solved either by telephone or correspondence between the Highway Commission and the Municipality. The North Carolina League of Municipalities aided materially in this process.

Thus, with 386 cities and towns reporting, the next step in the analysis was to examine and classify each item of expenditure, by population group. In the majority of cases, no question arose as to purpose. However, in a few cases it was necessary to arbitrarily assign the purpose for an indefinite item. For instance, "Labor on Streets" was designed as maintenance. Such cases were not common and the majority of reports were explicit as to purpose. Many indefinite words were interpreted as logically as possible by the writer.

The results of the tabulation are shown in Table I. The tabulation reveals that of the total allocation of $4,543,096.20, the expenditures amounted to $3,088,431.50 or 67.98%, while the unused balance amounted to $1,454,664.70.

Analysis by Expenditure

Before analyzing any of the individual items of expenditure it would be well to note that the expenditures as reported in this summary are only those expenditures which were made with funds allocated under terms of the Powell Bill. All of the Municipalities concerned made expenditures on streets from other local funds, and it should be constantly kept in mind that the expenditures shown in this report *do not represent all of the funds expended for street purposes.*

Stabilization of local streets represents several different classifications of expenditure. In the majority of cases rock or gravel was the stabilizing agent. However, some streets were covered with other types of material, mostly top-soil, sand, and clay. In the western Municipalities, the preferred material tended to be gravel while in the sandy eastern towns, clay was more prevalent.

It will be wise to note that, in many cases, stablilzation expenditures were merely a "stepping stone" to what eventually would become new hard surfacing. Many towns, due to limited funds, were merely stabilizing, with the intent of paving at a later date. In other towns the stabilization was considered as the final step in building improved streets.

One of the major items for which this money was expended was for new hard surfacing. This, of course, was expected, since the lack of suffi-

cient funds for desired hard surfacing has long been the argument of the Municipalities in their fight for additional State funds.

In most cases, the type of surfacing was of the bituminous surface treatment type and high type sand asphalt or other "hot plant mix." In general, the eastern Municipalities used more sand asphalt, while the western Municipalities showed preference for the bituminous surface treatment. As far as could be determined from the wording of the reports, no significant mileage was paved with Portland cement concrete.

The final data show that $785,491.83 was spent for new hard surfacing. This, however, can be modified to some degree. This figure includes only the actual expenditures during the fiscal year covered and does not include any amounts which were committed or encumbered for anticipated paving. In many Municipalities additional paving was under way to be paid for from these funds, but was not reported since actual expenditures had not been made. In other cities, contracts had been let, but the work had not yet been started. Although the Municipalities were not required to report committments or encumbrances, many did include such information in their reports. A total of $193,017.00 was reported as being committed or encumbered for paving. It must be remembered that the above figure represents only those cities which reported such category and it is quite possible and probable that figure would be increased considerably had all the committments and encumbrances been reported.

Additional amounts of paving were realized during the year which could be attributed to the Powell Bill, although the total expenditures were not made from the Powell Bill allocation. Many paving projects were financed jointly by Powell Bill Funds and other funds, particularly from street assessment funds.

In practically every paving project in the larger cities, a portion of the cost of paving was borne by the abutting property owners. This is true to a lesser degree in the smaller towns. Thus, in most paving projects, a portion of the cost was paid by the property owner in the form of assessments, and part by the Municipality, either from the Powell Bill fund or the General fund or both. The portion from Municipal funds paid for the cities' share of paving and for the intersections, (which by law must be totally paid for by the Municipality). Assessments which were paid for paving during fiscal year 1951 amounted to $392,471.36, while additional paving paid for by the Municipalities amounted to $31,544.01. Of course, the above two figures are not included in the amount reported from Powell Bill Funds ($785,491.83).

Maintenance expenditures in fiscal 1951 amounted to $882,222.07 and represented the largest expenditure for any single item. Reporting of maintenance expenditure was perhap more vague than any other item since it could, and did, include purposes of varied natures. Among the items which made up maintenance changes were the following: patching, dragging, shaping, tree trimming, seal coating, or drag seal, landscaping, mowing shoulders; and other items including labor, equipment rental, materials, supervision, gas and oil, and insurance. The larger cities spent, in percentage, more of their money on maintenance than construction, while in the smaller towns the emphasis was on paving. This was to be expected, since the larger cities had proportionally more hard surfaced mileage which perhaps had not been properly maintained due to a claimed lack of sufficient funds. Upon receiving the allocation, most of the larger cities felt it wise to concentrate on maintenance to protect their investment in existing hard surfacing. Generally speaking, the smaller towns, with little hard surfaced mileage, were not faced with this problem, and were free to initiate new improvements.

Another item of expenditure which reached sizable proportions was drainage. Drainage, of course, included ditching, culverts, storm sewers, and miscellaneous piping used to drain water from the street area. The smaller towns concentrated mostly on ditching while the larger cities emphasized expenditures on storm sewers. It was, of course, necessary for the eastern Municipalities to spend more for drainage than the western cities and towns, and this fact was reflected in the expenditure reports.

Equipment expenditures amounted to $215,675.13, and were concentrated mostly in the cities and towns having a population of 5,000 - 25,000. These cities, mainly, have not had as much equipment in the past as was necessary adequately to maintain their relatively large street systems. The larger cities were, generally, fairly well equipped, while the smaller towns had little need for street equipment, and a lack of skilled personnel to man such equipment.

