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Cover

Shown on the cover is the graduating class of the Wildlife Protectors' School held by the Institute of Government from November 29 to December 19, 1953, for the Wildlife Resources Commission. Reading from left to right: First row, J. D. McLean, Wildlife Protector for Gaston County; Vann Wyatt, McGrady; Wiley Danner, Boone; Henry Bazemore, Windsor; George Thomas, Maysville; Walter Phipps, Piney Creek; John Beard, Jr., Charlotte; Deane Bell, Institute of Government staff. Second row, Allen Bridges, Sanford; Preston Sheppard, Albertson; Robert Wright, Lumber Bridge; John D. Fisher, Kings Mountain; C. M. Tesener, Jr., Shelby; N. E. Dixon, Kings Mountain; Carson Pridgen, Nolma. Third row, A. M. Shaw, Maysville; Wade Register, New Bern; Stanley Johnson, Jr., Lillington; Frank Earl Williams, Whittier; Robert Webster, Jr., Madison; Horace Cahoon, Columbia; Claude Rutter, Raleigh; James P. Radford, Asheville; Ralph Dagerhard, Maiden. Fourth row, John D. Brown, Wildlife Protector, Merkleburg County; C. N. Woolard, Supervisor of Wildlife District 3; W. H. Kennedy, Assistant Chief of Law Enforcement for the Tennessee Game and Fish Commission. Not present for the picture was W. C. Bumgarner, Chief, Law Enforcement Division, Wildlife Resources Commission.

THE CLEARINGHOUSE

NOTES

From North Carolina Counties

County Buildings

Davie County commissioners have received a low bid of \$103,314 for the erection of a new office building to supplement the courthouse. The new structure will house the county welfare and health departments, the library, the farm and home demonstration offices, the agricultural offices, and the offices of county school officials. . . . The grounds around the **Pender County** courthouse at Burgaw have come in for attention from local civic groups within recent months. New lights have been erected to replace dilapidated ones, and floodlights have been installed to illuminate the courthouse. An old fence around the property has been removed. . . . The acute shortage of parking space for county officials and law enforcement officers has led the **Wilson County** commissioners to agree to convert a side yard of the courthouse into a parking area. . . . **Mecklenburg County** has just finished washing the exterior of its courthouse and is now engaged in painting the basement, first, and second floor walls. . . . In **Haywood County** the grand jury has urged the commissioners to install a speaker system in the courthouse. . . . **Guilford's** commissioners have voted to air condition the second floor of the courthouse at an approximate cost of \$28,000.

Macon County has purchased 25 acres of land on which to build a new county home, and plans for the building are now being drawn. . . . Bothered by the fact that their county home is not fireproof, **Mecklenburg** commissioners are seeking ways to finance either a new building or a renovation of the present home.

Halifax County commissioners have given their blessing to the efforts of a local committee seeking to preserve the ancient "gaol" in which Flora Macdonald's husband was imprisoned, although this historic building was long ago abandoned as a place for the incarceration of Halifax's prisoners. . . . Age does not necessarily

disqualify a jail from active use, however. **Chatham County's** jail, despite its antiquity, has recently received one of the best ratings in the state. . . . While **Vance County** commissioners wrestle with the persistent need for a new jail, **Johnston County** is making plans to replaster and paint the walls of its jail.

A recent report indicates that some 26 county health departments have now moved into new health centers and that 21 others have plans for health centers under way. **Harnett, Pender, and Chatham** have definite plans for centers; **Haywood, Yadkin, Cleveland, Iredell, and Guilford**, among others, are giving serious consideration to building health centers. **Cleveland's** commissioners have also been asked to add space for 50 beds to the Shelby and King's Mountain hospitals. In addition to a projected health center, **Pender County** has asked for bids on a four-room addition to the county hospital it opened in 1951. . . . On January 1 **Forsyth County** converted its hospital into a convalescent center.

School Bond Money

One half the proceeds from the \$50 million school bond issue approved last fall must be distributed to the counties on the basis of need and ability to pay. All over the state, building plans for new schools and additions to existing schools are being held up pending a decision by the State Board of Education and the Governor on an equitable formula for this distribution. Representatives of the county commissioners' and county school superintendents' organizations will be asked to sit with a committee from the State Board of Education now working to devise a formula for submission to the Governor.

Non-Tax Revenues

Alamance County is scheduled to hold an ABC election in February, and **Johnston County** is planning one for March. . . . Two cases are now

before the Supreme Court to test the constitutionality of the legislation authorizing dog racing in **Currituck County**. In the four years of operation at Moyock the county has received \$482,000 in revenue from the track. . . . **Carteret** is the only other county in which a dog race track is operated.

Studies and Surveys

County commissioners and school authorities continue to seek advice on knotty problems from commissions, committees, professional students, and similar agencies. In **Mecklenburg** the county government has acted in conjunction with the Charlotte authorities to appoint a committee to study the problem of acquiring school sites in the fringe areas of the city. Another committee is working on the merger of the city and county planning boards; still another is studying consolidation of the county and city tax collection agencies. . . . School surveys are the most common ways of seeking advice. **Haywood, Macon, Person, Alamance, and Transylvania** have all had their school facilities and programs surveyed by outside agencies in the last few months. . . . **Mecklenburg** commissioners are considering asking for outside advice in classifying the jobs of the county's 375 employees.

Voting Machines

After months of discussion the commissioners of **Forsyth County** have decided to let the people decide whether the county should invest in voting machines. The present plan is to submit the issue to the voters in a referendum at the time of the general election in November. . . . **Wake County** has leased 70 voting machines on a trial basis.

Sheriffs' Departments

Roheson County has installed a new and more powerful radio receiver for its sheriff's department. . . . **Bladen** officials are considering the need for a two-way radio system as well as the need for more deputies. . . . **Cleveland County** has decided to hire six deputies on a full-time basis to replace a number of part-time

deputies. The county will pay each deputy a salary of \$250 a month plus \$100 a month for travel expenses and an annual allowance of \$150 for uniforms. Each deputy will be expected to furnish his own car, but the county will outfit it with radio equipment.

County Libraries

Last year the average North Carolinian read 2.3 books, yet the libraries in the state contain less than one book per person—.61 books per person to be exact. For operating costs the libraries last year received an average of 44c per person. The

libraries in **Burke** and **Stanly** counties showed the lowest operating costs per volume circulated during the year. . . . Two North Carolina librarians have received Ford Foundation grants to enable them to study services and facilities elsewhere: Mrs. Margaret Johnston, **Haywood County** librarian, and Mrs. Nell Wright, assistant in the **Winston-Salem** municipal library. . . . The **Halifax County** commissioners have recognized the local county library board as a county unit, enabling it to lease and occupy buildings, accept gifts and grants, and to carry out lease conditions imposed on donations.

suggestions is that the Machinery Act already envisions most of them and clearly gives local tax authorities all the legal power they need to carry them all out.

Orange County has initiated the use of schedules of value on a large number of common items of household, business, and farm property this year. . . . **New Hanover** considered taking a similar step but decided against it. . . . In **Alamance** much study has been given the whole problem of personal property listings. Commissioner J. B. Long has pointed out that in prior years 9,602 of the county's 18,496 taxpayers have listed their personal property at \$300 or less. He also stated that only 196 Alamance taxpayers have listed personal property at more than \$1,000. This year the county will use a percentage rule for household and kitchen furniture: Homeowners must list the equivalent of 15% of the value of their homes as personal property. Tenants in rented houses must list as personal property the equivalent of 10 months rent. Business firms will be required to list inventories at 50% of book value. Schedules like those used in **Orange** will be used in assessing common types of personal property not included in the \$300 exemption. . . . **Mecklenburg County** will use a percentage rule in a somewhat different manner. In reviewing 1954 personal property listings the county tax supervisor has been authorized by the county commissioners to use 10% of the assessed valuation of the taxpayer's house and lot as a minimum yardstick for testing the adequacy of his personal property listing.

