

Popular Government

November 1953

*Storage
copy*



Fifth Annual Jailers' School

PUBLISHED BY THE INSTITUTE OF GOVERNMENT

UNIVERSITY OF NORTH CAROLINA

Chapel Hill



CONTENTS

THE CLEARINGHOUSE	1
Notes from North Carolina Cities	2
Notes from North Carolina Counties	3
New Ordinances	4
Traffic Notes	5
Notes on North Carolina Personnel	6
AMENDMENT vs. VARIANCE	7
BOOKS OF CURRENT INTEREST	9
THE ATTORNEY GENERAL RULES	10

Cover

Shown in the cover picture are members of the fifth annual Jail Management class conducted at Chapel Hill November 17-19 by the Institute of Government in cooperation with the State Board of Public Welfare.

Speakers at the school, and their topics, included: Harold Cox, Chief Jail Inspector for the Federal Bureau of Prisons and President of the National Jail Association, "Good Practices in Jail Operation"; W. M. Cochrane, Assistant Director of the Institute of Government,

(Continued on page 12)

THE CLEARINGHOUSE

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

Industrial Forums

Prominent industrialists, governmental officials, and civic leaders from throughout the state have been attending a series of ten industrial development forums sponsored by the Department of Conservation and Development this fall. Playing a major part in Governor Umstead's industrial development program for the state, the forums have been designed to encourage local development programs and to furnish "know-how" to the people who will carry them on. Arrangements were made by Mr. Paul Kelly, head of the department's Division of Commerce and Industry, while featured speakers have been drawn from most of the state's major industrial concerns. The forums have been held at Zebulon, Marion, Bryson City, Statesville, Elon College, Scotland Neck, Burgaw, Elizabeth City, Elizabethtown, and Southern Pines.

Municipal League Annual Convention

Over 500 municipal officials gathered in Asheville October 18-20 for the 44th annual convention of the North Carolina League of Municipalities.

Highlights of the convention were the three featured addresses and the two general sessions. Dr. Embree H. Blackard of Asheville delivered the keynote address at the opening session; Charles S. Rhyne, general counsel of the National Institute of Municipal Law Officers, spoke at the annual luncheon on the impact of the Eisenhower administration on local government; and President J. O. Talley of Fayetteville delivered the main address at the annual banquet. Monday's general session consisted of a panel discussing public works problems, with emphasis on the need for more uniform engineering and financial policies in the paving of residential streets in cities. Tuesday's general session consisted of a panel discussing stream pollution problems.

On both Monday and Tuesday mornings there were concurrent sessions for eight different groups of city officials, at which special problems were considered and discussed.

Mayor J. F. Hoffler of Wallace was elected president of the league for the next year, and City Manager H. L. Burdette of Hickory, Mayor C. M. King of Shelby, and Mayor Marshall Kurfees of Winston-Salem were named as vice-presidents.

Public Finance Officers Association

City and town finance officers, including directors, finance accountants, and treasurers, held their annual meeting in conjunction with the convention of the League of Municipalities in Asheville in October. These finance officers organized themselves into the North Carolina Public Finance Officers Association, inviting to membership all officials holding financial positions in the governmental units of the State. A constitution was adopted, and pursuant thereto the following officers were elected: A. E. Guy, Statesville, president; D. H. Umstead, Durham, vice-president; Rainey P. Pope, Burlington, secretary; Mrs. Blanda L. McLohon, Morehead City, treasurer; and J. C. Hill, Mount Airy, and Joe Collette, Winston Salem, members-at-large on the executive committee.

Around a dozen finance officers met at the two morning sessions on October 19 and 20. Topics discussed included uniform accounting, cost accounting, privilege license taxes, methods of collecting property taxes from persons going out of business after tax listing time but before the tax rate is set, and other matters raised by those in attendance.

Arson Investigators School

Law enforcement officers and firemen of the state will be interested in noting that the second annual Arson Investigators' School — Primary Course is being held at the Institute of Government December 1-5. Registration must be completed at the Institute on Monday, December 1, in time to attend the opening session at 1 p. m.

This is one of the series of specialist schools which the Institute of Govern-

ment is offering to law enforcement officials in North Carolina. It is designed to teach the law and investigative techniques important to investigators who must concern themselves with unlawful burnings.

The popularity of this course, which was introduced into the permanent program of the Institute of Government last year, makes it necessary to restrict attendance to sixty law enforcement officers and firemen. Advance registration is possible by writing to Richard A. Myren, Assistant Director, Institute of Government, Chapel Hill.

Bond Sales

During the first three weeks in October, the Local Government Commission sold bonds of the following governments (the government issuing the bonds, the amount of the bonds, the purpose for which the bonds were issued, and the effective interest rate are indicated):

Wayne County, \$1,000,000 school building bonds, 2.87%; Wilson County, \$360,000 school building bonds, 2.05%.

Charlotte, \$4,650,000 water and sewer, \$3,000,000 auditorium, \$1,200,000 public improvement, and \$375,000 street improvement bonds (\$9,225,000 total), 2.69%; Elm City, \$15,000 water bonds, 2.87%; Gastonia, \$500,000 sanitary sewer bonds, 2.82%; Leaksville, \$200,000 water and sewer bonds, 3.37%; Mebane, \$225,000 water and sewer bonds, 3.71%; Weaverville, \$50,000 water and sewer bonds, 4.18%; and Whiteville, \$20,000 sanitary sewer bonds, 3.29%.

Grifton School District of Pitt County, \$110,000 school building bonds, 3.93%

Delinquent Tax Collections

In a number of cities and counties there has been a marked change in attitude toward delinquent taxpayers this year. There is evidence of a much firmer policy, especially with respect to earlier action on delinquent accounts. In **Tabor City**, where Mayor Horace Carter estimates the total delinquents at \$25,000—some delin-

quent since 1929—every person owing the city will receive an itemized statement of what he owes, year by year. Failure to satisfy the account during a specified time period will result in levy or garnishment. T. F. Haislip, **Warsaw** tax collector, has issued newspaper warnings that he will begin to levy and garnishee for delinquent 1952 items immediately. The **Raeford** commissioners authorized early advertisement of delinquent 1952 real estate items. In **Hertford County** the commissioners explicitly backed T. M. Condon, the county tax collector, in the exercise

of his legal power to proceed against personal property for taxes due on real property. In **Granville County**, under special legislation, Miss Vivian Davis has been employed as a special assistant to County Auditor W. J. Webb to devote her full time to rounding up delinquent accounts. The **Chowan County** commissioners appointed J. N. Pruden as special tax attorney earlier this year, and in the month of June alone he succeeded in clearing up 113 real estate accounts—some as old as 1934—in the total amount of \$2,379.94.

school will use it for athletic teams and trips by the band and choral groups . . . The reception room of the **Caswell County** home has been renovated and refurnished. The walls have been painted, the room wired for electricity, and the floor covered with linoleum. New furniture consists of two sofas, ten chairs, five tables, four lamps, and wall decorations. Funds for the project were contributed by church organizations, home demonstration clubs, and several other interested groups and individuals.

NOTES

From North Carolina Counties

School Accident Insurance

An example of the kinds of insurance available to cover accidents involving school children and teachers is the policy taken out this year by the **Surry County** schools. The cost per student is \$1.25 per year and covers full medical, hospital, and dental expenses made necessary by accidental injury up to a total of \$2,000. Additional benefits are provided for the loss of a limb, sight, or life. The policy covers students "attending school, or while engaged in travel to or from school within one hour before or after the regular school day." Students participating in all school activities except high school football are also covered.

County Records

The accumulation of old records in the **Durham County** courthouse has resulted in a grave space problem and has led county officials to begin a review of records to determine which ones can be destroyed. They asked W. Frank Burton, the state archivist in the State Department of Archives and History, to come to the courthouse, examine the records, and advise which ones can be destroyed. The review takes about a week, and covers the register of deeds' office, the clerk of court's office, and the tax office. Generally speaking, all records pertaining to title to land will be retained, along with records which local laws require to be maintained

and records of historical significance. Mr. Burton works in purely an advisory capacity, and the county officials concerned make the final decision on what is to be destroyed.