Resurfacing accounted for $327,463.63 of the total expenditures. Most of the resurfacing was in the larger cities, and a good portion was done by force account (i.e. by city personnel) rather than by contract. Some of the reported resurfacing was of such minor significance that perhaps it more closely resembled "Maintenance" than "resurfacing." However, if a city reported these small segments as "resurfacing," they were included in this report as such.

The only other expenditure which accounted for more than $100,000 was for right-of-way. This figure includes not only purchase of land but removal of buildings, clearing of right-of-way, and other incidental expenses incurred during the process of preparing the land for street improvements.

While most of the figure went for projects which were undertaken by the Municipalities, in a few cases there is represented payments to the State Highway Commission for participation in the purchase of right-of-way for projects within the city limits on State System streets.

Several categories which, although small in dollar figures, were prevalent throughout all population groups were widening, curb and gutter, and opening of new streets. Widening was accomplished in a variety of types. In some cases it was merely enlarging radii at corners while in others it constituted a rather large mileage. The materials used in widening varied, and all were reported together. Such materials as asphalt, stone, and earth were used, and in a few instances the width was increased by merely blading a portion of a street which was not travelable. Although traffic congestion was a major reason for the widening, some towns increased width of certain streets in order that they might qualify for Powell Bill aid. (The Act requires, among other things, that a street to be eligible for claim must have an average width of not less than sixteen feet.) Many new streets were opened during the year for the same reason, although some streets were opened due to normal growth and expansion of a Municipality.

Curb and gutter accounted for $97,407.30. The majority of this was placed on existing streets which were either hard surfaced or in the prelim-

inary stages of construction. Most of the curb and gutter was paid for by both the Municipality and the abutting property owners. While all the Municipalities did not report what portion of the projects were paid for by property owners, an amount of $40,936 was reported and is not included in the figure of $97,407.30. Undoubtedly more than this was paid for by the owners but was no reported, as such items were not required to be reported.

The expenditures for grading, bridge construction, and traffic control accounted for $83,373.67. Grading was usually done in preparation for hard surfacing and actually should appear in the "new paving" category. However, since the grading had been completed and the paving had not, it was reported merely as grading, and so recorded in this report.

"Traffic control" consisted of traffic signals, cross walk lanes, traffic signs, painting of center lines and other items of a similar nature.

Bridge construction was a relatively unimportant category, since over 90% of the total was expended by one city, and the remainder by a few towns on crossings at minors streams.

There were several categories which accounted for the remainder of the money which was expended, but none was in significant amounts.

Certain minor expenditures for "top soil" were not identified as to purpose and, lacking knowledge of the intended use, were recorded merely as expenditures for top soil.

The same was true of gas and oil and repairs. In most cases, the charges for gas and oil were included in an overall project such as new paving, maintenance, and drainage. In those cases for which no purpose was shown, they were recorded in this category. Included in this category also were repairs to equipment, all of which were minor in nature.

Engineering which could not be assigned any of the other categories was classed separately, as were all miscellaneous and administrative charges.

Only a very few of the larger cities used any of the allocation for snow removal and in all cases the expenditures were insignificant.

Bridge repairs were rare and consisted mainly of repairs to small wooden bridges.

Map survey expenditures usually represent the amounts of money expended for the mapping and measurement of streets in order to qualify for Powell Bill aid and to prepare basic data for future improvement of the street system.

General Analysis

The analysis of these expenditure statements revealed that of the 386 cities and towns which were benefited by the Act, 82 or 21.2 per cent made no expenditures from the allocation, while 93 or 24.1 per cent completely expended their allocations.

The policies behind the use of these funds varied widely among the different Municipalities. Most cities and towns merely supplemented their annual appropiation with this allocation. Some reduced their General fund appropriation and therefore reduced the actual benefits of the allocation by paring off General fund monies for streets and placing them in other functions. A very few of the Municipalties used the Powell Bill Fund as their only street funds and allocated monies from the General Fund, (which in the past had been spent on streets,) to other services and functions.

That the Powell Bill allocation materially aided the Municipalities is not subject to question. Large cities were able to release more money for badly needed maintenance and relief from traffic congestion. The medium size cities were able to purchase more equipment, to more adequately maintain and improve their streets. Many of the smaller towns were, for the first time, able to spend more than a few hundred dollars on their streets.

As noted above there were 82 Municipalities which did not spend any of their allocation. There are several reasons why this occurred. Of course many of the smaller towns, and one or two of the larger cities, were saving the allocation in anticipation of pooling two or three years' allocation into a single large project. Many of the smaller towns found difficulty in obtaining anyone to do construction work, since allocations were so small. Such small allocations were not large enough to attract competitive bids, and, of course, not large enough to permit a town to hire a sufficient force to undertake the work themselves.

A third reason, as expressed by several Municipal officials to representatives of the Division, was that they were afraid to spend the money for fear that an expenditure would be made which was not in accordance with the Act, making them both criminally and personally liable, if the expenditure were illegal. This argues strongly for complete clarification of the "purpose" portion of the Act.