Property Tax Notes

Listing

New Hanover County authorities are taking seriously the Machinery Act's requirement that township list takers be given instruction in their duties before each January listing period. While most counties have been content to hold meetings of list takers for half a day or less, in December this year the **New Hanover** tax supervisor held a three-day school for list takers in that county. . . . Again this year **Durham County** is repeating a listing practice it has found helpful in prior years. Shortly after Christmas the tax supervisor mailed to some 18,000 taxpayers abstracts on which real property had been pre-listed (including 1953 purchases and sales). The taxpayers are asked to check the abstracts and bring them to the list takers in January for insertion of personal property holdings. . . . The late listing taxpayer has long been a headache for tax authorities. Individuals and especially business firms employing professional accounting assistance in the preparation of abstracts often request extensions of time for filing, or more often they simply file after the close of the listing period and seek remission of the 10% penalty on the ground that their accountants had so much work to do they could not complete the work in time for a January listing. The **Mecklenburg County** commissioners have taken action to stop the practice. In the future the late listing penalty will not be remitted unless the taxpayer procures a

written grant of extension from the tax supervisor before the end of the regular listing period.

Tax Mapping

Four months' work and a cash outlay of \$1,100 has brought **Dunn** a complete tax map of all real property in the town. The maps have been blueprinted and bound in a 150-page book. For about \$25 any interested individual may procure a copy of the volume for his own use.

Assessing Personal Property

Not long ago the *Charlotte Observer* proposed that counties end the farcical listing of household and kitchen furniture, saying that a county could do it by:

"1—Hiring enough tax listers to accommodate the taxpayers without undue delay.

"2—Schooling the list takers in interview techniques.

"3—Allowing sufficient time for a thorough questioning of each household concerning the quantity and value of his personal holdings.

"4—Employing special tax investigators to conduct an on-premises appraisal in cases where the personal returns are obviously underestimated.

"5—Making it clear, through publicity and advertising, that cheating and chiseling on personal property declarations will no longer be condoned."

The interesting thing about these

Tax Billing

The city of **Raleigh** is instituting a new tax listing and billing system. City Manager Carper says the system is based on a "punchboard procedure," and he expects it to be of material assistance in speeding up the handling of the city's 24,000 accounts.

Railroad and Utility Assessments

The State Board of Assessment has increased the tax valuations of utilities by more than \$39 million this year. Electric, gas, and power companies led in the increases with

a total valuation of \$210,267,415 as compared with last year's figure, \$188,081,551. (This year's total figure is subject to some possible adjustment in view of the fact that three utility companies have entered protests.) Telephone companies were raised nearly \$10 million. The total valuation on railroads was increased by \$2,278,030.

Foreclosures

Person County has embarked on a program of rigid enforcement of the tax collection laws. The latest step has been the announcement that the county will institute foreclosures in an orderly and systematic fashion.

. . . How to compensate attorneys hired to do foreclosure work is a problem that has often deterred cities and counties from orderly foreclosure procedures. Warren County has tackled this problem with regard to delinquent 1950, 1951, and 1952 taxes. Under a recent agreement, the county attorney will be paid for foreclosure work at the rate of 25% of all taxes collected without suit and 33 1/3% (plus the statutory attorney's fee of \$5) of all taxes collected by actual suit. He will not be paid any additional fee for the 1953 taxes he may collect as an incident to collecting taxes for the three preceding years.

appropriated by these units during this fiscal year. The remainder will be supplied in appropriations during the next fiscal year.

Municipal Buildings

Construction of a new city hall is one of the chief questions now facing Raleigh's city council. The present structure is highly inadequate but agreement has not been reached on the best location for the new building. Weight of opinion in the capital city seems to favor selling the present building and site as a means of financing the major part of the cost of a new building. In an effort to inform the people of the problem and to get their reaction on a preferable site, councilmen and city officials have been appearing on a weekly half-hour radio program to discuss the new city hall and other municipal problems.

Meanwhile in Greensboro councilmen are studying proposed renovation of the annex to the city hall as a possible home for the police department. The building, which formerly housed one of the city's newspapers, now contains the offices of the city recreation department and the county health department, but the health offices will soon be moved to a new health center.

Winston-Salem, following the practice of several other cities in the state such as Charlotte and Greensboro, has installed a night deposit box for the benefit of customers wishing to pay their water bills after the collection offices have closed. When the depository was placed in operation, collection personnel who had been on duty Saturday mornings for the convenience of customers were removed from Saturday duty.

Water and Sewer Improvements

In a very light vote, issuance of \$1,800,000 in bonds to finance expansion of Burlington's water supply was approved on December 15. Burlington has been one of the cities hardest hit by recent summer droughts. . . . Charlotte's city council has approved preliminary plans for a new \$2,500,000 filter plant in the southwestern part of the city. Initial capacity of the plant will be 12,000,000 gallons daily and ultimate capacity will be 48,000,000. The present filter plant can process 24,000,000 gallons daily. . . . Voters in Cary will

NOTES

From North Carolina Cities

Annual Reports

Attractive annual reports have recently been issued by Mooresville and Laurinburg. Both contain photographs, information on the achievements of each department during the last year, and an analysis of the city's financial condition. Laurinburg's report appears in a slick paper, 9 1/2 by 12 1/2, eight-page format; Mooresville used a 9 by 6 page size printed lengthwise on slick paper, and an attractive sketch of the new city hall is on the front cover of the 16-page booklet.

Annexation

The constitutionality of the state's annexation statute has been challenged by West Lumberton voters seeking to block the recently-approved extension of Lumberton's city limits. The annexation ordinance added North, East, and West Lumberton to the city and is expected to increase the city's population by more than 50 per cent.

The complaining citizens allege that the annexation statute is unconstitutional because (1) it subjects citizens to debts, laws and regulations without giving them the opportunity of voting for the officials who impose the regulations and impose the taxes and (2) it delegates authority to city officials to extend town limits without the consent of citizens in the area annexed or their representatives in the General Assembly. The complaint further charges that

the city did not meet the technical requirements fixed by the statute for passage of the annexation ordinance.

A temporary restraining order against the annexation has been issued.

Edenton, Mars Hill, and Rutherfordton are other North Carolina towns considering annexation of suburban property. In an unusual development, citizens from inside the corporate limits have protested a proposed annexation by the town of Hudson, and an election is going to be held to determine whether the town should go ahead with the limits extension.

Airports

Bids for a new terminal building at the Raleigh-Durham Airport will be asked sometime in January, and construction is expected to start on the new building this winter. A completely equipped one-story building with basement will be built now at an estimated cost of \$336,875, while an additional \$114,450 will be spent on a concrete ramp, paving, engineering, and outside lighting. Sometime in the future a second story, estimated to cost about \$100,000, will be added. Completion of the building is expected before the end of the year.

The Authority has accumulated about \$275,000 during the past several years in annual appropriations from Durham, Raleigh, Durham County and Wake County, and an additional \$50,000 will be appro-

soon vote on a proposed \$141,000 bond issue, \$111,000 for improving the sewer system and \$30,000 for improvements to the water system.

Lighting

A plan for progressive improvement of the street lighting system in **Greensboro** is being considered, \$10,000 already having been appropriated this year for improvements. Part of this amount, however, will be needed to finance lighting on a new highway through town. . . . **Spindale** is also considering a new lighting system. **Smithfield** has decided to employ an engineer to make a complete survey of the town's electrical system, preparatory to making improvements and expansions in its electrical plant.

Planning And Zoning

Greensboro has amended its zoning ordinance to permit medical office buildings in institutional districts, provided (a) the plot size is greater than 10,000 square feet, (b) off-street parking space is provided within 400 feet of the main building at a ratio of one square foot to each square foot of gross floor area of the medical building, (c) building coverage of the plot does not exceed 30 per cent, and (d) no building is located closer than 30 feet to the street line or 20 feet to any other lot line.

The **Raleigh** Planning Department has issued a population forecast for **Raleigh Township**. The total population is expected to be 98,900 by 1960 and 122,700 by 1970. . . . The **Greensboro** Planning Department has initiated a series of population studies with an analysis and forecast of school and pre-school population in each of the city's census tracts.

Jacksonville has formed its first City Planning Board. . . . The **Kill Devil Hills** Town Commissioners have publicized provisions of the town's new zoning ordinance at a meeting with contractors and real estate dealers. . . . Edwin L. Jones has been reappointed to the **Charlotte** Housing Authority, of which he has been chairman since its creation in 1938.

Statesville and **High Point** have been considering adoption of minimum housing standards ordinances. . . . A year-end report shows that under **Charlotte's** ordinance a total of 9,897 houses were brought up to standard and 1,156 were demolished

between August, 1948, and December 31, 1953.

A Committee on Planning for **Raleigh's** Future, established by the local Chamber of Commerce, has presented a report calling for an extensive development program to meet future needs. Among the major projects called for were expanded water and sewerage facilities, a "belt" highway system around the city, and new down-town parking facilities. Col. J. W. Harrelson served as chairman of the committee.

