

Popular Government

April 1953



*County and City Tax Collectors Annual Conference
April 15 and 16, 1953*

Center group of ladies—seated—left to right: Mrs. Joan Fuquay, Burlington; Mrs. Charlotte M. Cole, Hillsboro; Mrs. Ruth Gregory, Halifax County; Mrs. Doris Billen, Burlington; Mrs. Lydia H. Adcock, Vance County; Mrs. Carrie Mae Robertson, Halifax County; Miss Louise Ballard, Mooresville.

Seated—left of ladies—left to right: R. A. Stancill, Edgecombe County; H. W. Whitaker, Nash County; Carl C. Davis, Orange County; B. T. Collins, Gaston County; H. A. Ingram, Clinton.

Seated—right of ladies—left to right: Plato W. Davenport, Mecklenburg County; C. C. Rich, Wake County; James H. Sherrill, Caldwell County; Cecil W. Hailey, Caldwell County; E. L. Broyles, Hickory; Harry L. Whitener, Hickory; H. L. Lloyd, Henderson.

Standing—left to right: R. E. Pendergrass, Sampson County; H. A. Wood, High Point and Guilford County; J. W. Hayworth, Guilford County; D. Allen Wiggins, Sampson County; Marvin McIvey, Burlington; W. A. Mickle, Forsyth and Winston-Salem; R. A. Sorrell, Durham; E. T. Moore, Edgecombe County; A. E. Garner, Randolph County; John T. Beam, Gastonia; Charles F. Hughes, Asheboro; J. C. Ellis, Nash County; Rex Bridges, Rutherford County; D. G. Cogains, Montgomery County; A. D. Bunn, Nash County; M. V. Pendergrass, Durham County; W. T. Mason, Greensboro; Robert J. Miller, Davidson County; W. N. Moore, Greenville; R. H. Martindale, Hamilton Lakes; W. D. Lee, Jr., Cabarrus County; M. L. Peel, Martin County; E. F. Warren, Lenoir; Wm. M. Avery, Burke County; A. B. Harrington, Sanford; T. M. Condon, Hertford County; C. N. Alston, Concord; L. D. Brown, Smithfield; Robert S. Gidney, Cleveland County; Neal Thompson, Surry County; C. E. Moss, Halifax County; S. C. Tillman, Person County; John McGwigan, Halifax County; Joseph D. Drewett, Northampton County; W. F. Hester, Guilford County; J. P. Brown, Asheville and Buncombe County; Cecil H. Frye, Stokes County; W. G. Royster, Henderson.

PUBLISHED BY THE INSTITUTE OF GOVERNMENT

UNIVERSITY OF NORTH CAROLINA

Chapel Hill



TABLE OF CONTENTS

THE CLEARINGHOUSE	.....	1
Notes from North Carolina Cities	.....	1
Notes of Interest to North Carolina Counties	.....	4
THE CAPITAL EXPENDITURES BUDGET	.....	5
THE SUPREME COURT DECIDES	.....	9
BOOKS RECEIVED	.....	9
THE ATTORNEY GENERAL RULES	.....	10

COVER

Every year tax collectors from the counties, cities, and towns of North Carolina meet at the Institute of Government in Chapel Hill to discuss mutual problems. This picture shows the collectors from some seventy-five local units who attended the most recent session on April 15 and 16. This group was one of the first to join the Institute of Government's program. For full afternoon, evening, and morning sessions these officials studied, heard lectures, and worked together on legal and administrative problems connected with their important work.

THE CLEARINGHOUSE

NOTES

From North Carolina Cities

Municipal Elections

With the 1953 legislative session drawing to a close, public interest is beginning to turn to the impending municipal elections. **Gastonia** voters warmed up this month by deciding, 2,045 to 1,958, to adopt a modified ward system of choosing City Council members. Under the plan, which was adopted after a hard-fought political battle, at least one councilman will be chosen from each ward, although there will be a city-wide vote. The city had last used the ward system 34 years ago. **Rocky Mount** and **Winston-Salem** are the only other cities over 25,000 in the state using this system.

A number of other communities have modified their election procedures. **Lucama** will hold its first election in history this spring, after years of functioning under a convention system. **Wendell** has abandoned the convention system of nominating candidates, in favor of a municipal primary.

The season has also been marked by announcements from a number of long-time civic leaders, taking themselves out of the forthcoming races. Among the veterans stepping out are **Peter E. Shields**, who has served on the **Scotland Neck Town Board** for 20 years and **O. B. Reitzel**, mayor of **Siler City** for 16 years and town commissioner for the past four years.

See "Municipal Election Procedures," on page 10, a collection of recent rulings of the Attorney General which will be helpful to municipal officials preparing for the coming elections.

Annexation

Durham's City Council has voted in favor of a proposal to extend the city limits and has appropriated \$4,850 from non-tax revenues to a local advertising firm to present the facts about annexation to residents of surrounding areas. The council also de-

cidied (a) to omit tobacco warehouses from the area to be annexed, (b) to refuse to extend any water or sewer services outside the corporate limits except in "unusual cases of hardship," pending decision on the issue, and (c) to hold an election only for residents of the areas affected, unless it receives a petition from 15 per cent of the registered voters inside the city. City Council members have been attending meetings of residents of the affected areas so as to explain the advantages and disadvantages of annexation.

The **Forest City** Board of Commissioners has given notice of its intention to extend the city limits along highway 74 west of town for one and one-half miles and for one-fourth of a mile on each side of the highway. It would be the first such extension since 1901 . . . The **North Wilkesboro** Chamber of Commerce has sponsored a public hearing on the annexation of the Fairplains community along highway 18 north of the city, pointing to the need for expansion in order to attract further industry . . . Residents of a large area outside **Clinton** voted 154 to 49 in favor of annexation at the close of a public meeting called to consider the question. The proposed annexation, which would be the first in 40 years, would almost double the town's population.

Raleigh has adopted a new policy to encourage annexation of subdivisions adjacent to the city as they are developed. Under the policy, the city would enter an agreement with the developer setting forth the responsibilities of each. The developer would install water and sewer mains and grade streets; the city would share costs of water mains over 8 inches in size and costs of street improvements in accordance with its existing policies.

Planning and Zoning

Raeford's Planning and Zoning Commission has called a public hearing for April 16 to consider a new zoning ordinance for the town . . . Both the **Greensboro** and **Durham**

Planning Boards have been presented with rezoning proposals designed to permit the establishment of new shopping centers . . . **Dunn's** newly-organized Planning Board has decreed that there shall be no more dead end streets and circles in new subdivisions . . . **Hickory** and **Longview** have decided not to create a joint Planning Board but to coordinate their zoning plans for adjacent areas . . . **Raleigh** has amended its subdivision ordinance to require 66-foot, instead of 60-foot rights-of-way for commercial streets in subdivisions and to require developers to install street signs.

Fire Protection

Louisburg's volunteer firemen have presented the town with a new panel truck for use by the rescue squad. Money for purchase of the truck was raised by shows and carnivals sponsored by the department . . . The **St. Paul's** fire department is raising funds for purchase of a resuscitator . . . **Chapel Hill's** new \$16,000 750 g.p.m. pumper is slated for delivery this month . . . **Franklin** has advertised for bids for a new fire truck . . . The newly-organized **Pleasant Garden** volunteer fire department has purchased a second-hand truck from **Mayodan**.

Statesville's fire and police departments expect to occupy their new \$110,000 building this month . . . A committee of **Franklin** aldermen has been appointed to consider plans for erecting a new city hall which would house the town office, police department, and fire department . . . The **Red Springs** Town Board has made plans for construction of a new fire station.

A mutual assistance program is being established for fire departments in 22 western North Carolina counties, under the sponsorship of the newly-formed Western North Carolina Firemen's Association . . . The **Dunn** City Council has voted that volunteer firemen in the town department will not be paid for out-of-town calls until the person calling for assistance pays the town's \$100 fee for such service. The firemen were given the opportunity to vote against any more out-of-town service . . . **Louisburg's** new rural assistance program is off to a good start. Up to March 1 yearly fees of \$10 had been

received from 54 property owners within a five-mile radius of the town.

As a result of the disastrous waterfront fire of last month, the Coast Guard is conducting an intensive investigation into waterfront fire fighting systems in **Wilmington** . . . **High Point** has established two new positions in its fire department: a director of the fire prevention bureau and a supervisor of fire training. Both positions will have salary ranges from \$285 to \$315 per month . . . The **Winston-Salem** Fire Department has issued a printed report for 1952 in booklet form . . . **Hickory** has leased its oldest fire truck to the adjacent town of **Longview** for \$5 per year.