It appears that expenditures from yearly allocations will be somewhat higher in future years, as the towns accumulate sufficient funds to under-

(Continued Inside Back Cover)

TABLE I

Total Expenditures from "Powell Bill" Funds for Fiscal Year Ending June 30, 1951

386 Towns

Purpose	Expenditures	Percent	Percent
Stabilization	$ 177,121.89	3.90	5.74
New Paving	785,491.83	17.29	25.43
Maintenance	882,222.07	19.42	28.57
Drainage & Storm Sewer	226,814.66	4.99	7.35
Top Soil	1,925.60	0.04	0.06
Map Survey	7,492.66	0.16	0.24
Open New Streets	50,338.98	1.11	1.63
Equipment	215,675.13	4.75	6.98
Right-of-way	113,096.22	2.49	3.66
Bridge Repair	9,385.34	0.21	0.30
Resurfacing	327,463.63	7.21	10.60
Widening	95,782.90	2.11	3.10
Curb and Gutter	97,407.30	2.14	3.16
Grading	20,052.93	0.44	0.65
Traffic Control	29,651.16	0.65	0.96
Adm. & Misc.	3,201.78	0.07	0.10
Gas, Oil & Repairs	4,872.61	0.11	0.16
Snow & Ice Removal	5,458.47	0.12	0.18
Bridge Construction	33,669.58	0.74	1.09
Engineering	1,306.76	0.03	0.04
	3,088,431.50		
Unused	1,454,664.70	32.02	100.00
Total	4,543,096.20	100.00	

93 Cities and towns expended all Powell Bill Funds.
82 Cities and towns expended no Powell Bill Funds.

Cherry Point Zoning Act Invalidated

A decision of more than usual interest to local planning officials and governing bodies was handed down by the state Supreme Court on 29 October 1952. The accompanying article describes the background and the holdings of this case: Harrington & Co. v. Renner, 236 N.C. 321 (1952).

Establishment of the Cherry Point Marine Corps Air Base in a theretofore sparsely populated rural area had the same impact, in exaggerated form, as the location of a major industry would have on any small town. The influx of workers for the base, families of servicmen, and businessmen and tradespeople to serve this new population resulted in a rapid and haphazard development which brought many problems in its wake.

In an effort to solve a portion of these problems, the Commanding Officer of the base, together with the County Commissioners of Carteret and Craven Counties, secured the passage in 1949 of a special act (Sess. Laws, 1949, Chapter 455) authorizing the creation of the Cherry Point Marine Corps Air Station Zoning Commission. This commission was to consist of two members appointed by the Craven County Board of Commissioners, two members appointed by the Carteret County Biard of Commissioners, and one member appointed by the Commanding General of the air base.

The act provided that:

> "The Cherry Point Marine Corps Air Station Zoning Commission shall have the same powers which are given to the legislative bodies and zoning commissions of cities and incorporated towns by Article XIV of Chapter 160 of the General Statutes [the municipal zoning enabling act]: Provided, however, appeals may be had on decisions of the said zoning commission to the Board of Commissioners of Craven County as to any zoning regulations affecting property inside of that county, and to the Board of Commissioners of Carteret County as to any zoning regulations affecting property inside of that county. Each of said boards of county commissioners shall act as boards of adjustment, with the powers and duties prescribed by G.S. 160-178 for boards of adjustment appointed thereunder, and the procedure in such matters shall be as thereby prescribed."

It then went on to outline the boundaries of the areas within which the commission should exercise these powers: which were generally those areas within Carteret and Craven Counties in which most of the development was taking place, particularly along state highway 101 and U.S. highway 70 south of the base.

Under the authority granted by this special act, the zoning commission was appointed and set forth upon its duties. By the fall of 1950 it had completed and adopted a set of zoning regulations for the area. These regulations were submitted to and adopted by the Craven County Board of Commissioners in November, 1950.

1951 Amendments to Act

There was some dissatisfaction with this arrangement, however, and in 1951 a number of amending acts were submitted to the General Assembly. First, Newport Township in Carteret County was removed from the jurisdiction of the zoning commission (Sess. Laws, 1951, Chapter 227) and placed under a newly-created Newport Township Zoning Commission (Sess. Laws, 1951, Chapter 1001). Then a new Havelock Zoning Commission was created to replace the Cherry Point Marine Corps Air Station Zoning Commission, with jurisdiction over all of its former territory in Craven County (Sess. Laws, 1951, Chapter 757).

The Havelock Zoning Commission created in 1951 was to consist of four members appointed by the Craven County Board of Commissioners and one appointed by the Commanding General. It was to have the same powers granted the 1949 commission, except that no provision was made in the act for appealing from its regulations to the County Commissioners other than in their capacity as a Board of Adjustment. The 1951 act provided that "This Act shall not be construed as nullifying any Act or doing of the Cherry Point Marine Corps Air Station Zoning Commission, predecessor of the Havelock Zoning Commission, insofar as such Act or doing may affect land situate in said area."

Apparently, from the Supreme Court's statement of the facts, the new Havelock Zoning Commission did not reenact the zoning regulations for the area within Craven County, but merely allowed the existing regulations prepared by the Cherry Point Marine Corps Air Station Zoning Commission to continue in effect.

Suit for Injunction

Early this year, the defendants of this suit made plans to erect a building to be used for commercial purposes. It was to be situated in a portion of Craven County zoned for residential purposes by the Cherry Point zoning commission. The plaintiff, a corporation owning numerous houses and lots in the district, brought suit for an injunction to halt construction of the building. The Board of Commissioners of Craven County joined this suit as an additional party plaintiff.