NEW BUILDING CODE

A thoroughly revised State Building Code has been issued by the North Carolina Department of Insurance, after adoption by the State Building Code Council this summer. The new code grants builders greater leeway in use of materials and covers a number of subjects not included in the 1937 Code. Copies may be secured from the Department of Insurance for \$1.00.

Armories

Approval of two new National Guard armories by the State Armory Commission brings to twelve the number of new armories authorized since the federal-state armory construction program began two years ago. **Thomasville** and **Bladenboro** will each get \$100,000 armories according to the latest announcement. The other ten cities having armories approved or in process of construction are **Kinston**, **Red Springs**, **Burlington**, **Lenoir**, **Oxford**, **Zebulon**, **Lexington**, **Wilmington**, **Williamston**, and **Ahospie**.

Management

Wilson has contracted for a comprehensive audit calling for a more intensive examination of city finances than the usual annual audit. . . . At the end of its first six months experience in short term investment of idle city funds, **Greensboro** reported total earnings of \$7,747. . . . **Raleigh's** city council has authorized the city manager to contract with the IBM Corporation to prepare abstracts for the city as to names and addresses and tax bills. The city manager reported that the IBM equipment will do in six hours what the city takes two months to do manually, that the cost per bill using the equipment will be 8c per bill instead of

9c, and that the city will realize a substantial saving on a total of 24,000 tax accounts.

Recreation

Dunn has established a recreation commission but has postponed action on calling a special election to approve a special property tax to support a city recreation program. . . . An interesting example of the part played by civic clubs in the development of recreation facilities in many cities throughout the state is provided in the contracts recently entered into by the city of **Raleigh** with the Lions Club and the Junior Chamber of Commerce. Both clubs have agreed to develop park sites owned by the city under plans approved by the city council and the city recreation commission. The city will establish curb lines for streets, install toilets, lavatories and drinking facilities; and connect these facilities to the city water and sewer systems. The clubs will grade, back fill, sod, plant, and prepare the sites for installing parking areas, buildings, games, equipment, picnic grounds, and other facilities, proceeding as fast as possible with such financial aid as can be secured. For example, the Lions Club is planning to have a baseball field and picnic area in operation by spring with other facilities added as rapidly as possible. The city's recreation department will operate the parks. A third park to be sponsored by still another civic club is under consideration.

Miscellaneous

The police department in **Greensboro** has established a juvenile bureau to assist in preventing juvenile crime. The bureau will concentrate on crime prevention by patrolling and inspecting places where juveniles gather, by investigating crimes by and against juveniles, by supervising children on informal probation, and by coordinating community resources in removing harmful influences, providing wholesome ones, and correcting maladjusted individuals.

Another city has consolidated all of its engineering divisions under a city administrator. **Raleigh's** city manager, W. H. Carper, has moved J. B. Lambeth from the post of Director of Public Works to the job of Chief Engineer and has appointed W. J. Mann as new Director of Public Works.

Collection of City License Taxes From Out-of-town Businesses

By

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Perhaps the most difficult problem in the administration of a municipal privilege license tax ordinance is the collection of taxes from out-of-town businesses doing business within the municipality. In order to be fair to resident business firms who cheerfully pay their privilege license taxes, the tax collector must take the initiative in collecting from non-resident businesses, but often the very complexity of the laws governing privilege taxes frustrates his efforts to achieve good administration.¹

What Are These Businesses?

Municipalities may levy and collect privilege license taxes for the privilege of doing business within the corporate limits under the authority contained in G.S. 160-56 "to annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law." Without for the moment examining the limitations placed on this authority by judicial decisions or other statutory provisions, it is sufficient to say that this section has been interpreted to authorize the levy and collection of a tax from any business carried on for "gain or profit" within the city.²

Using "gain or profit" as a standard, we can immediately eliminate from consideration any person, firm, or corporation which transacts incidental business within the city, such as making purchases from resident business firms which contribute to the gain or profit of the resident firm rather than the non-resident firm. Rather our interest is directed toward the out-of-town business which comes into town in competition with resident business firms.

1. Fairness is used here in the sense that every person, firm or corporation subject to a privilege license tax should pay that tax. It cannot be said that the privilege license tax is equitable as it affects every business subject to the tax, for no completely equitable system is possible when apparently arbitrary limits are imposed on the taxation of some businesses by Schedule B of the Revenue Act.
2. *State v. Worth*, 116 N.C. 1007, 21 S.E. 204 (1895).

These out-of-town businesses can be roughly defined and classified in the following manner:

1. *The peddler.* In everyday terms the peddler is an itinerant salesman who travels from door-to-door selling merchandise. Historically he traveled from town to town with his merchandise on his back or in a wagon and remained in each town for a limited period of time. To the average person there was little difference between the person who sold the goods he carried with him and the person who displayed samples of merchandise for delivery at a future time, either by the salesman or by mail or by another representative of the manufacturer. By court interpretation and by statutory definition, however, the term "peddler" has acquired a technical meaning and is used specifically in reference to the person who carries merchandise from place to place and offers to sell or sells the identical goods he carries with him.

2. *The traveling salesman.* The method of selling through a traveling representative who displays samples of the manufacturer's product, solicits orders, and transmits the orders to the home office for filling has long been an important feature of American economic life. Long known and still referred to in the North Carolina statutes as a "drummer," the traveling salesman may solicit orders from house to house, as does the peddler; he may solicit orders from store to store; he may visit only large industrial concerns and businesses. He may, after soliciting orders, come back to fill the orders himself. More frequently he depends upon his company to fill orders through shipment of merchandise or delivery by another person or by truck.

3. *The route man.* A mechanized civilization has brought a special type of peddler-salesman who is distinguished by a special category for a

number of reasons. Representatives of large firms selling goods or services to homeowners or to retail stores are often assigned particular towns or parts of towns to cover regularly. The milkman delivers milk daily or every other day; the newspaper boy delivers the daily paper; the bakery man delivers bread. The laundry man solicits laundry to be cleaned; the dry cleaner solicits clothes to be cleaned. Practices vary according to the merchandise sold or delivered, but the route man is no itinerant. His rounds are regular and are repeated regularly throughout the year.

4. *The wholesale distributor.* In order to deliver merchandise previously ordered from a salesman or by mail, many wholesale companies send trucks on regular routes for delivery purposes. Occasionally delivery trucks will be asked to furnish merchandise which has not been ordered, and if it is available, the driver will often make the sale.

5. *The retail delivery man.* Many large stores maintain delivery services whereby merchandise purchased in their stores is delivered to the homes of purchasers in other cities.

6. *The itinerant merchant.* In every city or town, a person or firm sooner or later comes into town, establishes a stand on a vacant lot or on the street or rents a building for a short term, and sells produce or other merchandise for a limited period of time. He may stay one week, two weeks, a month, six months, or a year, but he is distinguished by the fact that he does not settle down permanently and may, indeed, disappear from town overnight.

7. *Retail businesses located outside town.* Many businesses which are located outside the corporate limits may, because of the character of the business, carry on business transactions inside the city. This is particularly true of businesses which have to seek out their customers, such as motor vehicle dealers or appliance dealers or junk dealers.

8. *Service businesses located outside town.* Other businesses located outside town may be service establishments, such as plumbing, general repair or

electrical repair businesses, and may be called upon to perform their services at locations inside the corporate limits.

This classification does not cover all the types of businesses which may cause the tax collector trouble in determining whether a privilege license tax is due by reason of business performed inside the town, but it covers the principal businesses which are involved. What are the rules that determine whether anyone of these businesses is taxable by the town, and where does the tax collector find these rules?

The Collector and the Ordinance

Municipal privilege license taxes are levied annually by an ordinance passed under the authority granted in G.S. 160-56 and this ordinance is the collector's constant guide. No tax can be collected unless it is levied in the ordinance, and most municipal ordinances in North Carolina list in detail the businesses or occupations which are subject to tax. In order to make sure that no business is left out, the good ordinances have what amounts to a "catch-all" clause, a section which imposes a moderate tax on any business not otherwise taxed in the ordinance.