Recreation

Siler City has created a Park and Recreation Commission to supervise the town's parks and its planned new swimming pool. The five members will be nominated by the town's five civic clubs and will serve two-year terms without pay . . . Recreation bodies in **Durham**, **Charlotte**, and **Waynesville** have been considering the making of long-range recreation plans for their cities . . . **Kinston** has decided to turn over operation of the concession stand in its park to the Recreation Commission. Previously it had rented the stand to private concessionaires.

Statesville has selected architects to prepare plans for two new swimming pools and two new recreation buildings, one for each race, authorized by voters in a \$230,000 bond election . . . Contracts have been awarded for construction of a new swimming pool at the **Hickory** community center. A tentative completion date of June 1 has been set for the project . . . The **Lumberton** City Council has received a petition for a \$225,000 bond election. Proceeds would be used for a swimming pool and a community center.

Streets and Traffic

City Manager John M. Gold of **Winston-Salem** has appointed a seven-man committee to formulate long-range plans for the city's street system. The committee will be headed by a traffic consultant retained by the city and will also include the police chief, the police traffic lieutenant, the director of the City-County Planning Board and his assistant, the chief city engineer, and the director of public works. The

group will prepare a five-year program of street improvements, will deal with particular major traffic problems, and will coordinate the efforts of the Planning Board, Police Department, Engineering Department, and Public Works Department. It will also serve as a specialized advisory group for the Capital Improvements Committee, which is preparing a long-range capital budget for the city.

Charlotte's new one-way street system has resulted in increases of from 8 per cent to 275 per cent of traffic volumes on the component streets, according to counts made by the traffic engineering department . . . **Newton** will synchronize the traffic lights in the center of the city as soon as equipment is received . . . **Winston-Salem's** Aldermanic Public Works Committee has recommended that the city adopt concrete posts for its street signs . . . Civic clubs in **Kernersville** are providing similar street markers as a part of a street marking and house numbering campaign . . . **Durham's** City Council has raised the ordinance penalty for failure to observe stop signs from \$5 to \$25.

Hazelwood has called a \$25,000 street bond election for April 28. The funds would be added to Powell Bill funds to complete paving all streets in town. There are presently some 7 miles of unpaved streets . . . **Albemarle** will begin paving 6.4 miles of streets this spring . . . With the opening of the new **Lexington** bypass, **Salisbury** officials have begun negotiations for a similar bypass route . . . **Durham** is planning to expand its beautification program for highways leading into the city, with the cooperation of the State Highway Department and local civic groups. . . . The State Highway Department will conduct an origin-destination survey in **Raleigh** this month.

Public Improvements

Charlotte officials have been struggling with the problem of how to proceed in the face of bids for their proposed auditorium and coliseum which exceeded funds on hand by \$105,000, with an additional estimated \$1,000,000 needed in order to furnish and landscape the structures . . . **Durham** has advertised for bids for a new elementary school for Negroes . . . The **Wilmington** school board has received bids on a

\$1,000,000 high school utility building, whose auditorium may be used for public functions . . . **Asheboro's** school board will receive bids on a similar structure this month . . . **Concord** is planning a new city hall . . . The **Edenton** Town Council has voted to purchase two sections of bleachers for the local athletic field . . . **Hickory** has hired architects to prepare plans for a new airport administration building.

Parking

Albemarle has been given the use of a large lot for off-street parking. The lot, owned by a local church, contains room for approximately 100 parking spaces . . . The owner of **Wilson's** only off-street parking lot has exercised his option to regain it from the city and will use it for building purposes . . . **West Jefferson** has switched from one-cent to five-cent parking meters and has abandoned the use of courtesy parking tickets. Violators will now be given citations to appear before the Mayor's Court or pay a one dollar fine within 24 hours . . . Chief A. A. Privette of **Wilson** reported approximately 23,000 fines were paid for parking violations in his city last year. **Raleigh** Police Chief Tom Davis reported 21,000 tickets were issued in one three-month period last fall, of which 3,264 remained unpaid due to the uncertainty of enforcement after the recent Supreme Court cases.

Public Utilities

Draper voters have approved issuance of \$270,000 of bonds for a public water system and \$350,000 for a sanitary sewer system, but they rejected a \$95,000 bond issue for a new city hall . . . **Gibsonville's** voters have authorized issuance of \$80,000 of bonds for construction of a new 125,000 gallon water tank, extension of water mains, installation of additional fire hydrants, and purchase of a new power pumping unit, and \$18,000 of bonds for extending the sanitary sewer system . . . **Elkin** has awarded contracts for a new 1,000,000 gallon water tank . . . **Waynesville** officials have received bids on the initial projects in a \$300,000 expansion program for the town's water system . . . Work has begun on a new sewer line in **Scotland Neck**.

Winston-Salem has received a new contract from Duke Power Company authorizing it to take up to 40,000,000 gallons per day (rather than 20,000,000 as formerly) from Idol's Pond on the Yadkin River. The city has also received bids on \$800,000 worth of water and sewer extension projects . . . **Thomasville** and **Lexington** officials have been making plans to dam Abbot's Creek so as to create a joint water supply lake. The project would cost an estimated \$400,000.

The **Chapel Hill** Board of Aldermen has refused to approve distribution of natural gas through existing gas distribution system without agreement on a new franchise . . . **Kinston** has called for bids on new generating facilities which will raise the output of the municipal power plant from 17,500 kilowatts to 26,000 kilowatts . . . Construction is expected to begin this month on a telephone system for **Rosman**. An automatic dial exchange will be installed . . . **Rocky Mount's** aldermen have voted to issue \$95,000 of bonds for extension of the water and sewerage systems.

Health and Sanitation

Claremont has established a garbage-collection fee of \$.25 per month. The fee will be collected every two months and will be included in water bills . . . **Elizabethtown** will begin twice-weekly garbage collection in residential areas this month. Future collections will be made only from the front curb, and residents must remove the empty containers within 24 hours after collection.

Work will begin soon on a new dog pound for **Wilmington** . . . A new **Winton** ordinance requires dog owners to register their pets this month. Unregistered dogs will be picked up. Owners may reclaim them within a week, on payment of a \$5 fine; if there is no claimant within that time, the dogs will be destroyed . . . **Wallace** citizens have been advised that a similar ordinance will be vigorously enforced this spring . . . **Louisburg** and **Durham** City Councils have instructed city officials to take measures against stray dogs.

Miscellany

Civil defense has taken on new meaning in **Winston-Salem**, where 25 air-raid sirens were installed last

month. The federal government paid one-half the cost of the sirens, with the city and county sharing the remainder . . . The **Durham** civil defense director has announced plans for establishment of an office with a full-time secretary . . . **Dunn** and **Durham** officials have been revising their codes of ordinances . . . The **Wilmington** City Council has authorized the City Manager to poll city employees as to whether they would prefer to begin work an hour earlier during the summer and quit an hour earlier.

Greensboro has adopted an ordinance requiring inspection of buildings to be moved, a police escort during the moving, and the presence of an electrician representing Duke Power Company during the move. Where the moving is along a street or sidewalk,

a minimum fee of \$7.50 would be charged, together with \$7.50 for each 50 feet moved. When buildings are moved on rubber-tired vehicles, the fee is \$20 for the first mile or part thereof and \$5 for each additional mile.

Southern Pines voters will decide April 15 whether to switch to a city manager form of government . . . **Durham** has adopted an ordinance making it illegal for taxicabs to park and receive calls outside of designated taxi stand areas, with provision of \$10 fines for violations . . . **Raleigh** has adopted an ordinance making it unlawful for an ambulance to answer an emergency call without first securing permission from the city police department. The ordinance cites the dangers from several such vehicles racing to the same accident.

Police Notes

Chief Bernice Cameron of Carthage was shot and killed early in the morning of March 16th, while investigating a filling station disturbance. Chief Cameron was forty-eight years old at the time of his death, and had been a police officer for eight years. He had been chief for seven years. He was a native of Moore county, and had been a guard at the Moore county prison camp prior to joining the police force. He leaves a wife and one daughter.

Personnel notes:

William H. Liles has been appointed acting chief of police in Bailey until a permanent successor to former chief P. K. Reams can be named. Acting chief Liles has had eleven years of law enforcement experience, and before his appointment served as constable. Mr. Reams resigned to become a deputy sheriff.