Mr. Burton advised county officials that one of the functions of his department is to work with state, county, and municipal officials in matters relating to records, including preservation, destruction, and storage problems. Other counties seeking help in this area should write to Mr. Burton in care of the Department of Archives and History, Education Building, Raleigh.

Revenue Sources

Newspapers and minutes of meetings of boards of county commissioners give evidence of an increasing source of revenue: contributions by churches, civic clubs, and private individuals for special projects. Here are some examples: **Nash County** has not used county funds in recent years to build gymnasiums. Those that have been built have been financed from contributions from individuals and organizations in the school communities served . . . The civic clubs of **Albemarle** have launched a joint project to obtain contributions for an activities bus for the city schools. The bus will cost an estimated \$3,000 and accommodate 36 passengers. It will be used for field trips, trips to points of educational interest, and for athletic trips. The elementary schools will use it for trips to points of educational interest, and the high

Special Elections

As was mentioned in the September issue of *Popular Government*, a number of counties held special elections in conjunction with the October 3 general election on the issuance of \$50,000,000 school bonds and \$22,000,000 mental hospitals bonds. While the voters of the State were approving the issuance of the school and mental hospitals bonds, voters in **Johnston**, **Lenoir**, and **Wilkes** counties were approving the issuance of \$750,000, \$1,000,000 and \$1,200,000 in bonds, respectively, to provide funds to supplement their counties' share of the state school bond issue. **Caldwell County** and **Caswell County** voted affirmatively on the question of a 5-cent library tax and ABC stores, respectively. Only **Stanly County** had an unsuccessful proposition, voters there disapproving the issuance of \$1,250,000 in bonds for a new courthouse.

Miscellaneous

Surry County commissioners, acting under power granted by the general law, have created a new township in the county. The main purpose was to divide one township which was large in area into two townships, so as to set up another voting precinct for the convenience of the people in the area . . . The **Madison County** health department has closed its two branch offices, one in Hot Springs and one in Mars Hill, for the winter. Clinics operated in these two branch offices will be re-opened in the spring for the convenience of citizens in the areas nearby. . . . **Wayne County** has advertised for bids on the construction of an annex to the courthouse to house the jail, welfare department, and possibly other offices. . . . **Scot-**

(Continued on page 4)

NOTES

From North Carolina Cities

Annexation

If the voters of the area to be annexed approve, at an election scheduled for November 17, **Leaksville** will extend its limits to incorporate four new areas containing a population of about 1,200 persons. A petition filed with the town board requesting annexation contained 563 signatures . . . **Cary** has annexed property on two sides of town on the request of property owners of the area, and no election was necessary.

Water and Sewer Improvements

Approval has been given by the **Warrenton** town board to call an election on the issuance of \$30,000 in bonds to help build a new filter plant and to extend the sewer system . . . **Henderson's** city council has decided to issue \$116,000 in bonds to increase the filtration capacity of the city's water system. Originally the bond proceeds were designated for street improvements . . . In a bond election at **Pilot Mountain**, voters will be asked to approve a \$60,000 issue for construction of a 200,000 gallon elevated water tank . . . **Apex** is enlarging its lake and increasing the height of its dam to provide an additional 14,000,000 gallons of water in its lake capacity. Cost of the project is estimated at \$1,200.

Fire

Winston-Salem went all out to publicize Fire Prevention Week this month. Outstanding activities on the program included a contest with **Roanoke, Virginia**, to see which city could hold its fire loss lower during the week; the award by the Junior Chamber of Commerce of Firemen-of-the-Year awards to an outstanding fireman from the city department and to one from the county's network of ten rural volunteer departments; and a Volunteer Firemen's Day featuring competition between volunteer departments at the **Winston-Salem Fair**.

Zebulon and **Walkertown** have received new rural fire trucks . . . **Raleigh** has dedicated a new \$140,000 Central Fire Station, which will

serve as headquarters for its department . . . **Winston-Salem** has installed a new switchboard to speed up the dispatching of equipment. It replaces a magneto telephone system which had been used since 1919. Four firemen have been designated as dispatchers to operate the switchboard, working in successive eight-hour shifts.

Planning and Zoning

Elkin has appointed a zoning commission to prepare a new zoning ordinance for the town . . . **Dunn's** planning board has been seeking a professional planner to assist in its work on a part-time basis. \$2,000 was appropriated for the purpose in the town's current budget . . . **Winston-Salem** has stepped up enforcement of its minimum housing standards ordinance by hiring an additional inspector and a secretary. Similar programs in **Asheville, Charlotte, Durham, and Salisbury** have recently been praised by the National Association of Real Estate Boards.

Laurinburg has revised its zoning ordinance to provide that all hearings on proposed amendments will be held by the City Council semi-annually, at its regular meetings in March and September. Requests for rezoning must be presented at least 30 days prior to the hearing. The provision is designed (a) to relieve the Council of the burden of year-round zoning hearings, (b) to enable it to consider each amendment in light of other proposals, and (c) to insure that interested citizens will know in advance when a particular zoning proposal will be heard.

Public Works

A private corporation has entered into a contract with **Shelby's** city council to operate and maintain the city's sanitary land fill for one year for a cost of \$8,800. **Shelby** is shifting to the sanitary land-fill for the first time this fall . . . **Marion** has moved its dump to the sewage disposal plant property and will begin using the sanitary land fill system of garbage disposal.

A study of **Wilson's** electric rates

is being made by a firm of consulting engineers. City commissioners hope that lower rates will be possible after the study has been completed . . . The **Robbins** board of commissioners has authorized a contract with the **Carolina Power and Light Company** for installation of street lights . . . **Statesville** has equipped its light department truck with two-way radio to increase its usefulness on emergency calls.

Public Works Organization

Winston-Salem's director of public works, R. W. Neilson, has announced a reorganization of his department that will provide for a more equitable distribution of work.

Most important of the changes was creation of a street construction division with responsibility for the construction and maintenance of streets, sidewalks, and drainage projects. The engineering division, formerly responsible for street construction, will henceforth devote all its time to engineering and design for all city departments.

Another new division was established to handle accounting procedures relating to revolving fund operations within the department and to handle all personnel records for the departments. Other divisions within the department are inspections, sanitation, garage, water and sewer, buildings and grounds, and secretarial.

Traffic

New Bern has established a traffic division within its police department, the head of the division being appointed by the city council but directly responsible to the chief of police. In addition it has established a traffic commission, composed of one member from each ward to be named by the alderman from each ward and of the head of the traffic division.

Parking

The larger cities are continuing in their efforts to find additional parking spaces in the downtown business districts. **Winston-Salem's** traffic consultant has recommended a plan whereby 650 downtown parking spaces might be added at a cost of \$1,500,000. One proposed 257-car

lot, to be developed at a cost of \$452,500, would be capable of expansion by adding a second deck to a capacity of 650 cars; another lot would contain a three-level garage holding 300 cars and costing \$840,600; a third proposal would add a second deck over an existing lot. As proposed, all the facilities would be paid off from parking revenues within 30 years. The city's parking authority has taken the recommendations under consideration.

Plans of a private corporation to build a parking garage in **Raleigh** are moving along. Over half the money to construct the \$575,000 structure has been obtained and a campaign to raise the remainder is in progress. The building will have six levels and will hold 435 cars.

Meantime **Durham's** city council is still pondering a proposal that the city install parking meters and use the revenue to finance off-street parking facilities. Opposition has developed to the use of meters . . . And the ordinance under which **Winston-Salem** towed away cars found parked on city streets between 1 a.m. and 6 a.m. has been suspended because it was so unpopular. The purpose of the ordinance was to clear downtown streets in order to facilitate street cleaning.

Miscellaneous

Statesville has voted to install a new "white way" for the downtown area, using fluorescent street lights purchased at a cost of \$21,000 . . . **Ahoskie** has purchased a tract of land for \$3,500 and deeded it to the state for use as the site of a new armory, to be built with state and federal funds.

Salisbury is the first North Carolina municipality to apply for and receive a certificate of approval from the State Stream Sanitation Committee covering a voluntary stream pollution abatement project. Basis for the certificate is the \$283,000 addition to the city's sewage treatment plant . . . **Charlotte** has extended for another twelve months the effective date of its ordinance regulating the discharge of substances into the sanitary sewer system. The changes in the sewage treatment plant must be completed before the ordinance can be enforced.