For businesses located within the town, the tax collector can get along with the ordinance as his only reference. When he begins to collect taxes from businesses located outside town, he must have for reference Schedule B of the Revenue Act (G.S. Ch. 105, Article 2). In this law the state levies privilege license taxes on a large number of businesses, and in each section the General Assembly has set forth whether a city may levy a license tax on the business taxed by that section and the maximum tax which the city can levy. Furthermore the language of the statute limiting the power of the city with respect to a particular business often determines whether that business, if it is located outside a municipality, may be taxed by the municipality for business transacted within the municipality.

Take this example. An automobile dealer builds a garage and showroom just outside the town limits. While his service department does most of its work in the garage, the dealer's salesmen do most of their work inside the town limits, soliciting customers and selling automobiles. Dealers resident in the town complain to the tax collector that the dealer located outside the city has not paid the town license tax for doing business in the town. What does the collector do?

First, of course, he examines the town ordinance and he will probably find that the ordinance levies a tax on motor vehicle dealers. He knows that out-of-town businesses can be taxed for business "carried on or enjoyed within the city," even though the principal place of business is outside the city.³ Before trying to collect the tax, he refers to Schedule B of the Revenue Act and finds that G.S. 105-89(3) levies a state tax on motor vehicle dealers. Subsection (c) thereof reads as follows:

Counties, cities and towns may levy a license tax on *each place of business located therein*, taxed under this subsection, not in excess of one-fourth of that levied by the State, with the exception that the minimum tax may be as much as twenty dollars (\$20.00).

The collector's question is answered. Not only does Schedule B fix the maximum tax which the city may levy on motor vehicle dealers but it also specifies that the tax may be levied only "on each place of business located therein." While this section authorizes the town's tax on the basis of location, every section of Schedule B is not so definite and may merely authorize cities and towns to levy license taxes on the business named in the section. In such cases the town may collect the tax from out-of-town businesses doing business inside town. For example, see G.S. 105-102 (Section 168 of the Revenue Act) where the city's power to tax junk dealers is not limited to location. A tax on an out-of-town junk dealer buying junk in a city has been upheld by the state supreme court.⁴

With the ordinance and Schedule B in hand, the collector must know more about the legal principles involved in determining whether an out-of-town business is liable for the city tax.

Carrying on or Enjoying Business in City

G.S. 160-56 provides that businesses, to be taxable, must be "carried on or enjoyed within the city." On the meaning of that phrase, as defined by the courts, hangs the tax liability of many out-of-town businesses, but the cases defining that phrase are so few that they provide general guides for the tax collector rather than a pattern of specific rules.

The first case to arise involved an ordinance of the city of Concord which

provided that "every person, firm, or corporation operating or delivering bread or other bakery products in the city of Concord shall pay a tax of one hundred dollars (\$100.00)."⁵ Under the authority of this ordinance the city collected the tax from a Charlotte bakery which maintained no place of business in Concord but which sent a salesman with a truck to Concord. The salesman sold and delivered bread and other bakery products to stores and cafes in Concord and collected for the products at the time of delivery. The bakery sought to recover the tax paid on the ground that it was not liable for the tax.

The North Carolina Supreme Court upheld the city, holding that both the town's charter (which contained authority to tax sellers of bread) and the general law (G.S. 160-56) were sufficient authority to levy and collect the tax. Addressing itself particularly to the question whether the bakery was doing a business which was "carried on or enjoyed within the city" of Concord, the court said:

We think plaintiffs' trade is "carried on or enjoyed within the city" of Concord. To be sure its headquarters are in Charlotte, but the activities of plaintiffs are in Concord. . . Where the bread is baked is immaterial, but where it is sold and where the money is collected is where the business is done and the trade carried on.

Three years later a similar case went up to the Supreme Court from Rocky Mount.⁶ The city ordinance levied a tax on bakeries and the tax was collected from a Raleigh bakery which maintained no place of business in Rocky Mount but which sent a salesman to Rocky Mount to sell products from the truck to stores and cafes in the city. The salesman was indicted for engaging in the business taxed without obtaining the necessary license and he appealed from a conviction for violating the ordinance.

The Supreme Court upheld the conviction on the basis of the *Hilton* case and also ruled that the provision in G.S. 105-53 exempting the sale of bakery products from the peddler's tax constituted an exemption from the peddler's tax alone and did not prohibit a municipality from taxing the business of selling bakery products under the authority of G.S. 160-56.

3. See the next section for a definition of "carrying on or enjoying" business in the city.

4. *Weinstein v. Raleigh*, 219 N.C. 643, 14 S.E.(2d) 661 (1940).

5. *Hilton v. Harris*, 207 N.C. 465, 177 S.E. 411 (1934).

6. *State v. Bridgers*, 211 N.C. 235, 189 S.E. 869 (1937).

Under the fact situations in both of these cases it is clearly established that a business which takes orders, delivers merchandise, and collects the purchase price is taxable by a city under G.S. 160-56 unless some other statutory provision prohibits the tax. All of these elements of a business transaction are found in the transactions of many out-of-town firms doing business in the corporate limits, and where all are present, the tax collector will have little difficulty. Two other North Carolina decisions demonstrate that under other fact situations the determination of tax liability may not be so easy.

In *Kenny Co. v. Brevard*,⁷ a town ordinance imposing a privilege license tax upon "wholesale dealers or merchants, not otherwise taxed, using streets for delivery, per truck," was under fire. The plaintiffs were wholesale merchants in Buncombe County who sent a traveling salesman to Brevard once or twice a week. The salesman solicited and received orders for merchandise from merchants in Brevard, subject to the approval and acceptance of the order at the company's place of business in Asheville. All orders were for future delivery. Upon acceptance of the order, the plaintiffs delivered the merchandise by truck to the merchants in Brevard, but no one in, or connected with, the truck either solicited or took orders for merchandise or accepted payment for merchandise except in the case of a C. O. D. shipment. Payment was usually made by check sent to the plaintiff in Asheville. The plaintiffs instituted action to restrain enforcement of the ordinance insofar as it affected them and the lower court held that the ordinance was invalid. On appeal the Supreme Court affirmed.

The principal ground of the Supreme Court's opinion was that the tax on wholesale merchants using streets for delivery was not a reasonable classification for tax purposes. The court went further, however, and said that even if the classification were reasonable, the plaintiff was not doing business in Brevard under the test laid down in *Plott v. Michael*⁸ in which the court said:

Moreover, it is a generally accepted principle that "the test of the place of a contract is as to the place at which the last act

was done by either of the parties essential to a meeting of the minds.' Until this act was done there was no contract, and upon its being done at a given place, the contract became existent at the place where the act was done. Until then there was no contract.

In *Weinstein v. Raleigh*⁹ the question presented was whether the plaintiffs, junk dealers, located one-half mile out of the city, were "buying and/or selling material commonly known as junk, within the city of Raleigh," so that the plaintiff was liable for a privilege license tax levied by the city under the authority of Section 168 of the Revenue Act. The lower court found that the "plaintiff firm regularly and customarily makes purchases of such articles of junk as old automobiles, automobile frames, tires, scrap iron, and scrap copper from a large number of persons and firms having these articles for sale within the city of Raleigh, and regularly deals with practically all of the automobile dealers and tire stations in said city, buying quantities of old tires, car frames and cars in a unit, and selling individual items from old cars to garages and mechanics of the city of Raleigh . . ." (Emphasis supplied in the opinion.) The Supreme Court held that under these facts, the decisions in the *Hilton* and *Bridgers* cases were controlling, implying that the facts justified the conclusion that, on the whole, business transactions were made within the city rather than at the plaintiff's place of business one-half mile outside the city. Otherwise, the plaintiff would benefit over junk dealers located within the city who were required to pay the tax.

There was a dissent in the *Weinstein* case based on the fact that a particular business should have been taxed according to its location. The lack of a dissent in the *Hilton* and *Bridgers* cases suggests a difference between a firm which sends a truck on a regular route within the city to sell and deliver its products and a firm operating from a fixed location which comes into the city to transact some of its business. Such a distinction is not in the majority opinion, however, and the quantitative test implied in the *Weinstein* case must be applied to out-of-town businesses.

With these cases in mind, it is now appropriate to re-examine the busi-

nesses classified earlier in the article and to determine, if possible, the probable tax liability of each.

Peddling

Definition. The North Carolina Supreme Court defined peddling over a half century ago in the following terms:¹⁰

The usual and ordinary significance of that word indicates the occupation of an itinerant vendor of goods, who sells and delivers the identical goods he carries with him, and not the business of selling by sample and taking orders for goods to be thereafter delivered and to be paid for wholly, or in part, upon their subsequent delivery.