William D. Berg, chief of police at Mooresville, has resigned to accept a position with the N. C. Department of Motor Vehicles. Named to succeed him was Robert C. Dyson. Chief Dyson has served on the Mooresville force since May of 1948. He had a distinguished Army career, being discharged with the rank of sergeant after winning the Bronze Star and the Silver Star for gallan-

try in action in the European Theatre of Operations.

A course in police administration conducted by the ICMA has recently been completed by the top commanding officers of the Greensboro police department. Director of Public Safety W. H. Reeves, Chief Jeter L. Williamson, Jr., Captains T. A. Trulove, W. B. Hall, A. F. Caudle, and P. B. Calhoun, and Lieutenants W. A. Burch P. D. Browning, and R. F. Sink were awarded certificates by Mayor Robert F. Frazier at a meeting of the city council. Mr. Reeves recently commented, "This course certainly proved to be worthwhile and I will certainly recommend it for consideration by any police department."

Chief C. E. Newton of Southern Pines and Deputy Sheriff A. F. Dees were cited on the "Official Detective" program on February 19th for their outstanding work in solving a murder which occurred last November. The officers were presented with gold watches by the sponsors of the program.

Wilmington's new women police officers have assumed their duties as school crossing guards. Chief J. J. Padrick said the women are doing a good job.

NOTES

Of Interest To North Carolina Counties

Fire Protection

Rural volunteer fire departments in Mecklenburg County have qualified for fire insurance rate reductions which are expected to save residents of the areas they serve \$200,000 annually. To comply with the requirements of the North Carolina Fire Insurance Rating Bureau, the county officially recognized the volunteer departments as county departments (under Section 153-9(39) of the General Statutes), delineated areas to be served which were not more than three all-weather road miles from the station of each department, and set minimum standards for equipment and personnel. The county recognition also enabled the departments to participate in the Firemen's Relief Fund, to receive workmen's compensation coverage on payment of token salaries, and probably to enjoy governmental immunity against tort liability for damage committed in the course of fighting a fire. The county furnished volunteer departments with two-way radio equipment and pays them \$100 a month.

New Jersey Considers New Tax Value Definition

New Jersey is a "property tax state" in which taxpayers have to weigh "the disadvantages of their higher property tax bills against the advantages of not being required to pay . . . individual income taxes and general consumer sales taxes." This makes the property tax there a source of more acute state concern than in North Carolina. Yet a recent *Tax Review* condensation of the New Jersey Commission on State Tax Policy's report on the property tax in that state presents ideas that North Carolina local and state officials will find extremely interesting.

Finding that tax administration now in use in New Jersey is based on "the qualifications and duties of a local assessor in 1716," and that the responsibilities of the taxpayer to cooperate in attaining proper as-

essment of his property "are no greater today than they were in 1759," the Commission summarized its criticism of the tax in New Jersey as follows:

- (1) The burden of the general property tax, on a state-wide basis, is about equally divided between homeowners and business.
- (2) Commercial and industrial real estate is generally assessed at higher ratios to full value than is residential real estate.
- (3) Gross inequalities in individual assessments are widespread.
- (4) Heavily taxed real estate is not necessarily found in municipalities with high tax rates.
- (5) New Jersey taxes on residences are almost double the national average.
- (6) In the case of residential properties, there is clear evidence that the assessment of land is at a substantially higher ratio to fair value than the assessment of buildings.

It should be observed that these conclusions were based on a state-wide study of averages. No such study has been prepared in North Carolina, but there is considerable doubt that all of the same conclusions would apply in this state. Nevertheless, North Carolina property tax administration on a state-wide basis is unquestionably subject to equally valid criticisms even if they are not the same ones.

The New Jersey Commission recommendations view the concept of "value" as the key to the present state of the property tax and suggest a new approach to value definition. The pertinent suggestions can be summarized as follows:

With respect to *real property*—land, buildings, and improvements—

(1) Except for new construction, additions, abandonments, and improvements, revaluation should be conducted every two years.

(2) As applied to *building and improvements*, "true value" should be ascertained by taking the *average* of (a) reproduction cost less depreciation and (b) the gross actual or imputed rental value of each property.

"Reproduction cost" would be determined according to the average level of construction costs during the five-year period immediately preceding the year in which the revaluation is made. "Depreciation" would be allowed in accordance with standard tables applicable to the whole state, and would take into account the actual use experience with different classes of buildings. In no event would depreciation exceeding 80% of reproduction cost be allowed so long as a building is in use.

(3) Assessment ratio: As to real property, the state legislature could provide for the assessments to be made at 50% of the "true value" valuation determined as suggested above. This ratio would apply to all counties.

(4) Role of the taxpayer: The state statutes would be amended to require every owner of real property, under a proper penalty, to file a *confidential* informational return with the county assessor, setting out:

- (a) The original cost of his property
- (b) The date of the construction of any buildings on property
- (c) The dates and costs of additions and modifications
- (d) Annual gross rentals from income-producing properties
- (e) The consideration paid when the property was last sold
- (f) Insurance coverage (exclusive of land and foundations)
- (g) If the property is currently for sale, the price at which it is offered, together with all encumbrances.

With respect to *personal property*—

(1) Personal property, like real property, would be revalued biennially.

(2) Taxation of household goods and personal effects would be abolished.

(3) The following types of personal property would be assessed for tax purposes at a stated per cent (unspecified) of *average book value* during the year: raw materials, goods in the process of manufacture, finished goods, and stock-in-trade.

(4) The following types of personal property would be assessed for tax purposes at a stated per cent (unspecified) of *book value*, allowing for *normal depreciation*: machinery and equipment.

Analysis of these recommendations concerning "value" indicates that they would not meet North Carolina's Machinery Act definition of
(Continued on page 12)

The Capital Expenditures Budget

How Cities May Efficiently Schedule the Construction of Public Facilities

Newspaper accounts in recent months have heralded the establishment of a new feature on the North Carolina municipal scene: the capital expenditures budget. Several of the major cities in the state, headed by Winston-Salem, have created Capital Improvements Committees or similar groups charged with the creation of such a budget. Because this represents a significant step in the movement toward more business like procedures in municipal government, it is worthy of examination at some length.

What is the capital expenditures budget? In brief, it is a planned program for the furnishing of public improvements. It is a priority list, prepared against a background of the city's general financial situation, of projects which are to be carried out in furtherance of the city's development. It is not a means of encouraging a city to spend more on grandiose projects than it can afford. Rather it is a means of guiding the city's normal improvement program along desirable channels and insuring that it is carried out in an orderly fashion.

Probably the most prevalent type of capital improvements budget among American cities consists of three parts. The first is a very detailed program of projects to be undertaken during the coming year. This is a part of the usual budget approved by the City Council each year as a control over expenditures by the various operating agencies of the government. The second part of the capital expenditures budget is a somewhat less detailed list of projects, with priorities assigned, to be undertaken during the following five years. While this period is selected arbitrarily, it has been suggested by the National Resources Planning Board as the most convenient planning period, in view of the uncertainties which arise when plans are projected further into the future. These first two parts of the capital budget are quite commonly referred to as a "Six-Year Capital Improvements Program." The third part of the budget consists of a listing of projects, usually without priority, to

By

Philip P. Green, Jr.

Assistant Director
Institute of Government

be undertaken at some time after the six-year period. These projects will ordinarily not be planned in detail but will constitute a store of projects from which subsequent six-year programs may be drawn.

In operation, the capital expenditures budget is reviewed at the end of each year. Some projects are selected to be undertaken during the coming year, others are moved up on the priority scale, some may be dropped, and others may be added to the six-year program. Thus, at any given time there will always be a sizeable backlog of projects waiting to be accomplished, and more-or-less detailed plans will always extend approximately six years into the future.

Advantages of Budgeting

The advantages to be gained from such programming are obvious, and in action they constitute much of the justification for the whole planning program. The capital expenditures budget forces personnel of the operating agencies of the city government to look toward the future and to anticipate their needs before they are upon them. Annual review insures that each project will be examined a number of times, so that hasty, ill-considered projects will gradually be eliminated. In the event of sudden needs, such as an economic depression, there is always a store of planned projects from which to choose work for the unemployed.