Raleigh has agreed to pay the cost of transporting school patrol boys

and girls in their annual trip to Washington in 1954 . . . **Charlotte** has employed a construction man to serve as resident inspector during the building of the city's \$4,000,000 auditorium coliseum. In cooperation with the federal government, **Fayetteville** has embarked on a two year program for the control of rats and insects in the city.

Fuquay-Varina has appointed a six-member library board to work toward the establishment of a public library . . . **Raleigh** has appointed an

associate city attorney who will receive an annual salary of \$3000.

Troy has recently taken two important steps in improving its municipal services. It has adopted the sanitary land-fill method of garbage disposal and is probably one of the smallest cities in the state using the procedure. The town has also purchased a police car equipped with two-way radio to enable connection with the patrol cars used by the county sheriff's department.

NEW ORDINANCES

As was noted last month, North Carolina cities have taken an active interest in making impossible the recently publicized deaths of children in other states through suffocation in discarded ice boxes whose doors snapped shut on the children and could not be opened from the inside. Among the cities which have required either that the doors be removed or that the locks be taken off or made inoperative are the following: **Durham, Hickory, Raleigh, Wilmington, Wilson, and Winston-Salem.**

Among other ordinances received by the Institute of Government from North Carolina cities and towns recently were these:

Durham. Permitting continuous Sunday movies after 12:45 p.m. instead of shutting them down between 6:30 p.m. and 8:45 p.m.

Greensboro. Amending the ordinance governing street and sidewalk construction to change the driveway width provisions applicable to filling stations and to other particular types of lots, such as residential, parking lots, garages, business houses, and trucking terminals.

Hickory. Forbidding any person, firm, or corporation from storing or keeping for sale within the city any dynamite, dynamite caps, nitroglycerin, blasting powder or other highly explosive compounds except cartidges and shotgun shells.

Raleigh. Providing that when existing use of a lot has been made illegal by a reduction in the size of the lot as a result of condemnation of a part of the lot for public purposes, continued use of the lot is to constitute a non-conforming use.

—Authorizing the city to cut off water service for a period of 30 days from a water user residing outside the city who violates the city's emergency regulations on the use of water from the city system.

Rocky Mount. Rewriting in detail the ordinance regulating the operation of taxicabs in the city.

Wilmington. Prohibiting two and three axle trucks of over 25 feet in length and all trucks with tractor-trailer units attached from using certain named streets in the city except when it is necessary to use such streets to deliver commodities transported by such vehicles. When restricted streets are to be used for delivery, the truck driver or consignee is to notify the police department which is then to create a temporary loading zone for the loading or unloading of such vehicle or vehicles.

NOTES From North Carolina Counties

(Continued from page 2)

land County and **Laurinburg** have agreed to jointly support a rescue squad. A truck with pulmotor and oxygen and blow torches for freeing victims trapped in cars is to be purchased for an estimated \$7,500, half to be borne by each participating government. Moreover, maintenance costs in the future will also be borne on the same basis.

TRAFFIC NOTES

By EDWARD LANE-RETICKER, Assistant Director, Institute of Government

Enforcement Stressed

The past few months have seen an added intensity in efforts to reduce the highway death and injury toll. Edward Scheidt, who was appointed Commissioner of Motor Vehicles last May after his retirement from the F. B. I., has emphasized enforcement as the keystone of his program. To date, several parts of Commissioner Scheidt's program have attracted state-wide comment.

Saturation

Each weekend a particular highway, shown by statistics to be unusually dangerous, is selected for "saturation." Instead of the usual complement of patrolmen, the highway is guarded by one patrolman every ten miles. The patrolmen remain on the highway at all times. (An ordinary patrol includes many miles of secondary roads in addition to several miles of primary highway.) Preliminary evidence indicates the plan has been successful in reducing fatalities on the highways selected for saturation. Editorial comment has generally been favorable. There has been some concern that fatalities on other roads might rise because of the concentration of patrol strength on one road. So far, there is no evidence that this is the case. Since most accidents occur on a relatively small number of roads and are most frequent on weekends, the saturation plan, while it might be called an experiment, gives promise of reducing the total number of deaths.

Plain Cars

In the field of traffic enforcement there is an argument of long standing over the relative merits of cars with conspicuous law enforcement markings and plain cars. In recent years the highway patrol fleet has included both kinds, but the emphasis has been on conspicuously marked cars. While the majority of patrol cars are still the familiar black and silver, many recent replacements have been either all black, or—even more inconspicuous—ordinary shades of blue and green. The large number of silver and black cars continue to serve the purpose of letting the ordinary driver know that the patrol is on the road. The plain cars are

useful in apprehending the wary violator who escapes detection by keeping a sharp lookout. Preliminary reports indicate a high degree of success for the plain cars.

Letters from Drivers

Commissioner Scheidt has asked drivers to report the registration numbers of drivers whom they observe in serious traffic violations. In response to this request, the Department of Motor Vehicles has received a large number of answers. After crank and spite letters have been carefully eliminated, courteous requests for cooperation in the enforcement of traffic laws are sent to the owners of the offending vehicles. Letters from citizens are not used for the purpose of prosecutions. The purpose of this program is to make drivers aware that their violations do not go unnoticed even though they may not be apprehended, and to increase public awareness of the problem of unlawful and dangerous driving.

Slow Drivers

Commissioner Scheidt recently ordered the highway patrol to take action against drivers operating at very slow speeds. While high speeds are much more dangerous than very low speeds, it has long been recognized that any car moving either much faster or much slower than the normal flow of traffic is a hazard. Under the law, a driver going too slowly must first be warned to speed up. He does not commit any offense unless he fails to heed the warning.

Making Accidents Safer

There are two ways of reducing the number of highway deaths and injuries. One is to reduce the number of accidents. The other is to make cars more crash-worthy so that the occupants have a better chance of escaping death or injury in the event of an accident. In cooperation with Cornell University Medical College, the Department of Motor Vehicles is gathering information about the nature and direct causes of injuries in automobile accidents. In injury accidents the highway patrolman who investigates will fill out a special report indicating how each part of the car withstood the force of impact. He will also attempt to determine

which part of the car was responsible for each bone break, laceration, and bruise. The doctor who treats the accident victim is also asked to make a special report on the extent of the injuries. The Crash Injury Research Program has been endorsed by the Executive Council of the North Carolina Medical Society. While the reduction of the number of accidents must remain the principal approach to highway safety, a decrease in the seriousness of injuries caused by accidents would certainly be a worthwhile partial solution to a huge problem.

Speed Checking

Stop-clock

To the "whammy" radar device, the highway patrol has recently added another type of instrument to obtain accurate measurements of speed. This is an electrical stop-clock connected to two rubber tubes. The two tubes are laid across a highway 132 feet apart. The clock itself is placed at the side of the highway some distance beyond the tubes. The wheels of a car passing over the tubes cause the elapsed time between the tubes to be expressed in miles per hour on the face of the clock. This type of equipment has certain advantages over radar. It is much less expensive and easier to operate. The indicating needle on the face of the stop-clock remains at the measured speed, and a skeptical driver can look at the clock and see for himself. The principle of its operation is much easier to explain in court than the principle of radar. A disadvantage of the stop-clock is that it takes more time to set it up and get it into operation than the radar.

Jamming the "Whammy"

As the patrol was putting its new stop-clock into operation, certain drivers in Wayne County were attempting to interfere with the operation of the radar speed checking devices which the patrol has been using for several months. One motorist dragged a chain behind his car to "ground out the whammy". Others have put tin foil in the hubcaps of their cars, evidently borrowing an idea from World War II when strips of foil were dropped from planes to jam enemy radar. The chain and the tin foil had no effect on the accuracy of the radar device. While these devices have done speeding drivers no good, evidence of them might well be useful in court. They tend to show that the speeding was intentional. A

court could take the fact that such a device was used into consideration in determining the punishment to be imposed.

The "Whammy" in Forsyth

The most encouraging report on the use of the "Whammy" comes from Forsyth. In August, 314 motorists were arrested for speeding. In August, 1952, only 83 were arrested. The significant thing, however, is not the increase in arrests, but the fact that the average speed of cars in Forsyth

has dropped ten miles per hour. At the same time there was a substantial decrease in the number of accidents in rural Forsyth. In August, 1952, three persons were killed and 35 injured in 47 accidents. In August, 1953, no persons were killed and 17 were injured in 37 accidents. In Winston-Salem, there were more fatalities, injuries, and accidents in August this year than in August last year, but they were generally due to causes other than speed.