For tax purposes the General Assembly has subsequently defined a peddler as "any person, firm, or corporation who or which shall carry from place to place any goods, wares, or merchandise, and offer to sell or barter the same, or actually sells or barter the same."¹¹ Both definitions emphasize the fact that the peddler must sell the identical merchandise that he carries with him. Attempts have been made in the past to tax persons selling by sample, with delivery later, as peddlers, but these attempts were made at a time when the North Carolina statute defined selling by sample in certain circumstances as peddling.¹² That provision is not now in the statutes, and even if it were, its constitutionality would be doubtful.

Insofar as collection of taxes from peddlers is concerned, the safest rule for the collector to follow is to collect the peddler's tax only from those persons who go from door to door and sell the identical goods they carry. A great deal of difficulty has been caused in some towns because peddlers will seek to avoid the tax by

10. *State v. Lee*, 113 N.C. 681, 18 S.E. 713 (1893).

11. G.S. 105-53(a); Section 121(a) of the Revenue Act.

12. See *Range Co. v. Carver*, 118 N.C. 328, 24 S.E. 352 (1896); *State v. Franks*, 127 N.C. 510, 37 S.E. 70 (1900); *Collier v. Burgin*, 130 N.C. 632, 41 S.E. 874 (1902). The state statute defining persons selling by sample as peddlers and levying a tax was repealed long ago after it was apparent that the act was unconstitutional, certainly as it applied to persons soliciting orders by sample where the merchandise to fill the orders had to be shipped in interstate commerce. See the section entitled *The Traveling Salesman* and the cases cited in note 24.

7. 217 N.C. 269, 7 S.E.(2d) 542 (1939).

8. 214 N.C. 665, 200 S.E. 429 (1938).

9. 219 N.C. 643, 14 S.E.(2d) 661 (1940).

taking orders and delaying delivery for a short time in order to be able to argue that the goods delivered were not the identical goods displayed at the time of the sale. Even if for all practical purposes the products delivered are the same products which could have been delivered at the time of sale, sales made in this manner probably do not constitute "peddling" in the technical legal sense, although the transaction may very well constitute "doing business" in town and be subject to the general privilege license tax for doing business. Suppose, for example, that the salesman drove into town, stored his stock of goods, went from door-to-door and solicited orders, and then later delivered the merchandise ordered. While as a technical matter he would not be delivering the identical merchandise carried with him when the orders were solicited, he was "doing business" in the town under the rule stated in *Plott v. Michael* and reaffirmed in *Kenny v. Brevard*, and the salesman would be liable for the tax. Other variations in selling by sample are discussed in the section concerning traveling salesmen.

Exemptions. The occupation of peddling is taxed as a privilege by the state, and cities and counties may levy taxes not in excess of those levied by the state and only upon those peddlers taxable by the state. The following persons, commonly considered as peddlers, are exempt from taxation as peddlers by the state, cities, and counties:

1. A person, firm, or corporation who or which is a wholesale dealer with an established warehouse in this State and selling only to merchants for resale.¹³ The fact situation is very important in determining whether a given person or firm is exempt under this provision. Thus any peddler without an established warehouse who sells only to merchants for resale is taxable.¹⁴

2. A person, firm, or corporation selling farm products raised on premises owned or occupied by such person, firm, or corporation, his or its *bona fide* agent or employee selling such products.¹⁵ In some cases it will

be hard to determine whether the salesman actually raised the products sold, such as trucks from Georgia which peddle fruit and have no proof other than their assertion that they raised the fruit. Even a more difficult case is presented where the out-of-state grower presents a certificate from the clerk of superior court in his county that he raised the fruit he intends to sell. Does the law require the tax collector to accept this proof if he suspects its validity?

3. A person, firm, or corporation who or which sells books, periodicals, printed music, ice, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, products of the dairy, poultry, eggs, or livestock.¹⁶ Likewise no tax can be levied on a person who personally produced the articles he offers for sale.¹⁷ It is interesting to note that many of these exempted products are those generally sold and delivered in cities by route men.

4. A person, firm, or corporation who or which maintains a fixed permanent location at or in which at least 90% of his or its total sales volume is made and who or which pays all applicable State and local taxes for such fixed permanent location. This exemption applies only to sales made from vehicles within the county wherein the fixed location is maintained.¹⁸

5. Drummers selling by wholesale are exempted from taxation by cities and counties.¹⁹ This exemption seems to be unnecessary since any person selling by sample would not fit the statutory definition of a peddler.

6. Any board of county commissioners may, upon receiving an application, exempt from the license tax levied under G.S. 105-53 disabled veterans of the Spanish-American War, disabled veterans of World War I or World War II who have been *bona fide* residents of the state for 12 or more months continuously, blind persons who have been *bona fide* residents of the state for 12 or more months continuously, and widows with dependent children.²⁰ The county commissioners must furnish each such person with a certificate of exemption to permit peddling within

the limits of the county without payment of the state tax.

These exemptions are from the tax on peddlers only, at least insofar as cities are concerned. Subsection (g) of G.S. 105-53 provides that "no county, city, or town shall levy any license tax under this section upon a person so exempted in this section, nor upon drummers selling by wholesale." The effect of this section was brought into issue in the case of *State v. Bridgers*²¹ where the Raleigh bakery claimed that G.S. 105-53(e), exempting the sale of bakery products from the peddler's tax, also prohibited cities from taxing bakeries. In reply the court stated:

It seems clear, therefore, that the prohibition relates to license taxes levied "under this section." The tax complained of is not levied "under this section." The tax is levied under the general authority given the city of Rocky Mount in its charter, . . . and C.S., 2677 (now G.S. 160-56), authorizing the levying of a tax upon trades and businesses carried on within its corporate limits. A business may have several aspects for tax purposes.

As an outcome of this decision it would seem that a city could levy a tax under the authority of G.S. 160-56 on any business subject to taxation as a peddler or on any business specifically exempted from taxation as a peddler, so long as the tax collected was not on the occupation of *peddling*.

Liability for the Tax. The individual peddler is liable for the tax levied under G.S. 105-53 except where the provisions of G.S. 105-53 (b) apply.²² Under that section

Any person, firm, or corporation employing the services of another as a peddler, either on a salary or commission basis, and/or furnishing spices, flavoring extracts, toilet articles, soaps, insecticides, proprietary medicine and household remedies in original packages of the manufacturer and other packaged articles of the kind commonly used on the farm and in the home, to be sold by a peddler, under any kind of contractual agreement, shall be liable for the payment of taxes levied in this section, instead of the peddler.

No corporation employing peddlers is liable for a tax as an employer of peddlers nor can it purchase one license good for two or more ped-

13. G.S. 105-53(a); Section 121(a) of the Revenue Act.

14. See *State v. O'Briant*, 188 N.C. 452, 124 S.E. 848 (1924).

15. G.S. 105-53(c); Section 121(c) of the Revenue Act. This exemption extends to out-of-state growers; see *Gramlin v. Maxwell*, 52 F.(2d) 256 (1931).

16. G.S. 105-53(e); Section 121(e) of the Revenue Act.

17. *Ibid.*

18. G.S. 105-53(a); Section 121(a) of the Revenue Act.

19. G.S. 105-53(g); Section 121(g) of the Revenue Act.

20. G.S. 105-53(f); Section 121(f) of the Revenue Act.

21. 211, N.C. 235, 189 S.E. 869 (1937).

22. See *State v. Rhync*, 119 N.C. 905, 26 S.E. 126 (1896); *State v. Morrison*, 126 N.C. 1123, 36 S.E. 329 (1900).

dlers.²³ A more difficult problem is presented where a peddler has one or more assistants, and this question is discussed in the following section.

Amount of Tax. The state levies taxes on peddlers under G.S. 105-53 (Section 121 of the Revenue Act) and counties and cities may levy peddler's taxes not in excess of those levied by the state. Each peddler must obtain a license from both the state and the county, and from the city if he operates within the city. The amount of the license is principally determined by the mode of transportation used by the peddler, and a few questions may arise in determining what mode of transportation is really used.

Frequently a peddler will come into town with a truck, park the truck, and peddle his wares on foot. It seems clear that he is then liable only for the tax levied on a peddler on foot. Suppose, however, that he moves the truck from block to block and then canvasses each house in the block on foot. Then the truck becomes a more important means of peddling and the usual decision is to collect the tax for peddling with vehicle.