Various economies will result from the use of the capital expenditures budget. The need for land as sites for various improvements can be anticipated, and the land may be purchased at a time when it is cheapest. Engineering plans may be prepared well in advance. Work can be timed so as to utilize pieces of major equipment on successive projects, preventing situations in which several such pieces are needed at one time and all are idle at another. A series of

major projects may justify purchase of equipment which would have to be leased at a high rental for individual projects. Projects may be scheduled for slack periods in which there is a labor surplus, due to seasonal unemployment.

Other advantages result from early planning. Where enabling legislation is required for a particular project, it can be prepared and presented for the General Assembly's approval well in advance of the date for beginning work. Expenditures may be timed so that they will not unduly upset the city's financial picture at any given time—and budgets have even been used to convert the city to a "pay as you go" policy. The engineering and planning staffs, with a steady and assured work program ahead of them, may budget their time accordingly, eliminating to a large extent the swing from "rush" periods in which additional part-time workers must be hired to "slack" periods in which they must be discharged.

Not the least of the advantages of the capital expenditures budget, however, is its effect upon the public generally and upon special-interest projects. All too many civic improvements are the result of sudden pressures engendered by interested groups, and quite frequently they have detrimental effects upon the city's finances if not upon the land use pattern of the city for the future. When there is a carefully planned capital expenditures budget which takes into account all the needs of the city as a whole, it is far easier to counteract the pressure of special-interest groups.

Organization for Preparing the Budget

The making of the capital expenditures budget may be handled in any number of ways. Some cities may prefer to give the City Manager or the City Clerk the sole responsibility for preparing the budget. In other cities the City Council may do the work itself. In some cities an informal committee made up of the City Manager, the financial officer, the planning director, and possibly the heads of

the various operating departments may lay the groundwork. Or the Planning Board may be given the task of over-all supervision of the project. Regardless of the way the job is handled in a particular city, the Planning Board should be called upon to make recommendations at some stage in the process of making the budget. For the purpose of convenience, we shall refer in this article to the budget agency as the Budget Committee.

The making of the budget is ordinarily handled in the following sequence: (a) a list of needs is prepared and kept current, (b) a study is made of the city's finances, and (c) a feasible program of improvements is selected from the "needs" of the city in light of the city's probable future financial resources.

Preparing the List of Needs

The initial step in preparing a capital expenditures budget is to find out what things need to be done. The City Manager should require that each department head prepare and submit a list of all major projects which he believes his department will have to undertake within the next 20 years, with particular emphasis upon those which he can foresee during the next six years. This list should include new facilities, facilities which must be replaced, facilities which must be enlarged or otherwise modified, and facilities which will require major repairs. While the list will pertain chiefly to fixed installations such as schools, fire stations, street payment, etc., it should include such major items as fire engines also. More routine expenditures for such things as police cars, replacements for office furniture, etc., would not ordinarily be included.

A simple way of collecting and filing such data is to require the use of individual project forms. These forms would describe the project; give the justification for it; estimate the cost (including site); estimate annual costs for staff, maintenance, further improvements, etc., which would result from the project; give the status of any plans for the project; estimate the construction period; specify the proposed manner of construction; and give the year proposed for construction.

If such a form is turned in by department heads whenever a project is suggested, it will enable the Budget

Committee to keep a continuous inventory of needs of the various departments. In addition, the Committee should encourage various citizens' groups to make suggestions, and it should ascertain from the Planning Board what other projects might be necessary to further its plans.

At the appropriate time each year, the Committee should request that each department head review the projects relating to his department and assign the priorities he thinks they should have, so that it may have a more complete picture of how pressing the various needs are. It may then list all suggested projects, showing departmental priorities.

Studying the City's Finances

Simultaneously with the gathering of data as to needs, the Budget committee should be gathering data as to the resources available to pay for the filling of those needs. In most cases the city's financial officer, whether he be known as the City Clerk, the City Treasurer, the City Accountant, the City Finance Officer, or by some other title, will possess both the information and the knowledge required to prepare such a study. Since all budget matters are of great concern to him, he will probably wish to play a leading role in the preparation of the capital expenditures budget. The Planning Board may assist him in such matters as the preparation of graphs and the estimation of probable future conditions.

It has been suggested by the National Resources Planning Board that in order to prepare a rational capital expenditures program, the agency preparing it must have a reasonable estimate of the operating expenditures which the city will be called upon to make during the same period. Likewise, the annual expenditures for the purpose of debt service (interest and amortization of outstanding bonded indebtedness) must be taken into account.

For that reason, data must be taken from the account books or from the historical section of the annual budgets to show how expenditures for each of the various operating departments have expanded or declined in the past. These expenditures may be shown in the form of graphs. In light of past trends and the predictions which are possible on the basis of the land use plan for the city, population estimates, and the econo-

mic development plan, predictions should be made as to operating expenses for the various departments in the future.

Similarly, a graph may be prepared showing the total outstanding bonded indebtedness of the community in the past, and accurate predictions may be made concerning the manner in which this will decline if no further obligations are incurred. In conjunction with this, a graph may be prepared to show the historical and future picture as to annual debt service requirements.

Next, consideration may be given to the financial resources of the community. Of primary interest, of course, is the assessed valuation of property within the community, since its chief source of funds is the ad valorem tax. Trends in this valuation may be shown in a chart, with future predictions based upon historical trends and upon the Planning Board's data as to the probable future development of the city. The tax rate may also be shown on this chart, with predictions based upon historical trends and upon the expressed policies of the city's governing body.

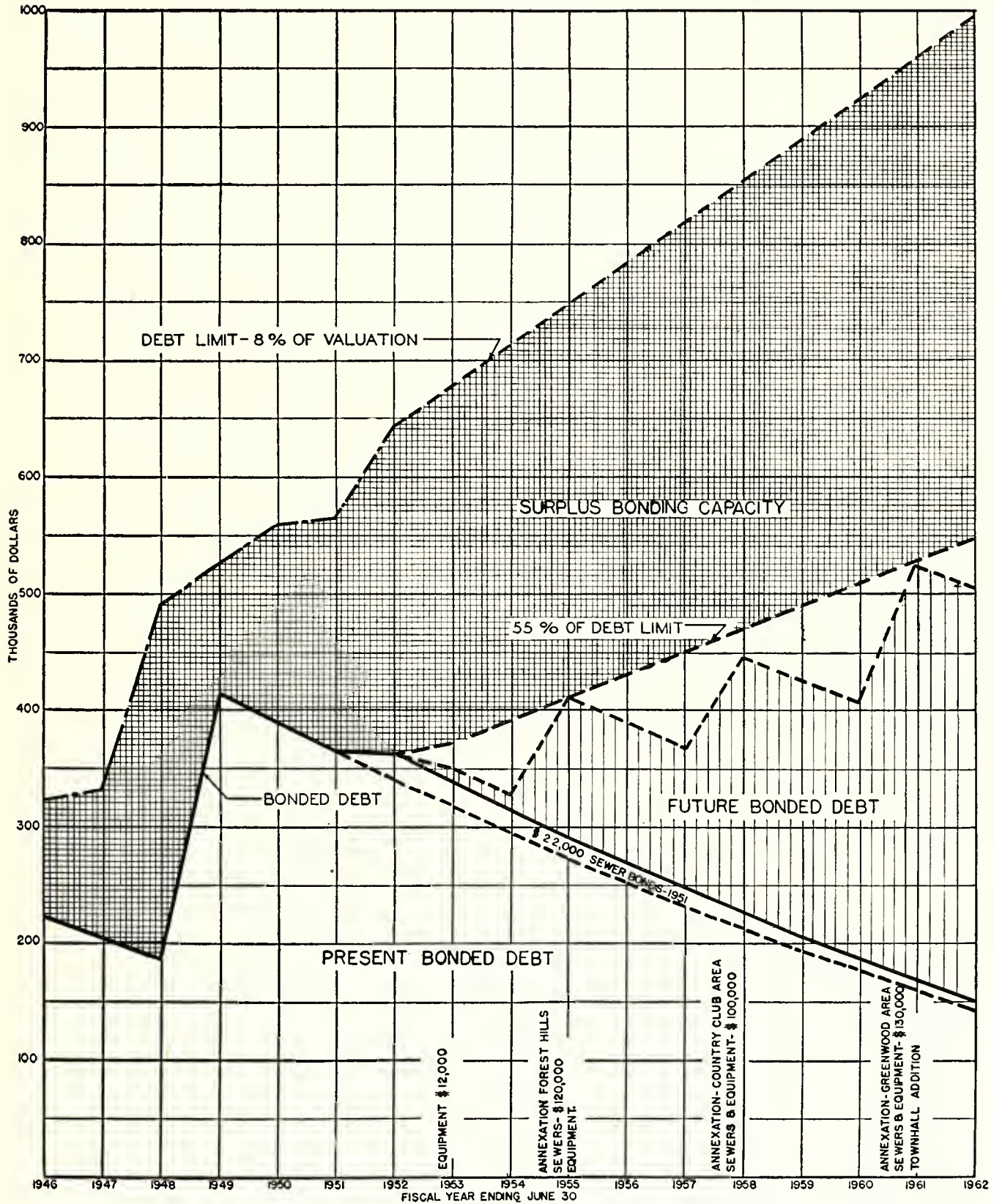
Out of these resources come the funds required to carry on the town government. Charts may be prepared showing the development of the various sources of income: ad valorem taxation, privilege license taxation, contributions from the state and federal governments, earnings of the various public utilities, assessments for local improvements, etc. The amounts yielded by each of these sources may be projected into the future.