NOTES

On North Carolina Personnel

Leave Accumulation Reduced

The **State Personnel Council** has reduced the maximum amount of annual leave accumulation from 45 to 30 days which permanent full-time state employees may carry forward. State employees will not automatically lose all leave accumulated in excess of 30 days immediately as they will have until January 1, 1955, to reduce their accumulated vacation time to 30 days.

Personnel Resolution

The Board of County Commissioners of **Guilford County** have adopted a new personnel resolution which amends the county's position classification plan, revises the county's pay plan, and standardizes leave regulations.

The new resolution simplifies and brings up to date the position classification plan which was adopted in 1950. The new pay plan established by the resolution provides a minimum and maximum salary and five intervening salary steps for every grade of position. New employees are appointed at the minimum salary unless they are designated as "trainees" or unless the County Commissioners approve a higher starting salary because of superior ability, experience, or training. However, no new employee may be hired at more than two steps above the minimum under the new resolution.

Employees appointed at the minimum entrance salary automatically receive salary increases after 6 and 12 months if their work is sufficiently satisfactory to merit their retention.

Salary increases above the second step established for each class of positions are only granted in recognition of superior or improved performance. The former pay plan provided for

each employee, regardless of his or her performance, to receive pay increases automatically at 6, 12, or 15-month intervals during the first 73 months of employment.

Although not all employees will receive a salary increase as a result of the revision of the pay plan, the maximum salary for most positions has been increased. The revision of the pay plan increased the budget for salaries approximately 3 per cent a month or approximately \$8,000 for the remainder of the current fiscal year.

Other features of the new personnel resolution provide for a 12-month probationary period for all new or promoted employees, uniform provisions relating to work week, office hours, compensatory leave, holidays, vacation, sick leave, workmen's compensation leave, civil leave, and military leave.

The new Guilford County personnel resolution is the most complete and comprehensive known to have been adopted by a North Carolina county.

5-Day Week to Stay

Most **Mecklenburg County** employees will continue to work a 5-day week in the future as the result of action taken October 4 by the Board of County Commissioners. By establishing the 5-day week as the permanent working schedule, the county commissioners continued the schedule which had been adopted in August on a trial basis. At least one employee will remain in the office of the sheriff, the register of deeds, and the clerk of superior court each Saturday morning. Office hours for most county employees will be 8:15 A. M. to 5:15 P. M., Monday through Friday. The office of the county police will be unaffected by the change.

Social Security Extension?

President Eisenhower, on August 1, sent to Congress for its consideration recommendations for extending coverage of the old-age and survivor's insurance program to nearly 10.5 million more persons. The proposed plan would extend coverage to members of state and local retirement systems under voluntary group arrangements. About 6.5 million persons would be brought into the system on a mandatory basis; they would include doctors, dentists, lawyers, architects, accountants, and other professional people; self-employed farmers; and many more farm workers and domestic workers. The plan recommended by President Eisenhower was developed by a group of 12 consultants appointed by the Secretary of Health, Education, and Welfare.

Social Security Tax

The social security tax rate for persons covered by Social Security will increase as of January 1, 1954. This increase is in accordance with the 1950 amendments to the social security law. Public employees under Social Security will have 2 per cent instead of the present 1½ per cent deducted from the first \$3,600 of their annual pay beginning with the first of January. Employing governmental units will contribute an equal amount. The new rates will apply to all taxable wages paid after December 31, 1953, regardless of when earned. The next scheduled increase, six years from now, in 1960, will be to 2½ per cent for both employee and employing governmental unit.

The balance in the old-age and survivor's insurance trust fund as of May, 1953, totaled over \$18 billion. The income of the trust fund is now between \$1.5 and \$2 billion a year more than expenditures. An actuarial analysis prepared in 1950 estimated that income will exceed expenditures until 1995, or 43 years from now. Income in 1970 was estimated at \$10.7 billion; expenses for that year were estimated at \$7.2 billion. In 1995 both income and expenses were estimated as being \$13 billion a year. By that time the reserved fund will be approximately \$110 billion.

The estimated cost of the old age and survivor's insurance benefits is 5.85 per cent of payroll. After January 1, employees and employers will be paying a total of 4 per cent of payroll.

Amendment vs. Variance

By

PHILIP P. GREEN, JR.

Associate Director
Institute of Government

The question of where the line is drawn between the functions of the City Council and the Zoning Board of Adjustment in administering a zoning ordinance puzzles many officials. Because of this uncertainty, there are many cases over the state each year in which a City Council grants relief that properly should come from the Board of Adjustment and vice versa.

This article will consider the nature of a zoning amendment enacted by the City Council and of a variance granted by the Board of Adjustment, will attempt to define the line between the two, and will highlight some of the rules which guide the City Council and the Board of Adjustment.

Zoning Procedures

To place these questions in their proper context, perhaps it is best to begin by outlining the procedures involved in preparing, adopting, enforcing, and amending a zoning ordinance.

In order to adopt a zoning ordinance, section 160-177 of the General Statutes requires that a City Council first appoint a *Zoning Commission* (which may be the Planning Board). This Commission is charged with the duty of studying the town and preparing a zoning ordinance, holding a public hearing on this ordinance, and then submitting a report to the City Council. Then the *Council* may make modifications in the proposed ordinance, after which it must hold an additional public hearing before adopting the ordinance (G.S. 160-175). This completes the initial legislative procedures.

Next are the enforcement procedures. The zoning ordinance ordinarily provides that the *Building Inspector* shall be the enforcement officer. He is charged with issuing permits and certificates of occupancy and with making any necessary inspections. In exercising these functions, he must follow the literal terms of the ordinance. Appeals may be taken from his decision, under the terms of the usual ordinance, to a *Zoning Board of Adjustment* (G.S. 160-178). This Board is charged with (1) examining the Inspector's ruling in order to detect any errors in his interpretation of the ordinance or any abuse of his powers, (2) granting so-called "special exceptions" in cases

where the ordinance specifically authorizes the Board to permit certain types of development on making certain findings, and (3) granting "variances" from the ordinance requirements in cases of hardship. The latter is the most usual type of case to come before it.

Finally, there is the amending process. Amendments may be of two types. First, there may be an over-all revision of the zoning ordinance at periodic intervals (it has been found good practice to re-examine the ordinance approximately every ten years in light of developments during the period). Secondly, there are always cases in which particular ordinance provisions are found to cause undue hardship, either throughout the whole of a neighborhood or throughout the entire city. These instances must be corrected by a zoning amendment. The *City Council*, as the local legislative body, has the responsibility of enacting both types of amendments. And although it is not required by statute, many City Councils have found it wise to refer all requests for zoning amendments to the *Planning Board* for study and recommendations prior to Council action.

Looking at these procedures from the standpoint of the property owner who is prevented by the ordinance from developing his property as he wishes, it is apparent that he has two courses of action available to him: (a) he may apply to the Board of Adjustment for a variance or (b) he may seek to have the ordinance amended by the City Council (which may necessitate his first appearing before the Planning Board). This is the source of the confusion as to functions which we have mentioned.

Zoning Amendments

As a legislative body, the City Council may amend the zoning ordinance as it sees fit, *provided* it stays within the limitations imposed by the zoning enabling act and by the state and federal constitutions.

Briefly stated, these require that an amendment meet the same tests as the provisions of the ordinance

originally adopted. The amendment must:

- (a) be adopted in compliance with the statute's procedural requirements (G. S. 160-176);
- (b) be uniform for each class or kind of building throughout each district (G.S. 160-173);
- (c) be in accordance with a comprehensive plan, be designed to further certain objectives listed in the statute, and be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality (G.S. 160-174);
- (d) have a reasonable and substantial connection with the public health, safety, morals, or general welfare (the usual constitutional requirements for exercise of the state's police powers);
- (e) not be arbitrary or discriminatory, either in favor of or against a particular property owner.