Another question may arise. Suppose a peddler comes into town with a truck and one assistant, the assistant having the job of passing out merchandise for the peddler to deliver. Probably there would be no tax liability for the assistant. But suppose that the peddler has three assistants, each of whom peddles in a different section of town. Under this fact situation there is an inclination to view each assistant as a peddler and to require a separate license from each individual.

The Traveling Salesman

By reason of definition the traveling salesman is not subject to the peddler's tax for he is not a peddler. Is he, then, subject to any tax for his activities within the city?

If a salesman solicits orders for goods which, to be delivered, must be shipped in interstate commerce, he is not liable for the municipal privilege license tax. The U. S. Supreme Court has consistently held that a privilege license tax upon persons soliciting orders for goods to be shipped in interstate commerce is a direct burden on such commerce. No tax may be levied on the persons taking orders or on the person delivering the goods ordered, if the merchandise

to fill the order is shipped in interstate commerce, the key to these decisions being the old "original package" doctrine.²⁴ Once merchandise is incorporated into the stock of a North Carolina person or firm, however, their sale becomes subject to taxation.²⁵

If, on the other hand, the salesman solicits orders for goods which will be furnished from a North Carolina warehouse or firm, a tax may be levied if, under the rules of the *Plott* and *Kenny* cases, it can be established that the contract of sale became binding at the place where the order is solicited. In the *Kenny* case, however, it was held that the fact that the orders had to be sent to Asheville and were subject to approval by the seller's office in Asheville proved that the contract became binding in Asheville rather than Brevard.

Ordinarily it will be difficult to establish that a traveling salesman fulfills the statutory definition of doing business in the city. As a rule the salesman takes orders and forwards the orders to his home office to be filled. The merchandise is either shipped by mail or freight or is delivered by truck. Payment is usually made by check. Much will depend upon whether the placing of an order by the customer is binding upon the salesman's firm before it is received and approved at the firm's home office.

The Route Man

Under most circumstances the route man, or his company, is subject to taxation by the municipality. If merchandise, such as dairy products or bakery products, is sold, both sale and delivery take place, and these elements are sufficient to constitute a contract or valid sale made within

the city, even though collection may be delayed and payment may be made by mail. It is in this situation where most frequently the city levies a tax under G.S. 160-56 on businesses engaged in the sale of merchandise which is exempt from the peddler's tax under G.S. 105-53(e). For example, the sale of milk by a delivery man might meet the definition of peddling but the sale of dairy products is exempt from taxation as peddling. The city, however, may levy a tax on the business of selling milk and dairy products.

Delivery

Businesses in North Carolina are not taxable for the simple act of delivering merchandise, for in *Kenny v. Brevard* the court held that a tax on a business for using the streets of the town for delivery was not a reasonable classification. This would seem to be applicable whether delivery was by a wholesale or a retail firm.

Itinerant Merchant

Itinerant merchants are defined in G.S. 105-53(d) as salesmen or merchants who are not regular merchants in the city, who expose goods or merchandise for sale either on the street or in a building occupied in whole or in part, and who conduct such business for less than six consecutive months unless the business is terminated for one of the valid reasons set forth in the statutes. The city may require itinerant merchants to pay the required tax in advance under the conditions set forth in the statutes. Itinerant merchants selling fruit and farm products are not subject to this particular tax.

Since itinerant merchants are taxed under the provisions of G.S. 105-53, and since the provisions of that section limit cities and towns in the imposition of taxes under that section only, cities and towns can probably levy a tax on the itinerant merchant for the privilege of engaging in his particular business, rather than as an itinerant merchant.

Retail and Service Businesses

Located Outside Town

Determination of the liability of all other out-of-town businesses for the municipal privilege license tax depends upon the factual situation, using the decisions in the *Kenny* and *Weinstein* cases as guides. Did contracts, entered into for gain or profit, take place in the municipality? Were services rendered for gain or profit within the municipality? Were business transactions entered into regu-

23. See *State v. Freeman*, 216 N.C. 161, 4 S.E.(2d) 316(1939).

24. See Note (1939) 18 *N.C.L.Rev.* 48 and the cases cited therein under footnotes 6, 7, 8, and 9. The principal North Carolina cases are *State v. Caldwell*, 127 N.C. 521, 37 S.E. 138, 187 U.S. 622(1900); *Sims v. Norfolk and Western Rr.*, 130 N.C. 556, 41 S.E. 673, 191 U.S. 441(1902); *Range Co. v. Campen*, 135 N.C. 506, 47 S.E. 658(1904); *State v. Trotman*, 142 N.C. 662, 55 S.E. 599(1906); *Best & Co. v. Maxwell*, 216 N.C. 114, 3 S.E.(2d) 292, 311 U.S. 454, 61 S.Ct. 334, 85 L.Ed. 275(1940) (where the state levied a tax on the occupation of displaying samples in a temporary location for the purpose of securing orders; this tax was held to be a burden on interstate commerce).

25. See *Smith v. Wilkins*, 164 N.C. 135, 80 S.E. 168 (1913).

larly and customarily? Or were business transactions in the city merely incidental to the firm's regular business outside of town? At the very least it would seem that if a person or firm frequently and as a matter of routine transacted business for gain or profit inside the town, and if the person or firm is in competition with another person or firm located inside the city, a good case for collecting the tax has been made.

Perhaps the hardest case is where an out-of-town firm solicits orders inside of town for a service to be rendered outside of town. Printing serves as an example. If a salesman takes an order for printing work to be done at the printing company's place of business in another city and the material must be approved by the customer before the cost of the printing is paid, is the printing firm liable for a privilege license tax? Certainly the printing company is engaged in business for a gain or profit. But where is the "place of contract"? Here again the collector must determine the place where the contract becomes binding as in the *Kenny* case.

Effect of Schedule B

Even if the tax collector determines that a business, not liable for the peddler's tax, is carrying on or enjoying business within the city, he must not attempt to collect the tax until he has checked the provisions of Schedule B of the Revenue Act. Here are the ways in which Schedule B must be consulted:

1. If the state permits taxation of a business by a city but imposes a ceiling on the maximum city tax permitted, the city tax collector should not attempt to collect the tax from the out-of-town business until he checks the exact wording of the statutory provision permitting taxation by the city. For example, G.S. 105-89(3) permits cities to tax motor vehicle dealers, but the collection of a tax from an out-of-town dealer doing business within the city limits is prohibited by the provision specifying that "counties, cities and towns may levy a license tax on each place of business located therein." On the other hand G.S. 105-102 merely authorizes counties, cities and towns to levy a tax on junk dealers not in excess of that levied by the state, and the taxation of an out-of-town junk

dealer was upheld in the *Weinstein* case.

2. If the state prohibits taxation by the city, no tax can be collected.
3. A special situation applies to persons soliciting laundry work or supplying or renting clean linen in any city or town outside the city or town wherein the laundry or linen or towel supply house is established. An out-of-town laundry or linen supply house soliciting in the town may be taxed not more than \$12.50 by the city under the provisions of G.S. 105-85. No mention is made of a limitation on or a prohibition against a tax on laundries or linen supply houses located in the town, except that one of the conditions required for permission to solicit in other towns is that the laundry or supply house shall have a "municipal" license. G.S. 105-74 provides for the collection of a special state tax from pressing clubs, dry cleaning plants, and hat blockers which solicit business in a town which has a resident establishment but merely provides that cities and towns under 10,000 population may levy a tax of not more than \$25 and cities and towns over 10,000 may levy a tax of not more than \$50. Presumably this maximum would apply to both out-of-town and resident businesses.

Classification

Ordinance provisions levying taxes on businesses must not be drafted so as to discriminate against non-resident businesses.²⁶ Just as the town is careful to collect a privilege license tax against a non-resident business doing business in the town in order to do justice to similar businesses located within the town which pay the same tax, so it must be careful to see that ordinance provisions do not tax out-of-town businesses at a higher rate than resident businesses pay. For this reason the classification of businesses taxed by the town should not depend on whether or not the principal office of a business is in the town, but should be drafted to apply to any business in the classification which is actually "carrying on or enjoying" business within the town, without considera-

tion as to the location of its principal office. Classifications such as the following would probably not be looked upon with favor by the courts:

1. Taxes levied on "businesses which do not pay property and other taxes to the town."
2. Taxes levied on "non-resident businesses which use the streets of the town for solicitation or delivery."