Finally, the total income and total expenditures of the city may be charted and extended into the future far enough to cover the next six-year period. If a surplus of income over expenditures is shown that surplus will be available for capital improvements and for operating expenses of those improvements during the period. A similar chart might show what additional funds will be available if the present level of bonded indebtedness is maintained.

As background against which to decide how high the levy upon city taxpayers should go, the study might also chart the changes in the county tax rates and any special district taxes which are levied. If there is a continuing local assessment program which is of importance to the taxpayer, it should be considered. Prob-

TOWN OF CHAPEL HILL, N.C.

CAPITAL IMPROVEMENT PROGRAM



A fairly typical capital expenditures budget is outlined in the chart above, which was prepared for Chapel Hill Manager Thomas Rose by City Engineer John Gove.

able federal and state taxes may also have some effect upon the feasible maximum which can be levied by local authorities.

Preparing the Improvement Program

The actual preparation of the capital expenditures budget, once all the necessary information has been gathered, is a task that would probably best be handled by an agency including the administrative head of the city government—the City Manager or Mayor, depending upon the organization of the particular town. This is because the function of assigning priorities to various projects for the city is so closely allied to the day-to-day administration of the government. Furthermore, departmental jealousies are so apt to become involved where “pet projects” are turned down that it is best for the superior authority to perform this function.

The first step in preparing the program will consist of examining the list of projects which have been submitted and assigning tentative priorities. Some projects can readily be eliminated as infeasible, for one reason or another. Others will conflict with one another, and a choice must be made between them—as where a school and a new through highway are proposed to occupy the same site. In order to spot such conflicts as these (and other less direct conflicts) it may be advisable to mark with a pin, on a map of the city, the site of each proposed improvement.

After the impractical projects have been eliminated and the conflicts erased, the committee should weigh the relative merits of the various projects, considering their effect upon other proposed projects as well as upon existing facilities. From this consideration, tentative priorities may be given the projects. The National Resources Planning Board suggests the following as some of the criteria which might be used in weighing the desirability of projects:

1. Protection of life
2. Maintenance of the public health
3. Protection of property
4. Conservation of resources
5. Maintenance of physical property
6. Provision of public services
7. Replacement of obsolete facilities
8. Reduction in operating costs
9. Public convenience and comfort

10. Recreational value
11. Economic value
12. Social, cultural or esthetic value
13. Promotional value through effect on future developments
14. Relative value with respect to other services.

Once tentative priorities have been assigned to the various projects, the committee will be ready to prepare a workable program. Obviously it will be better, ordinarily, not to attempt to carry out a number of major projects all at once, leaving some less important projects for later—even though the major projects all have the highest priority. The committee should consider what funds will be available at a given time, what engineering personnel will be available for preparing plans and how long the preparation of plans for particular projects will require, and what personnel and equipment will be available at a given time for actual work on the various projects. If special enabling legislation will be required, that will be cause for postponing the project until a time when it can be secured. Similar factors involved in preparing a “business-like” program will suggest themselves to the committee.

Probably the basic consideration is as to how the project will be financed—whether out of current revenues, from state or federal funds, by local assessments, through the issuance of general purpose or revenue bonds, or otherwise. This will involve knowledge of the financial picture which we have previously discussed. In addition, the finance officer or the city attorney should advise the committee as to the limitations—both constitutional and statutory—on the collection and expenditure of various funds.

The finished program would include a detailed listing of projects to be undertaken during the next six-year period, the year in which each project is to be undertaken, a complete picture of the costs which will accrue each year (capital outlays, debt service, and annual operating expenses) as a result of each project, the status of plans of the project, and the method of financing the project. Graphs may be prepared to accompany this schedule, showing the effect of the entire program on the city's finances.

Legislative Adoption

Although there are no General

Statutes requirements that the completed capital expenditures budget be formally adopted by the local legislative body (City Council), it is desirable that that body do so. The chief administrative official of the city (City Manager or Mayor) should submit the completed budget to the Council, together with an explanation of the priorities assigned the proposed projects. The Council should, of course, give careful consideration to the provisions of the budget, and it may wish to change the program in some ways. Before formal adoption, the Council may also wish to hold a public hearing on the proposed budget, so that there will be more widespread public understanding of its provisions.

Once it has adopted the budget, the Council should require that each of the agencies of the city government be guided by the provisions of the budget as it undertakes new projects. The annual operating budget of the city should be prepared with the capital expenditures budget in mind, and no major projects should be included which are not scheduled in the capital expenditures budget for that year—although the Council is, of course, free to make any modifications it wishes.

Selected Bibliography

City officials wishing to undertake the preparation of a capital expenditures budget may find sample forms and more detailed instructions in the following publications:

Green, Philip P., Jr. *A Guidebook for City Planning Boards* (Chapel Hill: Institute of Government, 1952).

Menhinick, Howard K. et al. *Local Planning Administration* (Chicago: International City Managers' Association, 2d ed., 1948).

National Resources Planning Board. *Long Range Programming of Municipal Public Works* (Washington: Government Printing Office, 1941).

In addition, the following books will be found useful as background material:

Chatters, Carl H., and Hillhouse, A. M. *Local Governmental Debt Administration* (New York: Prentice-Hall, 1939).

McMahon, J. Alexander. *Municipal Budget Making and Administration* (Chapel Hill: Institute of Government, 1952).

The Supreme Court Decides . . .

County Commissioners May Not Submit Their Own Alternative Proposal In School Bond Election

In *Parker v. Anson County*, 237 N. C. 78 (filed 30 January, 1953), the Supreme Court ruled that the power of county commissioners to approve or disapprove requests of county boards of education for bond issues does not include the power to submit an alternative proposal to the voters in a bond election.

The case arose in Anson where the county board of education had submitted to the county commissioners a proposal for a bond issue of \$1,250,000 to finance seven specific school construction projects. The county commissioners approved the request and called a special bond election for the county to obtain the necessary approval of the voters.

One of the specific projects for which the bond issue was requested was the construction of a new high school for white students in the north-western part of the county. With reference to this project, the commissioners submitted a second question in the bond election: should the new high school be built even if the existing high school in Wadesboro could be enlarged to accommodate all the white students in the county? This second question was submitted by the commissioners on their own motion and without consultation with the board of education.

A majority of the voters answered "yes" to the first question, thus approving the bond issue; but a majority also answered "no" to the second question, thus indicating that the new high school should not be built if the existing one could be adequately enlarged. On the basis of the answer to the second question, the county commissioners proposed to reduce the bond issue from \$1,250,000 to \$950,000 by abandoning the project for the new high school. At this point, the plaintiff, as a taxpayer, began an action with the object of either invalidating the election and restraining the county commissioners from issuing the bonds authorized thereby, or compelling them to issue the bonds in the originally authorized amount of \$1,250,000 without abandoning the new high school project. The lower court found against the plaintiff and dismissed his action.

The plaintiff appealed and the

By

Edward Lane-Reticker

Assistant Director
Institute of Government

Supreme Court reversed the decision below. Writing for a unanimous court (Justice Parker did not participate in the case), Justice Barnhill held that it is the prerogative of the board of education, and not of the county commissioners, to determine whether the county should have two high schools or one central high school. The right of the county commissioners is limited to determining whether expenditures proposed by the board of education are necessary and the method of financing such expenditures. The commissioners may not make alternative or substitute proposals. Having approved the requests of the county board of education, the commissioners were not authorized to submit to the voters their own proposal, which was, in effect, that the bond issue be reduced by the amount that could be saved by enlarging the present high school instead of building a new one. The submission of the second question and the vote on it, therefore, were of no effect. However, the inclusion of the second question on the ballot was not so confusing or complicating as to render the vote on the first question void.