The plaintiff alleged that the zoning regulations had been validly enacted under the special acts of 1949 and 1951; that the proposed building would violate these regulations; that the building would damage the use of its property for residential purposes; and that the Chairman of the Havelock Zoning Commission would take no action to halt the construction.

Grounds of Defense

The defendants filed answers and also demurred on four grounds: (a) that the statutes upon which the complaints were based were void for violation of Article II, Section 29 of the Constitution, forbidding special or local legislation in certain designated fields; (b) that the attempt to confer upon the zoning commission the same powers as those given incorporated cities and towns was ineffective and therefore that the zoning regulations adopted by the commission were invalid; (c) that the special acts gave no authority to the plaintiffs to maintain the action; and (d) that the plaintiffs had no other right to maintain the action.

Judge Burney, sitting as the Superior Court in Craven County, overruled these demurrers and continued the restraining order to the hearing. The defendants excepted and appealed. On the appeal, the Supreme Court, in an opinion written by Chief Justice Devin, reversed the lower court and ordered the demurrers sustained and the restraining order dissolved. Harrington and Co. v. Renner, 236 N.C. 321 (1952).

Holding of the Court

The Supreme Court's major holding was that the defendants' second ground for demurrer must be sus-

(Continued on page 15)

Officials Meet In Chapel Hill

Registers of Deeds

A three-day conference of North Carolina registers of deeds convened at Chapel Hill on Tuesday, December 9, at the call of the Institute of Government.

The representation was not confined to any particular region of the State. They came from the seaboard counties of Craven and New Hanover as well as from Cherokee County, beyond the Great Smokies.

From the colonial quiet of the Carolina Inn, the attending registers proceeded each morning, afternoon and evening to the newly completed addition to the law school building, Manning Hall. There they met to discuss their common problems and to compare their practices and procedures.

Responsibilities Examined

As a prelude to a consideration of the various functions of the register of deeds, the conferees entered into a general discussion of the office, laying particular emphasis on the weighty responsibilities and the liabilities to which loose practices or honest mistakes might subject the office holder. This, it was felt, served to emphasize the imporatnce of the ensuing topics on the program and to impress their seriousness more fully upon the newer members of the profession. It also provided the participants with a motive for attacking common problems and a viewpoint from which to consider them.

Early in the discussion, it was pointed out that the official bond of the office offers no protection to the register, himself, from the defaults or mistakes occurring in his office. An extreme range of practice in bonding assistants, deputies and employees as a means of self-preservation was disclosed, running the gauntlet from requiring no such bond at all, through bonding certain deputies in varying amounts, to bonding all employees to the full extent of the register's official bond.

At the close of this discussion, mimeographed lists, containing references to thirty-three different statutes imposing liabilities or penalties for certain acts or omissions, were distributed for the use of the registers in discerning pitfalls, some of which had theretofore escaped their attention or may have been once recognized but later forgotten.

Registration Procedures

The conference next proceeded to an examination of the procedures utilized in the registration of property instruments. In order to establish a basis for comparison, Mr. John H. McAdoo, the long-time register from Guilford County, outlined the steps followed in his office in chronological detail. Both he and Mrs. Eunice Ayers, of Forsyth County, had brought along samples of the various forms used in the recording and indexing procedures for purposes of illustration and comparison.

There was no suggestion of any desirability that the established practices of the various offices be made to conform to any uniform pattern. On the other hand, various devices, designed to expedite the registration process and for the prevention, detection and correction of errors which constitute potential lawsuits, were brought to light and accorded varying degrees of approval among the registers. When it was suggested that

Shown above are most of the officials attending the Registers of Deeds meeting in Chapel Hill. In charge of the meeting was Mr. W. C. Bumgarner, seated at the right, first row.

a particular checking procedure might be unwarranted as constituting more trouble than it was worth, Mr. McAdoo expressed the opinion that there is no such thing as too many cross-checks so long as the possibility of error exists. The registers evidenced general agreement on this point.

This topic of registration procedure carried the conference into an additional evening session after which those who wished attended the annual Christmas show displayed at the Morehead Planetarium, entitled "Star of Bethlehem."

Birth Records

Wednesday morning's session began with a discussion of vital statistics records. It appeared that the plaque of incompleteness of birth certificates, which materially impairs their utility, makes continuous visitation upon all registers without exception. The conditions were reported to be greatly improved, however, in those counties which have eliminated the town and township registrars of vital statistics and are utilizing the county health officer in that capacity.

The most intriguing problem to arise in this connection was that of determining the extent of the authority of the register of deeds to alter or amend birth certificates. Mr. William G. Massey from Johnston County expressed a confirmed opinion that the authority existed to make any verified amendment at any time. Mr. D. T. Townsend of Bladen expressed a no less emphatic opinion holding to the opposite view. Other opinions ranged somewhere in between the two extremes. The ambiguity of the existing statutes on the subject made it impossible for anyone to prove himself right or anyone else wrong. At this point, Mrs. Christine Williams, newly elected to the Duplin office, produced a letter from the State Bureau of Vital Statistics which contained a comprehensive set of instructions on the subject and stated that a vital statistics manual was being prepared for the use of the register of deeds.

Time was not available for any detailed examination of the letter, but the consensus was that the register of deeds should be safe in following the instructions of the state agency which was primarily responsible for the administration of the vital statistics laws. On the other hand, there was unanimity of opinion that, in the process of formulating such a set of instructions, the agency should consult the registers of deeds who are to carry them out as to the practicability of their operation.