General provisions of ordinances should preferably be phrased as levying a tax on "any business not otherwise taxed under this ordinance," or on "any retail business not otherwise taxed in this ordinance." Avoid placing in the classification any mention of the location of the business. The fact that business is carried on within the town is a reasonable basis for classification and avoids any constitutional difficulties.

Conclusions

Until more cases are submitted to the North Carolina Supreme Court for decisions in this area, there must be many unanswered questions as to what out-of-town businesses are taxable for doing business inside the town. The tax collector, armed with his ordinance, the Revenue Act, a knowledge of some of the existing legal rules and guides and his own good common sense, can reach a decision in most cases. Where the fact situations are complicated, he may have to ask the city attorney to act as judge of the facts in determining whether business was "carried on or enjoyed within the city."

When approaching the question of whether any business is taxable, however, it is helpful to remember the following conditions which must be met:

1. The tax must be levied by a duly-enacted ordinance, and if the business is not specifically taxed by the ordinance, there must be a general clause taxing all businesses not otherwise taxed.
2. The tax must be uniform with respect to all businesses in a given class, and the classification must be reasonable.
3. The amount of the tax, while in the discretion of the governing body, must not be discriminatory.
4. The business taxed must be "carried on or enjoyed within the city."
5. The tax must meet the limitations imposed by Schedule B of the Revenue Act with respect to businesses which are also taxed by the state in that schedule.

26. *State v. Williams*, 158 N.C. 610, 73 S.E. 1000(1911).

Books of Current Interest

City Planning

ZONING LAW AND PRACTICE. (Second Edition, Two Volumes). By E. C. Yokley. Charlottesville: The Michie Company. 1953. \$25.00. Pages 958.

Since publication of the first edition of this work in 1948, it has taken its place alongside Edward Bassett's outstanding text as one of the standard authorities in the field of zoning, with citations from more than 20 State Supreme Courts to its credit. The earlier edition included chapters on the origin of zoning and its place in the police power, the context of the ordinance, enactment and amendment procedures, permits, enforcement, powers and procedures of the board of appeals, non-conforming uses, area and height requirements, appellate procedure, judicial construction, injunction and mandamus, airport zoning, special subjects of zoning legislation, and suggested forms. The current edition has been brought up to date and enlarged, particularly by adding new chapters on planning commissions, off-street parking, and urban redevelopment. To keep it current, the author plans to issue annual pocket supplements. City attorneys and planning officials will find it a much-used addition to their libraries.—P.P.G., Jr.

HOME BUILDERS MANUAL FOR LAND DEVELOPMENT (Revised Edition). Washington: The National Association of Home Builders. 1953. \$3.00. Pages 274.

Published primarily to assist sub-developers and home builders, this manual is equally useful to city planners and other officials interested in the proper design and lay-out of their city. Simply written and liberally illustrated, it should be required reading for all Planning Board members who pass upon subdivision plats.

RENEWING OUR CITIES. By Miles L. Colean. New York: Twentieth Century Fund. 1953. \$2.50. Pages 181.

Casting his work on the broad canvas of urban renewal rather than mere slum clearance, the author has packed into a few pages a penetrating analysis of the symptoms and

underlying causes of urban "blight," together with a discussion of the many steps which are being taken to cure this problem. City officials generally, but particularly city planners and top administrative officials, will find that this book adds much to their understanding of municipal problems.—P.P.G., Jr.

CORRECTION

In the BOOKS OF CURRENT INTEREST section of the December, 1953, issue of *Popular Government* we inadvertently failed to state that three of the listings were for students' editions rather than for the regular editions of the books concerned. The publisher, the Bobbs-Merrill Company, Inc., 730 North Meridian Street, Indianapolis, Indiana, has kindly called the error to our attention, and we are glad to make this correction. The books should have been listed as follows:

ACCOUNTING FOR LAWYERS (Student's Edition). By A. L. Shugerman. 1952. \$9.00. Pages 600. [Available only if adopted as course book; problems manual, \$1.00; problem answers available to instructors only].

LAW AND TACTICS IN JURY TRIALS (Student's Edition). By Francis X. Busch. 1950. \$9.00. Pages 917. [Also available: *Exercise and Quiz Supplement*, \$0.25, pages 45].

THEFT, LAW AND SOCIETY (Second Edition, Student's Edition). By Jerome Hall. 1952. \$7.50. Pages 422.

SHOPPING CENTERS: PRINCIPLES AND POLICIES (Technical Bulletin No. 20). By J. Ross McKeever. Washington: Urban Land Institute, 1737 K Street, N.W. 1953. \$6.00. Pages 92. The success of early shopping centers has created a burst of enthusiasm among builders in North Carolina as well as elsewhere. This analysis of basic principles which should be observed in building such centers cautions, however, that "the number of mistakes that the

sponsor of a shopping center can make when developing a new center seems unlimited." As a compilation of the experience and ideas of successful developers throughout the country this bulletin will be useful both to developers and to city planning officials.

HOUSING AN AGED POPULATION. By the Subcommittee on Standards for Housing and Infirm, Committee on the Hygiene of Housing, American Public Health Association. New York: The APHA. 1953. Price? Pages viii, 92.

POPULATION PROBLEMS. By Warren S. Thompson. New York: McGraw-Hill Book Company, Inc., 330 West 42nd Street. 1953 (Fourth Edition). \$6.50. Pages xiii, 488.

Traffic

MANUAL OF TRAFFIC ENGINEERING STUDIES (2nd Edition). New York: Association of Casualty and Surety Companies, 60 John Street. 1953. Price? Pages 273.

City officials interested in probing into the facts, rather than the fancies, relating to their pressing traffic and parking problems will welcome this book with open arms. It presents in a highly readable manner, with ample illustrations, detailed techniques for making any of the common studies relating to traffic and parking. The first edition of this handy manual, published in 1945, quickly became a standard reference and ran through three reprintings. This edition has been more than doubled in size and brought up to date to reflect the latest techniques.—P.P.G., Jr.

STATE TRAFFIC SAFETY: ITS ORGANIZATION, ADMINISTRATION, AND PROGRAMMING. By Maxwell Halsey. Saugatuck, Connecticut: The Eno Foundation for Highway Traffic Control. 1953. Free. Pages 280.

This book will prove invaluable to public officials who are responsible for the coordination and direction of highway safety programs, especially programs which involve many different organizations. In the first half of his book, Mr. Halsey, who is Executive Secretary of the Michigan State Safety Commission, provides a guide to the various types of organizations to be found working in the field of traffic safety and gives an indication of the capabilities and limitations of each type of organization. He also

points out ways in which the aid of various organizations, both official and private, may be enlisted and effectively used in an over-all safety program.

The second part of the book discusses particular programs and the organizations best suited to carry them out. The emphasis throughout is on coordination and the role of the traffic safety coordinator in bringing together all available state and community resources in a united attack on the highway safety problem.—E.L.-R.

NOW THERE'S NO EXCUSE.
By Priscilla Hughes. London and Sydney: Angus and Robertson. 1952. 12s. 6d. Pages 110.

An Australian policewoman has written a book combining practical advice to drivers with clear explanations of traffic laws. An American reader is impressed by the similarity of Australian and American traffic problems and the laws passed to meet them. In her chapter on drunken driving, Miss Hughes conducts a running battle with the Australian courts, attacking them for their leniency, and demonstrates that mutual misunderstanding between courts and law enforcement officers is not limited to the United States.—E.L.-R.

Evidence

A TREATISE ON THE LAW OF CRIMINAL EVIDENCE (Fourth Edition). *By H. C. Underhill, revised and edited by John Lewis Niblack. Indianapolis: The Bobbs-Merrill Company. 1935. \$15.00. Pages xviii, 1691.*

For local police departments, prosecuting attorneys, judges, and practitioners specializing in the defense of criminal cases who must be satisfied in their libraries with one basic book in each of the many fields of law related to their work, that one book in the field of criminal evidence should be Underhill's *Criminal Evidence*. This book covers the limited area of the law of evidence with which it deals with a comprehensiveness which is not even exceeded by that of the classic 10 volume treatise of Wigmore.