The Supreme Court remanded the case to the lower court and directed that court to prepare orders and decrees consistent with the opinion. This apparently means that the county commissioners must now issue the full \$1,250,000 in bonds and make the proceeds available to the county board of education for the construction of the projects originally proposed and approved, including the new high school. The court suggests that it would be possible to abandon the project for the new high school if the county board of education should initiate a proposal for a change in plans and the proposal were approved by the county commissioners.

This decision seems to establish a general budgetary procedure for school capital outlay, whether financed by tax or bond revenues: the

board of education must initiate proposals; the county commissioners can approve or disapprove them but they cannot substitute their own. While the case deals only with capital outlay, and not with current school expenses, it would seem that the power of the commissioners is similarly limited with regard to the latter.

Books Received

An Approach to Urban Planning. Edited by Gerald Breese and Dorothy E. Whiteman. Princeton, N. J.: Princeton University Press. 1953. \$2.00. Pages 147. For the Planning Board member or city official interested in a quick bird's-eye view of some of the main problems involved in city planning and administration, no better reference could be suggested than this slim, paper-bound volume (108 pages of text plus a well-annotated bibliography). The book is made up largely of revisions of lectures presented at Princeton University by five national leaders in the planning field: Hugh R. Pomeroy, Norman Williams, Jr., Charles K. Agle, C. McKim Norton, and Walter H. Blucher. In addition to a general chapter, the book includes chapters on "The Planning Process and Public Participation," "Land Use and Zoning," "Housing and Urban Redevelopment," "Metropolitan Transportation," and "Fiscal Programming." Although much of the discussion is in terms of larger cities, the suggestions advanced will be helpful for towns of all levels.

Readings in Municipal Government and Administration. Edited by Charles M. Kneier and Guy Fox. New York: Rinehart and Co. 1953. Price? Pages 486. Although designed to serve as teaching materials for a college course on local government, this book covers the field of municipal problems so well as to be of interest to any municipal official. While broad in scope, it packs into a small space surprisingly detailed analysis of a multitude of problems.

The Attorney General Rules . . .

Municipal Election Procedures

With the approach of biennial municipal elections city attorneys and city clerks find themselves with the biennial puzzle of determining what laws govern the procedures for registration and voting in their municipalities. While it is clear that standards of eligibility to vote contained in Article VI of the North Carolina Constitution govern the question of who is qualified to register and vote in all elections in North Carolina (*State v. Viele*, 164 N. C. 122), many municipal charters carry troublesome provisions on election procedure. Other charters contain only general references to state election laws, and still others say nothing at all about election and registration procedures. In Article 3 of G. S. Chapter 160 appears the general municipal election law which purports to govern election procedures in all municipalities except those specifically exempted from its application in G. S. 160-29. And, finally, in the Australian Ballet Law found in Article 20 of G. S. Chapter 163 it is abundantly clear that the General Assembly intended that set of regulations to apply to all municipal elections. See G. S. 163-148.

Status of charter provisions concerning municipal elections. Understanding the situation as outlined in the introductory paragraph, it is not surprising that officials in towns with charters which carry election provisions should seek advice on the status of those charter provisions with regard to registration notices and dates. Two recent letters deal with this question.

To A. A. Powell and to J. Mack Holland

(A. G.) Where the town's charter provisions are different from those in the general municipal election law (Article 3, G. S. Chapter 160), the charter provisions will prevail over the general law. Thus, for example, in ordering a new registration of all voters, so far as procedural matters are concerned, such a town should comply with its charter provisions on the point. Similarly, if the charter contains specific provisions about the time for opening and closing the registration books when no new registration has been ordered, the char-

ter provisions would be controlling. Nevertheless, as indicated in the introductory paragraph, the Australian Ballet Law applies to the town election (G. S. 163-148) with respect to the manner of voting, the form in which the ballots should be printed, and other details covered by that particular statute.

New municipal registration in absence of charter provisions. If a town seeks to conduct a new registration prior to its next election, and if its charter is silent on the procedures to be followed in ordering and conducting a new registration, it would be faced with two very practical problems: When should newspaper advertisement of the new registration be commenced? And, when should the new registration books be opened and closed?

To Taylor, Kitchin and Taylor

(A. G.) Since the problem here is that of a complete new registration, not merely a question of the registration of new voters, G. S. 160-37 has no bearing on the two questions raised. See *Hardee v. Henderson*, 170 N. C. 572. Instead, G. S. 160-34 applies when a new registration is ordered. That section makes the new registration subject to the rules and regulations for the registration of voters for a *general* election. By "general" election the statute means a state-wide election, the procedure for which is governed by G. S. Chapter 163. Thus a new registration of the voters in a municipality is subject to the general election laws of G. S. Chapter 163 except as otherwise specifically provided in the general municipal elections law of G. S. Chapter 160. One of those exceptions is that found in G. S. 160-35 which read as follows: "In the event a new registration is ordered the board of commissioners [of the municipality] shall give thirty days' notice thereof by advertisement in some newspaper. . . ." That would answer the first question posed. Since, as already stated, a new municipal election in a situation of this kind is subject to the provisions of G. S. Chapter 163 unless G. S. Chapter 160 contains specific provisions to the contrary on the particular procedural point, it seems clear that G. S. 163-41 would

apply to the second question posed here. This section requires that the registration books be opened at 9 a. m. on the fourth Saturday before the election and closed at sunset on the second Saturday before the election.

Selection of voting officials under general municipal elections law. If a town has no charter provision on the point, or if its charter states that the point is to be governed by the general municipal elections law, how are election officials chosen?

To Willard C. Wright

(A. G.) G. S. 160-32 and G. S. 160-41 require the town board of commissioners, at least thirty days before any town election, to appoint a registrar and two judges to conduct the election. G. S. 160-43 provides that the judges shall open the polls and superintend them. Construing these sections together, it would seem that the registrar and judges, acting jointly, conduct the election.

Loitering at the polls in a municipal election. What is the distance from the polls that a candidate must maintain on election day? May individuals go in and out of the polls at will during election time?

To Willard C. Wright

(A. G.) G. S. 163-148 provides that municipal elections shall be conducted under the same rules as are elections in counties and school districts. G. S. 163-165 provides in part: "No person shall, while the polls are open at polling places, loiter about or do any electioneering *within such polling place or within fifty feet thereof*, and no political banner, poster or placard shall be allowed in or upon such polling places during the day of the election." [Italics supplied by the Attorney General.] Also, G. S. 163-170 provides in part: "No person other than voters in the act of voting shall be allowed in the room or enclosure in which said ballot box and booths are, except the officers of election and official markers as hereinafter provided."

Markers in municipal elections. In a town election who has authority to mark ballots for voters who cannot write?

To Willard C. Wright

(A. G.) Although G. S. 163-148 makes Article 20 of G. S. Chapter 163 applicable to all elections, G. S. 163-172 through G. S. 163-174 are so

worded as to seem to apply only to partisan primaries and to general elections for county, district, and state officers. On several occasions this office has expressed the opinion that markers are not provided for in non-partisan city and town elections under the general law. In some cities and towns the charters provide for markers in city elections, but if the town's charter is silent on the subject, I am of the opinion that markers are not permitted in the town elections.

AD VALOREM PROPERTY TAXES

Location of Personal Property for Tax Purposes. Boats, motor vehicles of all kinds, and construction equipment continue to cause difficulty for tax authorities and taxpayers. Suppose a resident of County A owns and stores a boat in a yacht basin in County B, where should the boat be listed for taxation? Suppose a North Carolina bus company with its principal office, garage, etc., located in County X also has auxiliary garage in County Y at which it always keeps a number of its buses. Is County Y entitled to tax any of the buses? And, finally, suppose a firm of North Carolina contractors with a principal office in County Z owns construction equipment used in performing contracts in other states, and suppose that while some of this equipment is returned to County Z at the completion of a job, other items are sold outside North Carolina at the termination of the particular job. Which of these items of equipment, if any, should be listed for taxation in County Z?