Cancellations

Attorney Charles T. Boyd, of the Greensboro Bar, whose efforts of two decades ago culminated in the publication of the first guidebook for registers of deeds, arrived at the meeting during the morning. At the request of the Institute of Government, he had come prepared to advise on the common-law and statutory methods of cancelling and dischargeing recorded real property security instruments. During the afternoon, he led a spirited and enlightening discussion of the subject, and it became apparent that there are some points tucked away in our cancellation statute, discernable only to the most astute reader, which may affect the validity of the cancellation and/or the bond of the register of deeds. It also became apparent that some offices are still permitting invalid cancellations by the beneficiaries under deeds of trust .

The Association

Wednesday evening's session was devoted to the formation of the North Carolina Association of Registers of Deeds. The pressing need for an organization had been apparent to everyone. Many of those who found it impossible to attend the conference had expressed hope that the effort to organize would be sucessful.

In an address before the group, Mr. Massey deplored the fact that the existence of the courthouse janitors was all that prevented the registers of deeds from being the last group to obtain an effective organization. He was also carful to point out, however, that the purpose of organizing is not limited to augmenting the welfare of the officials as a group but extends to increasing their individual effectiveness as public servants.

The officers elected are as follows: President: Mrs. Eunice Ayers of Forsyth; First Vice President. Mr. J. W. Johnson of Cumberland; Second Vice President: Mrs. Margaret B. Moore of Caldwell. Teasurer: Mr. W. G. Massey of Johnston. The Institute of Government was designated to act as secretary, by agreement.

Following the election of officers, a resolution was adopted authorizing the president to divide the state into from five to eight districts and to appoint a chairman in each district. These chairmen were authorized to call district meetings and, together with the elected officers, are to constitute the executive committee of the Association.

The executive committee was designated to act as the legislative committee during the pending session of the General Assembly, and a number of proposals for statutory amendments were adopted for consideration and for transmission to the members throughout the state in order to obtain their reaction and recommendation.

Disposal of Records

Mr. W. Frank Burton, State Archivist, was present at the morning session on Thursday to discuss the "destruction of records." He explained that this was really a misnomer for his topic, that his real purpose was to insure the preservation of valuable records. He pointed out, however, that the steadily increasing volume of the records business, in view of space limitations, requires some action either a continuing program of courthouse expansion or some program for disposing of the worthless records which occupy much of the presently available space. He then presented plans for working out a solution to the problem and offered the aid of his department to any who desire it.

Meeting Adjourned

As the conference came to a close at 11:30 on Thursday morning, all in attendance agreed that it had been an interesting and profitable meeting. They had made it so.

Whatever else the meeting might have been, it would not have been exactly what it was without the participation of the register from Bladen. Mr. Townsend is a forthright gentleman who doesn't pull his punches. During a discussion of one of the gratuitous services performed by most registers of deeds for the purpose of keeping the good will of their voters, someone asked Mr. Townsend what kind of opposition he had for the Bladen office.

"All kinds," he complained. "I've been opposed by everything from the most crippled man to the prettiest widow in Bladen County!"

Arson

North Carolina has pioneered a new phase in the nation's fight against arson and related crimes. On November 5th, 1952, sixty-nine men from nineteen counties all over the state gathered at Chapel Hill for the first annual School For Arson Investigators, Primary Course. On that Wed-

nesday and on the three days following, the group put in twenty-seven hours of concentrated study and discussion of problems encountered in the investigation of unlawful burnings.

The school was sponsored by the Institute of Government in cooperation with the State Department of Insurance.

Although all of the training which the officers received at the School was designed to add to their general efficiency, there were crtain subjects which were aimed at unique problems presented in solving cases of unlawful burnings. These were: "The Law of Arson in North Carolina" taught by Richard A. Myren, Assistant Director of the Institute of Government; "Motives for Arson" taught by H. H. Moore, Manager of the Raleigh Office of the General Adjustment Bureau; "Automobile Fires," a training film and lecture presented by J. H. Clark, Assistant Manager of the Southern Division of the National Automobile Theft Bureau; "Arson Detection by Firemen" presented by Captain Harold Gibson, Winston-Salem Fire Department; "Causes of Fire" by Captain Fred Trulove, Greensboro Fire Department; "Fraud Fires" taught by C. C. Duncan, Investigator, Sorth Carolina Insurance Department; and "What the Solicitor Wants from the Arson Investigator" discussed by Basil L. Whitener, Solicitor from the Fourteenth Judicial District. To give relief from the rigorous schedule of classes and at the same time add to the value of the School, a Hollywood movie, "Arson, Inc." based on the files of an actual police case was shown at one of the evening sessions.

Of more direct general application were the following subjects which were presented to those in attendance: "Scientific Aids and Preservation of Evidence" taught by Richard W. Turkelson, Assistant Director, North Carolina State Bureau of Investigation; "Rules of Evidence for Investigators" by Richard A. Myren; "Expansion of the Investigation" by Richard W. Turkelson; "Cooperation and Coordination" by Charles W. Lewis, Chief of the Investigation Division of the North Carolina Insurance Department; "Interrogation Techniques" by Richard W. Turkelson; and "Courtroom Procedure" by Richard A. Myren.