The courts have summed up these requirements in a general rule that "spot zoning" (i.e., the zoning of one or a few lots for some purpose inconsistent with the uses for which the surrounding area is zoned) is invalid. Such zoning is almost transparently discriminatory, and the courts have been quick to strike it down in the cases which have reached them.

This being so, how is the City Council to determine when a particular application for a zoning amendment would constitute "spot zoning" if granted? It should consider the facts in the particular case, measure them against the requirements listed above, and then decide whether the amendment will qualify.

In more practical terms, a good first test is "How large an area would be affected by this amendment?" If the area is large, there will ordinarily be little question of spot zoning. But as it grows smaller, the implication becomes stronger that some type of discriminatory special treatment is involved. When the area is reduced to one or two lots, this implication becomes almost a presumption.

Next, the City Council might ask, "Are there any good practical reasons for this amendment, from the stand-

point of the city as a whole, or is it merely a favor to a particular property owner?" If it is the latter, it would fall into the category of spot zoning.

The Council should always keep in mind its role in a democracy. It is not some sort of gracious and benevolent despot, with power to relieve deserving persons of the necessity of complying with the rules which bind everyone else. Instead, as a legislative body it has the task of enacting general rules of conduct for the community. The courts and quasi-judicial agencies such as the Board of Adjustment have been provided to deal with the particular cases.

Variances

The Zoning Board of Adjustment is provided in the usual zoning enforcement mechanism as a sort of "pop-off" valve, with the duty of relieving the hard cases before they get into the courts. Its function is to consider the plight of the property owner who has been refused a building permit by the Building Inspector and who has brought an appeal. If it finds that the Building Inspector has misinterpreted the ordinance or that special hardship conditions justify relief from the literal requirements of the ordinance, it can grant such relief. The relief based on hardship is termed a "variance."

In many respects the Board of Adjustment is similar to a court of equity granting relief against the operation of a statute which proves too harsh in a particular case. However, it is not totally free to grant relief whenever it perceives injustice; it must act within the scope of a body of rules which have been evolved by the courts as general guides for its decisions (these rules are discussed at length in the Institute of Government's volume on *Zoning in North Carolina*, pages 342-72).

Two of these rules are particularly pertinent to our discussion here. The first is that the Board of Adjustment must deal only with individual cases as they are brought before it on appeal. It cannot issue general rulings, such as instructions to the Building Inspector to grant relief whenever he finds certain facts to exist or to grant relief to everyone in a given neighborhood. Secondly, the Board of Adjustment cannot grant relief based upon hardship conditions which are general throughout the neighborhood or throughout the city. It can grant relief only on the basis of hardship

conditions which are peculiar to the property of the applicant or to a very few lots.

Both of these rules are based upon the fact that the Board of Adjustment is not a legislative body. When it encounters general conditions calling for relief, it has a duty to refer the matter to the City Council with a recommendation that they be taken care of by means of an amendment. It is improper for the Board to attempt to correct either a provision of the ordinance or the zoning of a district by means of a series of variances.

Similarly, the Board is precluded from granting relief which is in conflict with the general purpose and intent of the zoning ordinance it is supposed to enforce. It may not grant a variance permitting extension or expansion of a non-conforming use, nor may it grant a so-called "use variance." (The latter is a variance permitting the property owner to use his property for some purpose forbidden by the ordinance, as distinguished from "dimensional variances" which alleviate the requirements with reference to yard size, building height, etc.) In the case of *Lee v. Board of Adjustment*, 226 N.C. 107, 37 S.E. 2d 128 (1946), the North Carolina Supreme Court held that an attempted grant of a use variance was an invasion of the legislative field.

In sum, the Board of Adjustment must remember that it is a quasi-judicial body, provided to deal with individual cases. It may not consider hardship conditions which are general throughout an area. It may not establish general rules. It may not grant relief which is in conflict with the underlying purposes of the zoning ordinance. All of these are matters which properly should be dealt with by the City Council.

The Dividing Line

Thus, we find that the City Council and the Board of Adjustment are complementary. The types of cases with which the City Council may deal are those with regard to which the Board of Adjustment may take no action, and vice versa. The City Council, as a legislative body, must deal with all cases in which conditions are general: a given provision of the zoning ordinance which is causing hardship throughout the city, an area which should be rezoned as a neighborhood shopping center, the extension of the boundaries of an existing business or industrial district. The Board of

Adjustment, on the other hand, is a quasi-judicial body which can deal only with individual cases and with peculiar fact situations. If it does not agree with the philosophy underlying a particular type of ordinance provision, it must persuade the Council to change it; it must not attempt a sub-rosa amendment by means of a series of variances.

Suggested Procedures

It is desirable that the procedures for handling applicants for relief from zoning ordinance requirements take into account the interrelationship which we have shown. In some cases it will be quite obvious that the proper remedy is a zoning amendment—where a large area is to be rezoned. In many other cases, however, there will be some question as to whether an amendment or a variance is the proper remedy. Because the average property owner is not aware of the rules governing the City Council and the Board of Adjustment, he cannot always make the proper choice of remedies. With regard to this type of case, therefore, it is desirable that he "run the gamut," allowing each agency to determine whether his case falls within the area in which it can grant relief.

Thus, all cases except those clearly necessitating a zoning amendment should begin with an application to the Building Inspector. If he decides that the application should be rejected, an appeal may be taken to the Board of Adjustment. The Board may then find that there is a proper case for granting a variance, in which event no further proceedings will be necessary. It may find that the conditions complained of are neighborhood-wide or city-wide in scope, in which event it should refer the case to the City Council with a recommendation that it amend the ordinance provisions. It may find that no relief at all is merited (i.e., that the case is one where a variance would be the proper remedy if any were justified, but that an insufficient showing of hardship has been made), in which event it should deny the request and inform the applicant that he may take an appeal to the courts.

One type of case offers difficulty which no procedural devices can cure. That is the case where the property owner wants to enlarge or reconstruct a non-conforming use (i.e., a type of property use forbidden by the zoning ordinance but permitted to remain because it was in existence prior to the

(Continued on page 12)

Books of Current Interest

Evidence

CASES AND MATERIALS ON EVIDENCE. *By E. M. Morgan and J. M. Maguire. Brooklyn: The Foundation Press. 1950. \$8.50. Pages 980.*

When the case method of law school instruction, first introduced at Harvard Law School, revolutionized law school teaching, the case books published by law professors were mere collections of edited court opinions completely devoid of any comment or supplementary materials. This was in line with the idea that the student should dig the principles of law out of decided cases just as the practicing lawyer was required to do. For this reason, case books were considered to be practically worthless as library material. With the maturing of the case method of instruction, it was recognized that there were some areas in which the student needed assistance in following case development and still others that there was just not class room time to develop by the case method.

This realization has led to the writing and publishing of a new type of case book, one which includes a great deal of textual material in addition to the case abstracts. These books are legal treatises in the finest sense of that word, and one of the best is Morgan and Maguire on Evidence. The masterful development of the introductory materials on burden of proof and presumptions is typical. A text such as this, illustrated as it is with leading cases, can well be a convenient starting point for any legal research.—R.A.M.

Criminal Law

CRIMINAL LAW. *By Edward Miron Dangel. Boston: Edan Publications. 1951.*

City Planning

URBAN LAND VACANCY: A STUDY OF FACTORS AFFECTING RESIDENTIAL BUILDING ON IMPROVED VACANT LOTS IN FLINT, MICHIGAN. *By J. Douglas Carroll, Jr., Institute for Human Adjustment, University of Michigan. Ann Arbor: University of Michigan Press. 1952. Price? Pages 44 (mimeographed).*

City planners have long utilized the number of unused lots in a city as a basis for estimating its potential future growth. This pioneering study indicates that unrefined estimates of this type may be greatly in error, because of findings that the "saturation point" in a particular area may be reached when 70-75 per cent of the lots are built upon. Although based upon study of a relatively small area, this report has far-reaching implications for officials interested in community development.—P.P.G., Jr.

The University of North Carolina is now issuing a bi-monthly Checklist of Official North Carolina Publications, a bibliographic tool showing what has been published by the various agencies of the state. Many of the publications are inexpensive or free upon request.

Librarians wishing to receive this checklist should write to: Dr. William R. Pullen, Doenments Librarian, University of North Carolina Library, Chapel Hill.