All of these questions must be answered on the basis of the general rule set out in G.S. 105-302 (1)—ordinarily, tangible personal property must be listed for taxation at the residence of the owner—and the exception set out in G.S. 105-302—tangible personal property is to be listed where situated (rather than at the owner's residence) if the owner or person in charge of it hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse at a place other than the owner's residence for use in connection with the particular property.

To: E. O. Moore and Paul M. Gross (as to the boats)

(A.G.) On the facts available in this situation, it appears to me that since the county of the boat-owner's residence is different from the place where the boat is situated, and that probably the boat's being docked in County B involved either some direct payments for the privilege or some indirect payments by virtue of some club membership, the tax situs would be governed by the exception in G.S. 105-302 (4), and the boat would be taxable in County B.

To: Herbert C. Riggs (as to the buses)

(A.G.) In view of the exception to the general rule in G.S. 105-302, it is my opinion that the buses regularly garaged in County Y and located in County Y on January 1 would be subject to ad valorem taxation in County Y.

To: H. C. Dockery (as to the construction equipment)

(A.G.) The taxability of personal property located outside North Carolina but owned by a resident of North Carolina can be determined only in the light of all the facts surrounding a particular case: the location of the property on January 1; how long the property was out of the state; whether the property was ever in this state; etc. In GREENOUGH v. TAX ASSESSORS, 91 L. ed. 1621, at page 1626, the United States Supreme Court, by way of dictum, states: The Fourteenth Amendment has been held to place a limit on a state's power to lay an ad valorem tax on its residents. Previous decisions of this Court have held that mere power over a resident does not permit a state to exact from him a property tax on his tangible personal property permanently located outside the jurisdiction of the taxing state. Such an exaction, the cases teach, would violate the due process clause of the Fourteenth Amendment, because no benefit or protection, adequate to support a tax exaction, is furnished by the state of residence. [Italics added.]

In view of these principles of tax jurisdiction, if the property is permanently located outside North Carolina, County Z could not subject it to taxation.

Exemption of Real Property of Educational Institutions from Taxation. A private college owns apartments which it uses as living quarters for its faculty members, charging them rent for occupancy; in a few cases the apartments are rented to individuals not members of the faculty. Are the apartments exempt from taxation?

To: Louis C. Allen

(A.G.) In view of the language of G.S. 105-296, it is my opinion that this property would be tax exempt except such as the college habitually rents to persons other than officers or instructors of the college. In my opinion, however, an occasional, temporary lease to an outsider to avoid a vacancy would not be sufficient to remove the exemption.

An individual owns a building in which he operates a business school in which classes are taught in typing, bookkeeping, shorthand, etc. . . . The owner occupies a portion of the building as a dwelling house. Is the entire property exempted from taxation?

To: Louis C. Allen

(A.G.) The fact that a person operates a private school in a building where he lives is not sufficient within the meaning of G.S. 105-296 (4) to transform the building in its entirety

into a building "wholly devoted to educational purposes." The important question to be decided here is that of the primary use of the building. If the principal use of the building is that of a school and the owner's residing in the building is incidental thereto, then the property would be exempt. But if the principle use of the building is that of a residence, and the operation of the school is an incidental activity or at most merely a parallel or twin activity, then the property would not be exempt.

Delivery of Tax Receipt to Taxpayer upon Payment after Lien Sale. When a tax lien has been sold and the taxpayer has later paid the taxes in full, should the original receipt then be delivered to the taxpayer?

To: Charles Hughes

(A.G.) I know of no reason why the original receipt should not be delivered to the taxpayer if the taxes are paid in full. (This payment would, of course, include all taxes, penalties, interest, and costs of sale.) It is my understanding that this is the usual practice in most counties.

Tax Collector's Right to Use Statutory Collection Methods after He Has Paid Items Not Allowed as Insolvent. At the time of his annual settlement in October a tax collector presents an insolvents list; some of these personal property items are disallowed by the governing body, whereupon the collector pays the amount of these items from his pocket. The settlement is accepted, and he continues as the unit's tax collector. Under such circumstances, may the collector with respect to the disallowed personal property accounts, use levy and attachment and garnishment in order to reimburse himself for the amount he paid from his own pocket at the time of the settlement?

To: Ashby Robinson

(A.G.) Certain Supreme Court decisions indicate that the authority might exist under the circumstances outlined here. One limitation placed by the Court upon the existence of the right is that the rights of third parties must not be prejudiced, as might be the case if real property were involved and if the tax records showed that the tax had been paid and a third party had relied thereon in purchasing such property or in accepting a mortgage thereon. The conclusion to be drawn seems to be that the answer will turn on whether the tax records show that payment of the particular item has been made. If they do not, then the tax lien on personal property of the taxpayer can be perfected by the collector upon levy or garnishment; if they do, the collector would probably have to rely on his chances in bringing a suit against the taxpayer as original debtor.

CLERKS OF COURT

Veterans' Guardianship Act. (1) May a Clerk of Superior Court determine without a jury the com-

petency of a veteran? (2) What is the extent of the estate that a guardian appointed under the Veterans' Guardianship Act controls?

To: B. F. McMillan

(A.G.) (1) Nothing in Chapter 34 [Veterans' Guardianship Act] of the General Statutes requires the Clerk to have a jury hearing. (2) G.S. 34-2 provides that "the terms 'estate' and 'income' shall include only moneys received by the guardian from the Bureau and all earnings, interests, and profits derived therefrom." Therefore, the guardian, appointed pursuant to Chapter 34 of the General Statutes, would only have charge of funds received from the Veterans' Bureau.

Procedure for Commitment of the Insane. Where two physicians reach contrary opinions as to the sanity of a person, can the clerk dismiss the application for commitment?

To: Foster Edwards

(A.G.) Certification by two physicians is necessary in order to set the commitment procedures in motion. G.S. 122-46. There is to be a full hearing and judicial determination by the clerk upon the issues involved in the commitment. The clerk shall hear all the evidence and make his determination. While the certification by the two physicians should be considered as substantive evidence upon the issues, it is not necessarily controlling. If the evidence was insufficient in the opinion of the clerk to warrant commitment, he properly dismissed the application for commitment.

SEARCH WARRANTS

Admissibility of Evidence of One Crime Obtained While Searching for Evidence of Another. After being called to a house to investigate two killings apparently committed with an axe and a knife, a sheriff in searching for the weapons found 7½ gallons of non-taxpaid whisky in an outside toilet. The person living in the house and connected with the affair was indicted under a separate warrant for the possession of non-taxpaid whisky for the purpose of sale. Since the sheriff had no search warrant, is the evidence obtained in his search admissible on the whisky charge?

To: Grady Mercer

(A.G.) Yes. Assuming that the sheriff was properly at the house to make an arrest and did so, he had a right to search for the murder weapons as an incident to arrest. A search of premises and person incident to an arrest is excepted from the constitutional and statutory requirement of a search warrant. A search incident to arrest must, however, meet the test of reasonableness. *HARRIS v. UNITED STATES*, 331 U.S. 145. Where a crime has been committed, the search may extend from the person of the one arrested to the premises under his immediate control. The search for the axe and knife logically extended outside the house since they could be more easily concealed there.

A search warrant under these cir-

cumstances was not required; the illegal liquor was discovered in the process of a lawful search as an incident to an arrest.

LIQUOR LAWS

A. B. C. Officers; Authority to Arrest. In making arrests are A. B. C. officers limited to violations of prohibition laws or do they possess the authority of other peace officers?

To: Henry W. Hight

(A.G.) G.S. 18-46(0) authorizes the expenditure by A. B. C. boards of certain sums of money for law enforcement, the employment of one or more officers, and provides further that such officers shall take the oath prescribed by law for peace officers and shall have the same powers within their respective counties as other peace officers. Since this section is part of the article authorizing the establishment of A. B. C. stores and boards, it is my view that the officers' authority is confined to enforcing prohibition laws. Of course in the enforcement of the prohibition laws, such officers have the same authority as any other peace officer.

Possession of Tax-Paid Whisky in A. B. C. County. Is one guilty of violating Chapter 18 of the General Statutes if he has two pints of tax-paid liquor with seals intact on a table in his grocery store?

To: James E. M. Miles, Jr.