Conducting this, along with similar secondary and advanced schools, has been taken on as a permanent project by the Institute of Government. It is believed that such a program will bring the best possible training to the greatest number of law enforcement officers in North Carolina at the least expense to the governmental units of the state. It is designed to bring to great numbers of North Carolina officers detailed consideration of not only general investigative techniques but of the specific problems encountered under the laws of North Carolina, which are essentially rural in nature.

The cases which confront officers in North Carolina have many characteristics which are not encountered by big city investigators. Estimation of the amount of tobacco stored in a pack barn which has burned from the amount of ash left is only one example of these peculiar problems. The small expense involved makes it possible for local departments to send several men. The recent school cost the local departments only the price of the man's lodging for three nights, the cost of his meals for three days, and the expense of his transportation. There was no tuition charge.

It is believed that this program of training a great body of local officers in the fundamentals of arson investigation will be appealing to other states. Programs could probably be worked out with University Extension Divisions. The state of Virginia was represented by three men at the recent Chapel Hill School and Georgia sent one representative. The intense interest shown in the School held at Chapel Hill has spurred the planning of ten local schools for the benefit of officers who could not get to Chapel Hill. These one-day schools, which will offer six hours of instruction, will be so arranged as to be within easy reach of every officer in the state. Anyone interested in further details concerning this program is invited to write to Richard A. Myren, Assistant Director, Institute of Government, Chapel Hill, North Carolina.

Zoning

(Continued from page 12)

tained: i.e., that the General Assembly had not validly delegated zoning authority to the zoning commission, and that therefore the regulations upon which plaintiffs relied were invalid. With regard to the other points raised by defendants, the court declared that "It is unnecessary to determine the question debated, whether the Acts of 1949 and 1951 referred to violate Art. II, section 29, of the Constitution," and it stated that "in a suit to restrain violation of a zoning ordinance, both the individual alleging threatened injury to his property and the municipality may be parties plaintiff."

While the court quite clearly ruled that *in this instance* the General Assembly had not made an adequate grant of authority to the zoning commission, it did not spell out its reasons with particularity. For this reason, City and County Attorneys over the state have engaged in a great deal of speculation as to the exact defect involved.

The court first pointed out that in upholding zoning ordinances previously, it had been dealing with ordinances adopted by municipal corporations as an exercise of their police power, under the authority granted by Article XIV of Chapter 160 of the General Statutes (the authority which both special acts involved here attempted to grant to the zoning commission). But, it concluded, "Here no municipal corporation was in existence and none was created by the Act, nor can we conclude that it was within the legislative intent that the Commission it created should possess the functions of a municipal corporation, or exercise the police power of the State."

Does this language indicate (a) that the only defect was in the draftsmanship of the statute, in failing to make clear the legislative intent to delegate the authority to zone, (b) that the nature of this particular commission was such that no delegation of zoning authority could validly be made to it, or (c) that the zoning authority can never be delegated to any body other then a municipal corporation?

First Interpretation

It is difficult to see how the General Assembly could more clearly have stated its intent that the Cherry Point zoning commission exercise at least so much of the police power of the state as is involved in the enactment of zoning regulations. This would seem to indicate that the first alternative was not the basis of the decision.

Second Interpretation

Several factors involved in the case at hand would indicate that perhaps the court was primarily disurbed by the nature of this particular zoning commission. In the first place, it is obvious that the commission possessed none of the attributes of the usual type of legislative body—whether it be a City Council, the governing body of a sanitary district, or the Board of County Commissioners. Its mem-

bers were not elected by the people and therefore had no direct responsibility to the people regulated. Furthermore, under the terms of the special acts, they were not even required to be residents of the area controlled. (It might be noted that the 1951 act establishing the Newport Township Zoning Commission in Carteret County contained a specific requirment that commission members be residents of the area regulated.) These factors are indeed strong reasons for finding that no valid delegation of legislative authority to the commission could be made.

This surmise is reinforced by the attention which the court devotes to the fact that the regulations involved had not actually been *adopted* by more than a portion of the present membership of the zoning commission. This was because Craven County was entitled to only two representatives on the original Cherry Point Marine Air Station Zoning Commission, which had actually enacted the regulations in effect at the time of the case.

A third member of both the original commission and the present Havelock Zoning Commission—the representative of the Commanding General of the air base—was not a resident of the area, being a citizen of Tennessee who resided on the base. Furthermore, he was found by the court to be neither a *de jure* nor a *de facto* member, because of the double office-holding provision of the Constitution (Article XIV, Section 7). While the Attorney General has ruled that a member of the usual zoning commission is a "commissioner for a special purpose" and not subject to this provision (because in theory the ordinary zoning commission exists only to prepare a zoning ordinance for adoption by the City Council), the court ruled here that "the comprehensive nature of the duties prescribed by the Act of 1949, which involve relations with the public and the exercise of judgment and discretion in matters concerning property rights, should bring the members of this Zoning Commission within the definition of public officers." Certainly, the fact (1) that the members were appointed for a fixed term of two years and (2) that (unlike members of the usual zoning commission) they were given legislative authority reinforce this holding. This being the case, a federal officer could not even assume the duties of a member of the commission, according to the usual interpretation of the constitutional provision.

It should be pointed out that the court specifically dealt with the statement in both special acts that "Each member of said commission shall be considered as holding office as a commissioner for special purpose within the meaning of Article XIV, Section 7, of the Constitution of North Carolina, and if any officer is appointed his powers and duties shall be in addition to other powers and duties and he shall serve as an ex-officio member of said commission." The court said, "Declaring it not a public office does not make it so, or render the incumbent immune from the ordinary requirements of public office holding."