Purchasing Guide

CONNECTICUT PURCHASING GUIDE. *By State of Connecticut Developing Commission. Hartford: State Office Building. \$2.00. Pages 114.*

This publication lists 17,000 products and services of 2,850 Connecticut industries. The products and services are listed alphabetically with a key number identifying the industry or industries who can supply the products or services.

Madison

THE COMPLETE MADISON: HIS BASIC WRITINGS. *By Saul K. Padover. New York: Harper & Brothers. 1953. \$4.00. Pages ix, 361.*

In these pages, the chief architect of the American Constitution comes to life. Through his own writing, Madison is revealed as a unique combination of practical politician and

governmental philosopher. The reach and insight of Madison's mind, the simplicity and clarity of his writing, and his part in the construction and defense of the Constitution place him with Washington, Jefferson, Franklin, and Hamilton at the summit among the many remarkable men whose efforts resulted in the creation of a stable democratic government.—E.L.-R.

TVA

TVA: DEMOCRACY ON THE MARCH. *(Twentieth Anniversary Edition). By David E. Lilienthal. New York: Harper & Brothers. 1953. \$3.50. Pages xxiv, 294.*

The former chairman of the Tennessee Valley Authority presents a persuasive case for the proposition that the TVA is a highly successful experiment, not only in regional economic planning, but also in governmental decentralization.

ALL DOWN THE VALLEY. *By Henry Billings. New York: Viking Press, 18 East 48th Street. 1952. \$3.50.*

This is the story of the Tennessee River Valley from 1799 to 1952, including the story of the Tennessee Valley Authority and its impact on the Valley.

Rural Government

GOVERNMENT IN RURAL AMERICA. *By Lane W. Lancaster. New York: D. Van Nostrand Company, 250 Fourth Ave. 1952. \$3.75. Pages 369.*

Public Administration

ADMINISTRATIVE ACTION: THE TECHNIQUES OF ORGANIZATION AND MANAGEMENT. *By William H. Newman. New York: Prentice-Hall, Inc. 1951. Pages 468.*

READINGS IN PERSONNEL ADMINISTRATION. *By Paul Pignors and Charles A. Myers. New York: McGraw-Hill Book Company, Inc. 1952. Pages 477.*

PUBLIC ADMINISTRATION AND POLICY DEVELOPMENT: A CASE BOOK. *Edited by Harold Stein. New York: Harcourt, Brace and Company. 1952. \$7.50. Pages 854.*

PUBLIC PERSONNEL MANAGEMENT. *By William G. Torpey. New York: D. Van Nostrand Company, Inc. 1953. \$5.00. Pages 425.*

The Attorney General Rules . . .

Municipalities

Pool Room Regulations. Can a board of aldermen prescribe by ordinance the age at which children may frequent pool rooms?

To: Richard A. Williams

(A.G.) A board of aldermen has authority to license, prohibit, and regulate pool and billard rooms, and in the interest of the public morals, revoke the license for the privilege of operating such rooms. G.S. 160-200 (33). Under this broad authority a municipality may by ordinance regulate the age below which children may not frequent pool and billard rooms.

Ordinance Restricting Keeping of Dogs. In view of G.S. 160-200 and *State v. Stowe*, 190 N.C. 79, can a town pass an ordinance prohibiting the keeping of dogs, restricting the area in which dogs may be kept, and limiting the number of dogs that may be kept on any lot within the town limits?

To: R. B. Mallard

(A.G.) The essential question is whether an ordinance prohibiting or restricting the keeping of dogs within the town limits or within certain areas thereof would amount to an unreasonable discrimination and would exceed the police powers granted to municipalities by statute. From G.S. 160-55 and 160-200 and the cases cited below, I am of the opinion a town has the authority to pass an ordinance restricting the area in which dogs may be kept in the town or restricting within reasonable limits the number of dogs that may be kept on any particular lot in the town, but I doubt that the courts would sustain the validity of an ordinance entirely prohibiting the keeping of dogs anywhere within the town limits. See *State v. Hord*, 122 N.C. 1092, *State v. Stowe*, 190 N.C. 79, and *Lawrence v. Nisson*, 173 N.C. 359. The ordinance should be carefully drawn to show that the town is acting within the limits of its police powers and its power to abate nuisances.

Residence Requirements for Police Officers. In view of G.S. 160-25, as rewritten in 1951, must a police officer be a resident of the city he serves?

To E. D. Kuykendall

(A.G.) G.S. 160-25, as rewritten, provides: "No person shall be a mayor, commissioner, councilman, or alderman of any city or town, unless he shall be a qualified voter therein." Prior to 1951 this section specifically included the "intendant of police." While it may have been the intent of the General Assembly to remove police officers from the list of officials who must be qualified voters within the municipality, Article 6, Section 7 of the State Constitution requires a public official to be a qualified voter within the area of which he is an official. *Barlow v. Benfield*, 231 N.C.

663, held that the chief of police of an incorporated town is a public official and further that a person not a resident of the municipality could not be elected chief of police. In spite of the language of G.S. 160-25, as rewritten in 1951, I am of the opinion that a city policeman is an officer within the contemplation of Article 6, Section 7 of the State Constitution.

A police officer, though not a qualified voter of a municipality, when appointed by the proper authorities, is at least a *de facto* officer and his acts are just as effective as if he were a resident and qualified voter of the municipality. His title to office cannot be challenged collaterally but only through a *quo warranto* proceeding brought for that purpose. *In Re Wingler*, 231 N.C. 560.

Clerks of Court

Commitment Hearing. Do the two doctors who sign affidavits as required by G.S. 122-46, as rewritten in 1953, have to appear at the commitment hearing before the clerk?

To: Miss Margaret Wooten

(A.G.) The statute provides that the clerk is to hear all evidence and make a determination thereon. The affidavits of the two doctors should be considered as substantive evidence upon the issues involved in the commitment but would not be controlling. It is not necessary for the doctors to appear personally at the hearing, for the statute only provides that the doctors make affidavit that the alleged mentally disordered person is in need of observation and admission in a hospital for the mentally disordered.

Exemption in Will from Filing Annual Accounts. A will provided that the executors and trustees would be exempt from filing annual accounts. Does this provision prevail over statutes (Article 16 of G.S. Chapter 28 and G.S. 28-53) requiring executors and trustees to file annual accounts and setting forth the duties of the clerk in this respect? Under these circumstances would a clerk be criminally liable if he found it necessary to issue a citation and attachment?

To: J. A. Bass

(A.G.) I know of no rule or principle of law which permits the testator to nullify and set aside positive statutes relating to the administration of an estate and the duties of executors and trustees. Executors and trustees are required by law to file annual accounts, irrespective of any language in the will; and if it is necessary to issue a citation and to issue attachment, a clerk would be acting within his legal rights and duties and no criminal liability would attach.

Motor Vehicle Laws

Use of Dealer's Plates by Purchaser. An automobile dealer allowed

a purchaser of a car equipped with dealer's plates to use them for more than ten days after the sale. The dealer did not furnish the purchaser with a receipt certifying that the necessary license and title fees had been paid as provided under G.S. 20-79 (b). Does this section or any other section of the General Statutes impose criminal liability upon the dealer?

To: J. V. Morgan

(A.G.) G.S. 20-79(b) permits the purchaser of a motor vehicle to use the dealer's plates for ten days after purchase, provided he has in his possession receipts from the dealer certifying that the purchaser has given money for title and license to the dealer to be forwarded to the Department. G.S. 20-111(c) provides "the giving, lending, or borrowing of a license plate for the purpose of using same on some motor vehicle other than that for which issued shall make the giver, lender, or borrower guilty of a misdemeanor" subject to a fine of \$50 or imprisonment for 30 days upon conviction. This section further provides that any plate improperly used is to be revoked or canceled and new plates must be purchased.

Dealer's plates are issued for particular vehicles within the provisions of G.S. 20-79. When the dealer permits these plates to be used on vehicles which no longer meet the requirements of G.S. 20-79, the plates are then being used "on some motor vehicle other than that for which issued". I am of the opinion that the dealer would be guilty of violating G.S. 20-111(c).