(A.G.) G.S. 18-32, applicable to A. B. C. territory, makes it unlawful for a person, firm, or corporation to possess liquor for the purpose of sale, and the possession of more than one gallon of liquor at any one time, whether in one or more places, constitutes *prima facie* evidence of the violation of this section. No statute prohibits a person from having more than one gallon of tax-paid whisky in A. B. C. territory. But if he does have more than one gallon, it is *prima facie* evidence that he has it for the purpose of sale. This *prima facie* case is not conclusive and the defendant may show he had the liquor for his own personal use; the *prima facie* case is sufficient to take the case to the jury.

In the absence of other evidence showing possession for the purpose of sale there is no violation of Chapter 18 of the General Statutes.

MOTOR VEHICLE LAW

Conviction of Drunken Driving in Canada. A resident of North Carolina was convicted of drunken driving in Canada. May the Department of Motor Vehicles revoke his operator's license under G.S. 20-23 which provides for revocation of an operator's license upon conviction of an offense in another state, which, if committed in North Carolina, would be grounds for revocation?

To: L. R. Fisher

(A.G.) The word "state" in G.S. 20-23 probably cannot be construed to include another country, particularly in view of other provisions of the Motor Vehicle Law which expressly refer to "state or country."

Therefore, the Department may not revoke the license in question.

Driving while License Revoked. A man whose operator's license was in a state of revocation was convicted of driving without a license. Does G.S. 20-28 authorize the Department of Motor Vehicles to revoke his license for an additional double period in this case?

To: E. V. Wilkins

(A.G.) The Department must add the mandatory additional double period of revocation required by G.S. 20-28 when it has sufficient evidence to prove that an operator was driving during his period of revocation. The conviction of driving without a license is sufficient proof. It is not necessary that the conviction be for the specific offense of driving while license suspended or revoked.

Operation after Suspension but before Reissuance. An operator, whose period of suspension had expired, was informed by the Department of Motor Vehicles that he could obtain reissuance of his license upon compliance with the Financial Responsibility Act. Prior to the completion of details for obtaining a reissuance, he was apprehended while operating a motor vehicle and convicted of driving while license suspended. Should the Department suspend his license for an additional double period as required by G.S. 20-28 in the case of a person who is convicted of driving while license suspended or revoked?

To: L. R. Fisher

(A.G.) Since the suspension had already expired at the time of the operator's apprehension, he was not guilty of driving while his license was suspended but only of driving without a license. I am of the opinion that the Department is empowered to recognize the factual situation despite the report of conviction for driving while license suspended. The Department, therefore, should not add an additional double period of suspension.

Tax Value Definition

(Continued from page 4)

"true value"—"for what the property . . . can be transmuted into cash when sold in such manner as such property . . . [is] usually sold"—and they would be questionable under the constitutional limitation on exemptions and requirement that "Taxes on property shall be uniform as to each class of property taxed." Despite these statutory and constitutional points, the New Jersey ideas have real pertinence for those who look forward to constructive changes in North Carolina property tax law and administration.

Now

Any County Can Have
PHOTOGRAPHIC RECORDING
for Current Work

Without Capital Investment

A new installation plan, just announced by Hall & McChesney, makes it possible for any county office to adopt projection recording for current work *right now*. There is no installation expense, no capital investment required by the county.

HERE'S THE PLAN: A microfilm camera is installed in your office by Hall & McChesney. We "loan" you the camera, show your staff how to use it, and provide you with the film. Your office simply "snaps" the records which are brought in for recording and sends exposed film to our Greensboro plant.

You get back your photographic copies, printed in black on white paper (just like the originals), on standard size record sheets which are punched and trimmed, ready to insert in your loose leaf binders. You eliminate all typing and reading back—all possibility of error. Your staff has time for other work in the office. And you have a permanent "master" microfilm from which new books or pages can be made whenever wanted.

Your cost is only a small charge per page of records—less than the cost of hand typewritten copies. You can start using this modern recording method within a few days. Tested and proven—now being used in North Carolina Counties.



Ask for Trial or Demonstration

Tell our representative you want to try photographic recording for 30 days in your office without cost or obligation other than the pages of records you actually use.

HALL & McCHESNEY Inc

436 Walker Ave. Phone 4-8431 Greensboro, N.C.

Home Office



Syracuse, N. Y.

Budget Your Institute Membership Now!

SERVICES INCLUDE:

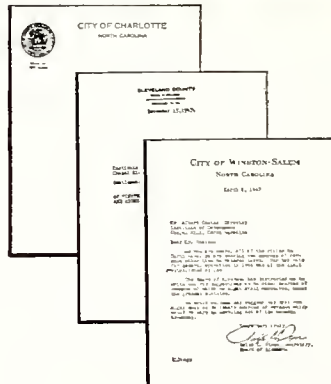
Training Schools



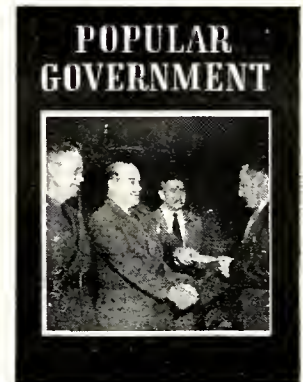
Clearinghouse of Information



Consultation



Inquiries

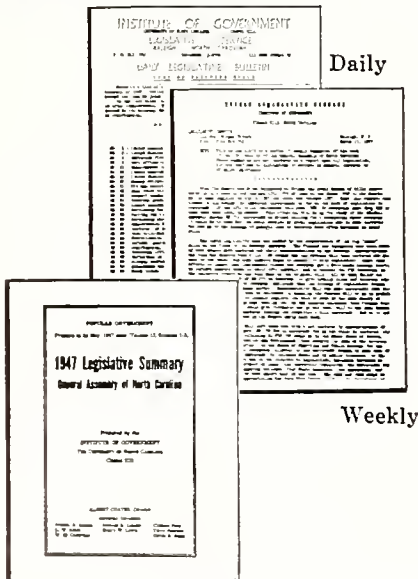


Monthly Magazine

Legislative Service

Guidebooks

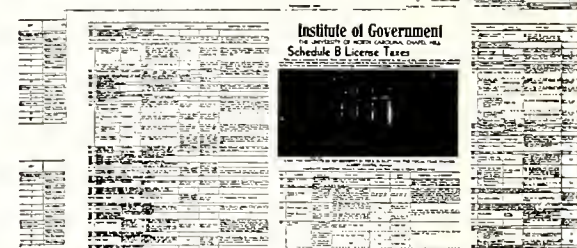
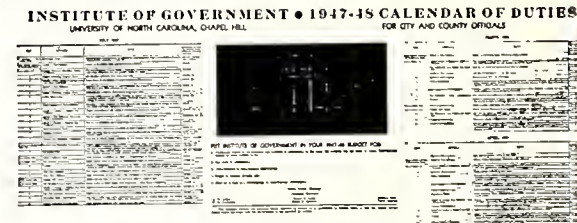
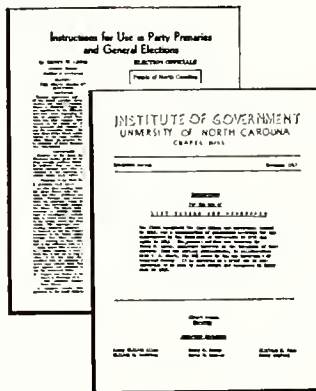
Calendar of Duties



Daily

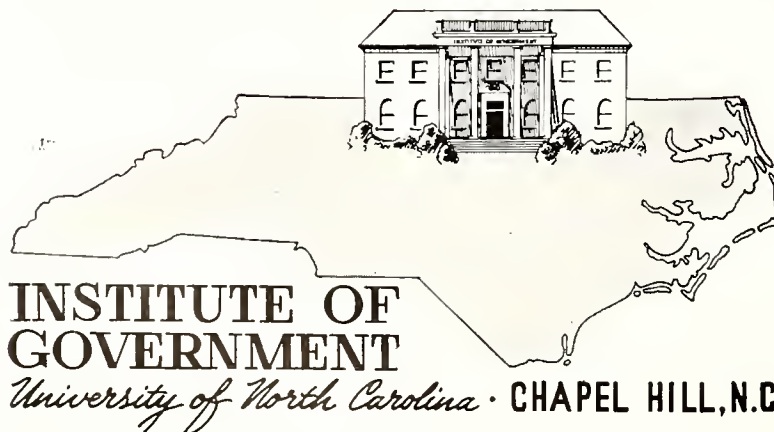
Weekly

Summary



Schedule "B" License

Tax Chart



INSTITUTE OF GOVERNMENT
University of North Carolina · CHAPEL HILL, N.C.