Third Interpretation

What about the third alternative? Can the authority to zone ever be delegated to any body other than a municipal corporation? Certainly there is some basis for interpreting the opinion to mean that legislative authority could never validly be delegated to a non-elected body such as a zoning commission. Unfortunately, the court's position in this respect seems to be based in part upon confusion between the situation involved here—where the General Assembly attempted to delegate authority directly to the zoning commission—and the more usual situation where a municipality, in exercising its delegated authority, attempts a *further* delegation to a subsidiary body. This confusion is evidenced by the court's statement that

> "It is the Zoning Commission according to the complaint which under the Act prescribed the regulations now sought to be enforced. In *James v. Sutton*, 229 N.C. 515, 50 S.E. 2d 300, it was said: 'The power to zone is conferred upon the governing body of the municipality. That power cannot be delegated to the board of adjustment."

Obviously, there are many cases in which a direct statutory delegation of legislative authority would be upheld, although a sub-delegation of this authority to some agency not mentioned in the statute would not.

A number of attorneys have been worried about the possible effect of the decision upon acts authorizing the county Board of Commissioners to zone the county. Certainly, if zoning authority can be delegated *only* to municipal corporations, counties would not qualify. As the court pointed out

> "While the General Assembly may delegate power to a municipal corporation to enact zoning ordinances in the exercise of police power of the State . . ., it must be remembered that though counties are bodies politic and corporate, created by the State for certain public purposes, they are not in strict legal sense municipal corporations as are cities and towns, but are rather instrumentalities of the State by means of which the State performs governmental functions within its territorial limits."

However, the court indicated that perhaps it does not mean to go so far in restricting the number of agencies which might be authorized to zone. As to counties, it stated that "Conceding, without deciding, that the General Assembly has the power under the Constitution to empower a County Board of Commissioners to enact ordinances providing for zoning districts in the rural areas of the county, here the Act of 1949 has not done this."

Furthermore, the court found it necessary to point out that the "adoption" of the zoning regulations here by the Craven County Board of Commissioners in November, 1950, had no effect, since the act gave the Board only the functions of (1) appointing members of the zoning commission, (2) hearing appeals concerning the regulations adopted by the zoning commission, and (3) serving as a Board of Adjustment. The purported "adoption" of the regulations fell within none of these classifications. Obviously it would be unnecessary to consider the effect of this "adoption" at all if the County Commissioners could not be granted the authority to zone.

Conclusion

It cannot be determined with certainty which of the interpretations we have suggested is correct. Prudence dictates that the draftsman of any future enabling act in the field of planning and zoning reserve final legislative authority to the *elected governing body* of the territory affected—whether it be the City Council, sanitary district governing body, or Board of County Commissioners. Whether under its opinion here the court will exact higher requirements or place further limitations on the exercise of powers granted by such acts remains to be seen.

Report

(Continued from page 5)

should make it clear that in offering recommendations to the judges of the Superior Court we do not indicate any lack of appreciation of the fine work that our judges do, oftentimes under handicaps that would overwhelm less dedicated men. We know that they share our concern over the lost time and motion in our courts, that they regret, as we do, the inconveniences to which witnesses and jurors are subjected. We propose, as an experiment, therefore, that insofar as it is practical the following steps be tried in the coming twelve months.

1. In all counties wherein the terms of court exceed four terms per year Monday of each term of criminal and civil court in said counties shall be declared by the court as the day when all matters which do not require a jury shall be heard and determitned and that no jurors either grand jurors or petit jurors be summoned to appear on Monday.

2. Attorneys and litigants be informed that no matters requiring any substantial time in which a jury is not needed will be heard except on Monday.

3. In criminal court it is suggested that the Solicitor determine by inquiry of counsel the number of cases in which bills of indictment will be waived so that trial may proceed upon an information; that attorneys for defendants be encouraged to waive bills of indictment and try cases on an information in all cases wherein it is obvious that the grand jury will return a true bill; that insofar as is possible the court will dispose of all cases wherein pleas of guilty will be entered on Monday so that jurors will not be kept idle in court during the remainder of the week while the court is hearing pleas of guilty and that the court make a special effort to encourage attorneys to cooperate in such plan.

4. The Calendar Committee in such counties be authorized to depart from this plan in civil court when it is apparent that the motion docket and the hearing of causes not requiring a jury will not consume the entire day on Monday. In that event it is suggested that where a part of the day will be consumed in the trial of divorce cases only eighteen jurors be required to report on that day, and if it appears practical so to do the motion calendar shall be disposed of on Monday morning and the jurors summoned to appear at 2:30 P.M. for trial of divorce cases.

5. On Monday the calendar in both criminal and civil court be revised with utmost care and caution looking forward to reducing the number of cases marked for trial and marking those for trial which the attorneys know will be for trial by a jury; that the number of cases on the calendar be reduced to the number which the court may reasonably expect can be reached and that no case on such revised calendar shall be continued when the court is in position to try it except wherein the motion for continuance is based on most unusual and unexpected developments such as death or very serious illness of someone closely connected with the case which occurred after the revised calendar was arranged on Monday.