Unofficial Novelty Plates. A company wants to sell in North Carolina unofficial license plates made to resemble the official plate, except that the unofficial plate instead of bearing license numbers will have some other identification such as the first name or nickname of the owner. The plate would be mounted on the front of the automobile. Is or may the use of these plates be forbidden in North Carolina?

To: L. R. Fisher

(A.G.) It is unlawful to display "a registration number plate knowing the same to be fictitious" (G.S. 20-111) and G.S. 20-45 permits the Department to take possession of any "registration plate. . . which is fictitious." G.S. 20-49(d) permits officers and inspectors to inspect "registration plates" upon a vehicle which the officer believes is being operated in violation of any provision of the Motor Vehicle Law of 1937. The Commission is required to provide suitable forms for "registration number plates". G.S. 20-41.

Any plates designed to resemble the official plate is a "fictitious plate" in my opinion and therefore the statutes cited forbid their use. G.S.

20-39(b) authorizes the Commission to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of the Motor Vehicle Law and in my opinion under this provision the Commissioner could issue a regulation forbidding the use of such plates.

Accessory After the Fact. An operator committed manslaughter by improper operation of an automobile and left the scene of the accident. Later another person driving the automobile was apprehended under such circumstances as to warrant a conviction as an accessory after the fact to involuntary manslaughter. Should the driver's license of a person convicted as an accessory after the fact be revoked?

To: Childs and Childs

(A.G.) G.S. 20-17(3) requires the Department to revoke the license of any operator convicted of "any felony in the commission of which a motor vehicle is used." G.S. 14-7 provides that any person who becomes an accessory after the fact to any felony shall be guilty of a felony. The crime of manslaughter is punishable by imprisonment in the State's prison (G.S. 14-18) and therefore, manslaughter is a felony. The license of a person convicted as an accessory after the fact to manslaughter should be revoked.

Intoxicating Liquor

Confiscation of Vehicles Illegally Transporting Liquor. With reference to the procedure to be followed in the confiscation of motor vehicles seized while used in the illegal transportation of intoxicating beverages, (1) must all vehicles ordered confiscated and sold by the court be sold by the sheriff of the county; (2) may vehicles seized by county ABC enforcement officers and ordered confiscated by the court be sold by the county ABC enforcement officers; (3) what officer should sell vehicles seized by municipal police and ordered sold by the court; and (4) may, or should the judge of the court having jurisdiction state in the order of confiscation and sale, the officer who should make the sale?

To: R. L. Corbett

(A.G.) The jurisdiction to declare forfeiture of a vehicle used in the transportation of intoxicating liquor is in the court which has jurisdiction of the offense charged against the person operating the vehicle. *State v. Reavis*, 228 N.C. 18. G.S. 18-45 (o) gives to officers appointed by ABC Boards the same powers as other peace officers in the enforcement of the prohibition laws.

The court, in its order of confiscation, should designate the officer to make the sale of a confiscated automobile. Probably, under ordinary circumstances, the trial court would designate the sheriff to make the sale in a case in which the vehicle has been seized by the sheriff or his deputies; the court would authorize the chief of police to make the sale in a case in which the seizure had been made by a city police of-

ficer; and the court would designate the chief law enforcement officer of the ABC Board to make the sale in a case in which the vehicle had been seized by ABC officers.

Forfeiture of Car. Is an automobile subject to forfeiture under G.S. 18-6 when the defendant, while being pursued by a patrolman, threw jars of whiskey out of the automobile?

To: William R. Britt

(A.G.) I am of the opinion that the automobile is subject to forfeiture. This same question was raised in Virginia and it was contended that an actual seizure of the whiskey was required but the Virginia Supreme Court refused to give the statute such a construction. See *Commercial Credit Company v. Commonwealth*, 71 ALR 904. The same question was raised under the Federal Prohibition Act and it was decided there that the car was subject to forfeiture. See *Lizaso v. U. S.*, 65 F. (2d) 685.

Criminal Law

Police Officers; Entry Without Warrant or Search Warrant. Do municipal police officers have the right, without a search warrant, to enter a room in a cafe when the room is occupied by customers, has a sign on its door reading "private," and the door is closed?

To: Henry L. Kiser

(A.G.) *State v. Wray*, 217 N.C. 167, is the only North Carolina case in which the facts somewhat resemble this situation. There the place in question was a public cafe but not a private room in the cafe. The Court sustained the charge of the trial court that the officers had a right to go upon the premises and make an investigation without a warrant.

The general powers of law enforcement officers in making arrests are set out in Chapter 15, Article 6 of the General Statutes. A number of cases discuss in general terms the authority of officers to make arrests.

Under the circumstances described, I doubt that a police officer has the right to enter a private room in a cafe without a warrant or search warrant unless he hears loud noises emanating from the room or is aware of some other similar disturbance taking place therein. He could easily apply for a search warrant if he has reliable information that the law is probably being violated in the room.

Schools

Suits Against Trustees of City School Administrative Unit. May suit be brought against the board of trustees of a city school administrative unit upon a contract made by such board with an architect? Would such suit be brought against the board as an entity or against the individual members in their official capacity?

To: Coy E. Brewer

(A.G.) G.S. 115-45 provides that every county board of education is a body corporate and is subject to suit in its corporate name and the Su-

preme Court in *Kirk v. Board of Education*, 230 N. C. 619, held that an action could be maintained against a county board of education on a teacher's contract because of the statute. The board of trustees of a city administrative unit is not a corporation. G.S. 115-84 authorizes boards of trustees of city administrative units to enter into contracts for the construction or repair of school buildings. They may acquire sites for buildings (G.S. 115-85) and title to city school property is vested in them (G.S. 115-88).

Reasoning by analogy from the Kirby case, I am of the opinion that action will lie against the trustees in their official capacity, on a contract made in accordance with G.S. 115-84, with any judgment against them in their official capacity.

The members of the board of trustees should be named as defendants with "as Trustees of the _____ City School Unit" added.

Minutes of Boards of Education and School Committees as Public Records. Are minutes of boards of education and school committees public records and subject to inspection by a private citizen?

To: W. F. Veasey

(A.G.) A district school committee is required to keep a record of its proceedings (G.S. 115-133) as is the county superintendent as ex-officio secretary to the county board of education of its meetings (G.S. 115-44). G.S. 132-1 defines public records as "all written or printed books, papers, letters, documents and maps made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business." Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person. G.S. 132-6.

Construing these provisions together, I am of the opinion that minutes of county boards of education and district school committees are public records open for public inspection.

Rejection of Teachers. When a district school committee votes to re-elect or reject a teacher, can the county board of education over-rule the school committee's decision?

To: Sam R. Ogilvie and Holland McSwain

(A.G.) G.S. 115-354 provides that the contracts of public school teachers shall continue from year to year until the teacher is notified as provided in G.S. 115-539. In interpreting G.S. 115-359, it was said in *Board of Education v. Dickson*, 235 N.C. 359, that a district school committee "has power to dismiss or reject a principal or teacher of a school of the district as of the end of the current school year, but such dismissal or rejection is subject to the approval or disapproval of the county board of education and has no validity whatever until it has been approved by the county board of education."

The Court further said that if the county board approves the dismissal it is not effective until the county superintendent notifies the teacher by registered mail prior to the close of the current school term. A teacher's contract therefore continues for the next school year unless notice is sent in the manner stated.

Domestic Relations

Consent of Divorced Parent to Adoption. After a final decree of absolute divorce giving final custody of the child to the mother, is it necessary for the father to consent to the adoption of the child?

To: W. W. Speight

(A.G.) Yes. An absolute divorce with final award of custody to the mother does not forfeit all parental rights the father has to the child. Since the adoption statute requiring consent of parents does not make any exception in regard to consent in divorce cases, the father's consent is still required.

Electrician's License

Authority of Property Owner to Wire His Own Houses. Can a person, firm or corporation who owns or purchases lots and builds houses for rent, sale, or gift, thereon make the electrical installations in these houses without being qualified as required by G.S. 87-43?

To: John W. Mayo

(A.G.) A person can do electrical wiring on his own home without securing a license as required by G.S. 87-43. If, however, a person is engaged in building houses for rent or for sale, G.S. 87-43 would apply and it would be necessary for the builder to obtain a license or to employ a licensed electrician for the purpose of making the installation.