Permit me to close with a note of personal comment. During the period I have served as chairman of the Council I have had full opportunity to observe and appraise the attitude of mind and individual conception of the several members of the Council respecting the discharge of the duties assigned to us. Without exception they have laid aside all personal interest and devoted their time, ability and legal training to an unselfish and high minded effort to ascertain the principal defects in our judicial system and to devise and suggest reforms which will promote the prompt, effective and impartial administration of justice in our courts. Through the work of men such as these, we may confidently anticipate a gradual but assured improvement of our system of judicial procedure. We bespeak the wholehearted cooperation of the members of the General Assembly through whom alone the suggested reforms may be made effective.

Respectfully submitted,

M. V. Barnhill,
Chairman.

Statutes

(Continued from page 3)

Bar Association; Luther E. Barnhardt and Robert Lassiter, Jr., from the General Assembly; Malcolm McDermott, Frank W. Hanft and William C. Soule, from the law schools; and J. Spencer Bell and William Joslin, appointed by the Governor.

The Corporation Law Drafting Committee doing the preliminary research and drafting on the corporation law project is composed of M. S. Breckenridge, E. R. Latty, and Leonard S. Powers. The writer, as Revisor of Statutes, is ex officio secretary of both bodies.

Commission

(Continued from page 8)

judicial remedy available to him under law in cases where this act had no application.

Procedure established. — To obtain review under the act the person must file a petition in the superior court of Wake County stating the basis of his objections to the decision. He also is required to notify the board and other parties of his action. A complete record, including a transcript of testimony taken at the hearing, is filed in the court by the agency. The judge takes no evidence not offered at the hearing, except (1) he will hear oral arguments and receive written briefs, (2) he will take testimony concerning alleged irregularities in procedure before the agency not shown in the record, and (3) if no record was made at the agency hearing, or if the record is inadequate, or if no hearing was held in a case where there should have been a hearing, the judge may hear the matter de novo (or he may remand it to the agency). When newly discovered evidence is presented to the court the case may be remanded to the agency for the taking of such evidence.

The provisions concerning the scope of review and the grounds upon which the judge may reverse or modify the decision of the board are the same as those contained in the procedure act for licensing boards. Any party to the review proceedings, including the agency, may appeal to the supreme court from the decision of the superior court judge.

Continuation of the Work

As was pointed out above, the commission already has in hand a very considerable portion of the research material that would form the necessary basis for recommendations in areas not covered by the proposals just discussed. In order that this and the valuable experience gained by the commission in the past year might be fully utilized, it is being recommended that the General Assembly provide for the continuation of the commission to complete this work.

Powell Bill

(Continued from page 11)

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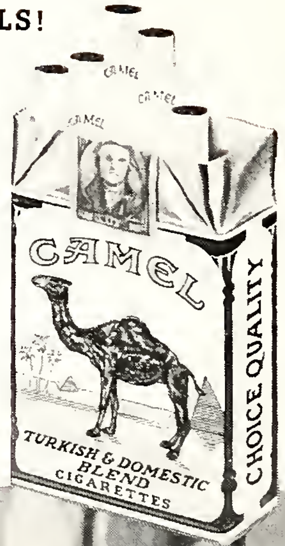

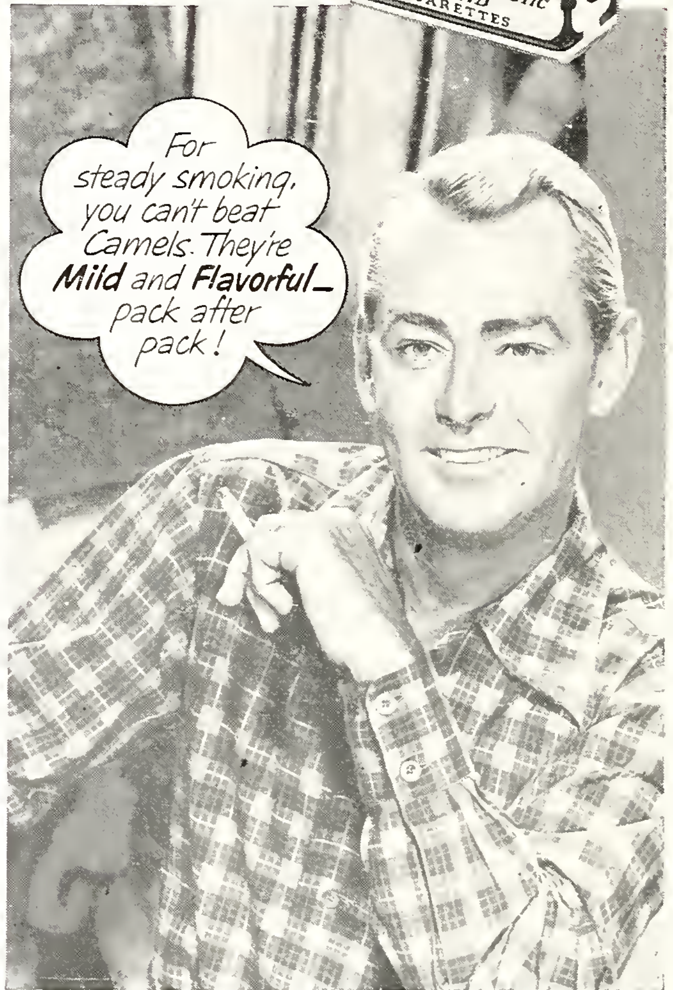

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