Property Taxation

Agricultural Products in Storage. Under G.S. 105-294.1 permitting the taxation of certain stored agricultural products at 60% of the regular tax rate, one of the procedural requirements is that the board of county commissioners determine certain facts and enter them on their minutes on or before March 31 in any year in which the 60% rate is to be applied to such stored products. If a board of commissioners fails to make such a determination by March 31, may it do so by a resolution dated July 6 in which it is purported to then adopt a resolution, as of March 31, *nunc pro tunc*?

To: Thomas J. White

(A.G.) The legal question is whether the time provision of G.S. 105-294.1 is mandatory or merely directory. I can think of no reason why the date of March 31 should be set as an absolute limit on the time within which the statute could be complied with. It is true that such a determination should be made before the tax levy is made because it is necessary to have such a question determined before a proper decision could be made as to the amount of

levy necessary to raise needed funds. So long as such determination is made in ample time for the board of county commissioners to take such factor into consideration in making its annual tax levy, it would appear that all practical purposes are served. In view of this situation, it is my opinion that the deadline of March 31 is directory only rather than mandatory and that the board of county commissioners could adopt such a resolution, complying with the statute, subsequent to March 31 and prior to the time for fixing the annual tax levy.

Amendment vs. Variance

(Continued from page 8)

ordinance) or where he wants to use his property for a purpose forbidden by the ordinance. As we have seen, the Board of Adjustment may not grant him a variance, because that would be in conflict with the purpose and intent of the zoning ordinance and would, in the view of the courts, constitute legislative action. If he desires relief only for his particular piece of property, the City Council may not enact a curative amendment, because that would constitute spot zoning. Consequently, he is barred from any relief unless he is able to persuade his neighbors and the Council that a larger area (including his property) should be rezoned for the purpose he desires.

If a zoning ordinance is to have any effect at all upon the city's growth and development, it must be enforced. In order to do a proper job of enforcement, each agency involved must be acquainted with the whole enforcement process and with the exact limits of its particular function. It is particularly important that the City Council and the Board of Adjustment have this understanding, because the courts have consistently set aside their decisions when they have invaded one another's fields. One is a legislative agency, the other is primarily judicial. One deals with general rules, the other with particular cases. While it is sometimes hard to draw the line between the two when confronted with an actual situation, in most cases it will be quite apparent as to which has jurisdiction.

The City Council is not a "super" Board of Adjustment, with power to set aside or overrule the Board's decisions (such function being reserved for the courts under G.S. 160-178). The Board of Adjustment is not a

Popular Government

"specialized" City Council with power to correct the Council's "mistakes" in the zoning ordinance. If they will keep this thought in mind, both boards will be more effective in guiding and controlling the growth of their city.

Cover Picture

(Continued from Inside Front Cover)

"The Law Governing Jails in North Carolina"; T. A. Early, Inspector of Correctional Institutions for the State Board of Public Welfare and Vice-President of the National Jail Association, "Needs and Conditions of Jails in North Carolina"; Dr. Ellen Winston, Commissioner of Public Welfare, "Welfare Department Responsibilities in Connection with Jail Operation"; John Morris, Secretary-Treasurer, North Carolina Sheriffs' Association, "The Sheriff's Responsibilities in Jail Operation"; Murray Linker, State Board of Health, "Jail Food Sanitation"; and "Jail Sanitation"; Miss Eleanor Bowdoin, State Board of Health, "Nutrition and Food Preparation"; and Dr. Lee M. Brocks, University of North Carolina, "New Lights Among the Shadows: Progress in Penal Administration."

At the close of the course, certificates were presented to those attending the school by Albert Coates, Director of the Institute of Government.

Present when the picture was made were (front row, left to right): R. C. Cox, Robeson County Jailer; Mrs. R. C. Cox, Matron, Robeson; Mrs. Mabel West, Matron, Buncombe; Mrs. Will Miller, Matron, Watauga; Mrs. I. T. Wilkinson, Matron, Cabarrus; Dr. Winston; P. Q. Cloninger, Jailer, Gaston; Mr. Cochrane. Second row: Grant Lyon, Jailer, Wilkes; Floyd D. Honeycutt, Jailer, Stanly; Mr. Morris; Mr. Early; E. H. Rich, Deputy Sheriff, Buncombe; Hubert E. Rayfield, Jailer, Anson; Robert L. Smith, Mecklenburg County Police; Carl G. Holliman, Jailer, Charlotte. Third row: L. R. Cobb, Jailer, Wayne; Robert H. Upchurch, Jailer, Durham; Rigdon R. Massey, Jailer, Guilford; J. A. Holmes, Jailer, Wake; Samuel R. Boger, Assistant Jailer, Cabarrus; W. S. McCommons, Jailer, Kannapolis; H. G. Speas, Jailer, Forsyth; Lt. P. D. Browning, Police Department, Greensboro; and Leonard Jones, Jailer, Cherokee.

Law and Administration

A Series Published by

INSTITUTE OF GOVERNMENT

The University of North Carolina
Chapel Hill

Volumes in the Series:

- | | |
|--|--------|
| I. THE LAW OF ARREST
By Ernest W. Machen, Jr. | \$1.50 |
| II. THE LAW OF SEARCH AND SEIZURE
By Ernest W. Machen, Jr. | \$1.50 |
| III. PROPERTY TAX COLLECTION IN NORTH CAROLINA
By Henry W. Lewis | \$2.50 |
| IV. MOTOR VEHICLE LAW IN NORTH CAROLINA
By John Fries Blair, William E. Poe, J. Shepard
Bryan, Jr., Ernest W. Machen, Jr., Charles E. Knox | \$1.50 |
| V. ZONING IN NORTH CAROLINA
By Philip P. Green, Jr. | \$3.50 |
| VI. LEGISLATIVE COMMITTEES IN NORTH CAROLINA
By Henry W. Lewis | \$1.50 |
| VII. THE GENERAL ASSEMBLY OF NORTH CAROLINA—
ORGANIZATION AND PROCEDURE
By Henry W. Lewis | \$1.50 |
| VIII. SOCIAL SECURITY AND STATE AND LOCAL
RETIREMENT IN NORTH CAROLINA
By Donald B. Hayman | \$2.00 |



Now starring in TV's brilliant new program, "TOPPER"—on CBS-TV.

Anne Jeffreys
AND
Bob Sterling
tell why they
changed to
CAMELS



Anne: I CHANGED TO CAMELS YEARS AGO BECAUSE TO ME THEY TASTE BETTER AND ARE SO MILD. YOU TRY THEM, TOO.

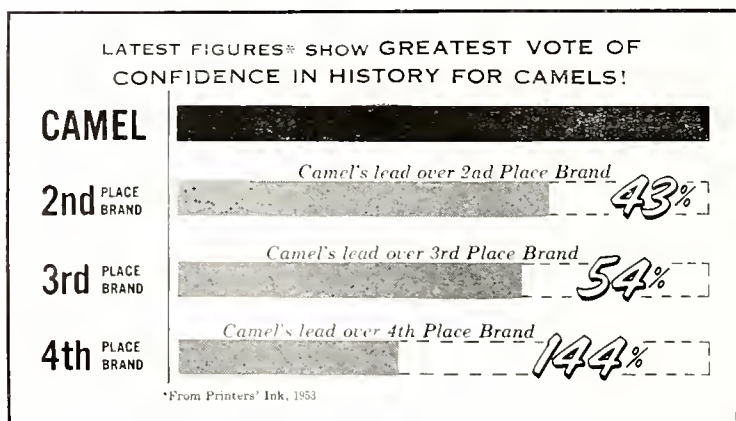
Bob: SO MANY FRIENDS SMOKE CAMELS, I TRIED THEM AND FOUND I LIKE THEM BETTER THAN ANY OTHER CIGARETTE.



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

Camels:

FIRST IN MILDNESS, FLAVOR AND POPULARITY



MAKE CAMEL'S FAMOUS 30-DAY MILDNESS TEST.

Smoke only Camels for 30 days and you'll find out what you've been missing!

• From coast to coast, more people prefer Camels than any other brand. Men and women, of all ages, in every walk of life are trying, testing and preferring Camels. What this *must* mean to you is that Camels' costly tobaccos give you rich flavor and genuine mildness—pack after pack. Yes—smoking Camels is more pure pleasure!