Although written by a lawyer for lawyers primarily, the clarity of presentation even of the detailed expansion of fundamentals should be understandable to any experienced law enforcement officer with some formal introduction to the law of evidence. To the training officer, this

book can be the source of the background material with which he should be familiar when he takes the floor to explain basic rules of evidence to the men of his department. The basic rules presented by such an instructor to his men must, like an iceberg, be supported by a greater mass of information which will not necessarily show. This is necessary in order to allow the instructor to answer questions which some of the men may ask based upon their peculiar experience in connection with one of the rules being discussed. The instructor must be prepared for such detailed questioning on all of the rules although any one class will produce it on only a few of the rules. Which few they will be can never be anticipated in advance.—R.A.M.

EVIDENCE—COMMON SENSE AND COMMON LAW. *By John MacArthur Maguire. Brooklyn: The Foundation Press, Inc. 1947. \$3.00 Pages xi, 251.*

It is increasingly recognized by those responsible for the training of law enforcement officers that one of the great deficiencies in programs of the past is the lack of time devoted to the study of the law of evidence. The excuse most often given for neglect of the law of evidence in training programs for peace officers is the great difficulty of the subject. That the subject is a difficult one can not, of course, be disputed, but this has not stopped progress in the instruction of officers in equally difficult areas. Perhaps the difference is that the legal profession has never provided the clear and concise materials needed for the instruction of officers in the fundamentals of the rules of evidence.

Going part of the way in this direction is Professor Maguire's book. Although written for law students as a supplement to the course which Professor Maguire teaches in evidence at the Harvard Law School, it is perhaps the best written introduction to the law of evidence now available. It still does not reach the choice of materials and lack of assumption of basic knowledge necessary in the work which must eventually be written for individual use by law enforcement officers, but will serve as an excellent guide to a training officer in a local department who has himself some understanding of those rules of evidence with which all police officers should be familiar. For this reason, the book is recommended

for law enforcement departmental libraries.—R.A.M.

Industrial Development?

THE COMMUNITY AND INDUSTRIAL DEVELOPMENT (Technical Bulletin No. 21). *By Robert B. Garbrant. Washington: Urban Land Institute, 1737 K Street, N.W. 1953. \$2.00. Pages 16.* This is a basic manual for the citizen or official interested in an industrial development program for his community. It presents the case for seeking such development, outlines the basic location factors which an industry seeks, and suggests procedures for contacting and attracting industry.

A MANUAL FOR INDUSTRIAL DEVELOPMENT. *By S. B. Topf. Cambria Heights, New York: Rhodes Publishing Company, P.O. Box 11. Price? Pages 149.*

This is another addition to the growing list of guidebooks for industrial development programs. The author presents a highly practical series of suggestions, together with a great number of illustrations taken from his own experience.

Miscellaneous

THE AMERICAN SOCIALIST MOVEMENT: 1897-1912. *By Ira Kipnis. New York: Columbia University Press. 1952. \$6.00. Pages 496.*

THE DUKE ENDOWMENT YEAR BOOK. *Charlotte, North Carolina: The Duke Endowment, Power Building. 1953. Pages 45.*

THE OLD FARMER'S 1954 ALMANAC. (162nd Year). *Dublin, New Hampshire: Yankee, Incorporated. 1953. \$0.25. Pages 112.*

RACE, JOBS, AND POLITICS—THE STORY OF FEPC. *By Louis Ruchames. New York: Columbia University Press, 2960 Broadway. December, 1953. \$3.75. Pages x, 255.*

THE CITIZEN ASSOCIATION—HOW TO ORGANIZE AND RUN IT. *By Alexander L. Crosby. New York: The National Municipal League, 299 Broadway. October, 1953. \$0.75 (discounts available for quantity purchases). Pages 64.*

THE CITIZEN ASSOCIATION—HOW TO WIN CIVIC CAMPAIGNS. *By Alexander L. Crosby. New York: The National Municipal League, 299 Broadway. October, 1953. \$0.75 (discounts available for quantity purchases). Pages 64.*

The Attorney General Rules . . .

Motor Vehicle Laws

Revocation of Driver's License for Second Conviction of Driving Under the Influence. Would the warrant under which a person was convicted, for the second time, of driving under the influence of intoxicating liquor have to state that this was the second offense before the convicted driver's license could be revoked for more than 12 months?

To: George R. Uzzell
(A.G.) The statute dealing with the period of revocation provides that the Department, on notice of a second conviction of driving while under the influence of intoxicating liquors, shall suspend or revoke the license for three years. You will note that this section does not state the criminal penalty for the conviction of a second offense of driving while under the influence of intoxicating liquor. It is therefore my opinion that the Department must impose the heavier period of suspension when it receives a notice of a second conviction despite the failure of the solicitor to charge in the warrant that the defendant has previously been convicted of a like offense.

Revocation of Driver's License on Conviction of Two or More Charges.

Upon the conviction of a person charged both with speeding at 65 miles per hour and with careless and reckless driving, both charges relating to the same act of driving, may the driver's license of such person be suspended under the authority of G.S. 20-16(9) which reads as follows: "The Department shall have the authority to suspend the license of any operator or chauffeur without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee: . . . has, within a period of 12 months, been convicted of . . . one or more charges of reckless driving and one or more charges of speeding in excess of fifty-five (55) and not more than seventy-five (75) miles per hour."

To: J. A. Jones
(A.G.) While the statute may be susceptible of a contrary construction, it is my opinion that the proper interpretation is that it contemplates two offenses separate in point of time. In my opinion, the Legislature was here dealing with one who is a repeated offender, not one who violates two laws at the same time.

Nol Pros. Does an officer of the law in court have a right to enter a *nol pros* in a case or should the Solicitor?

To: E. J. Willis
(A.G.) In nearly all courts about which we have any information the prosecuting officer or the Solicitor usually decides when a *nol pros* will

be entered. The entry of a *nol pros* is always, however, subject to the final supervision of the judge, and the judge can intervene and prevent the entry of a *nol pros* if he desires. In our opinion an officer of the law has nothing to do whatever with the entry of a *nol pros* and has no authority with regard to it.

Driving on Left Side of the Highway. Is it contrary to the law for a rural mail carrier to drive across the road in order to put mail in the box on the left side of the road? Does the same law apply to dirt secondary roads and to paved highways?

To: C. W. Marsh
(A.G.) The traffic regulations applicable to other motor vehicles apply to one driven by a mail carrier in delivering the United States mail. Section 20-146 of the General Statutes of North Carolina provides as follows: "Upon all highways of sufficient width . . . the driver of a vehicle shall drive the same upon the right half of the highway . . . unless it is impracticable to travel on such side of the highway and except when overtaking and passing another vehicle . . ." The mere fact that the mail box which is to be served is on the left side of the highway does not make it impracticable to drive on the right side of the road. Thus, if the highway is of sufficient width, it is unlawful to drive to the left of the center of the road. There is no distinction in this respect between a paved highway and a dirt road.

Legal Speed Limit for United States Highway Post Offices. What is the legal speed limit for the operation of United States Highway Post Offices on the highways of North Carolina?

To: Carl T. Moose
(A.G.) Section 20-141(b)(3) provides that vehicles other than passenger cars, regular passenger vehicles, pick-up trucks of less than one ton capacity, and school buses loaded with children shall not exceed the speed of 45 miles per hour on the open highway.

Although I do not have any specific knowledge of the type of vehicle you are operating, it would seem that a post office mail-carrying vehicle would fall within this category. Thus, the speed of such a highway post office vehicle is probably limited to 45 miles per hour.

Arrest Without a Warrant. Does a sheriff have the authority to pursue one guilty of a misdemeanor, such as speeding or driving drunk, into another county and there arrest him without a warrant?

To: Fred W. Liverman
(A.G.) The sheriff does not have the authority to make an arrest under the circumstances as you have described where the offense is a misdemeanor. In the case of *Wilson v.*

Mooreville, 222 N.C. 283, 287, the Supreme Court of North Carolina said: "Hence in the absence of statutory authority, the power of a sheriff or other peace officer is limited to his own county, township, or municipality, and he cannot with or without warrant make an arrest out of his own county, township or municipality, where the person to be arrested is charged with the commission of a misdemeanor. Beyond the limits of his county, township, or municipality his right to arrest for misdemeanor is no greater than that of a private citizen."

Driving While License Card Is Held by an Out-of-State Court. A resident of North Carolina was convicted by an out-of-state court and the clerk of that court was directed to hold his driver's license for a sixty-day period before returning it. During the sixty-day period the operator was arrested in North Carolina for driving without a license. Should he be convicted of driving without a license in his possession under G.S. 20-7(m)?

To: J. Hoyte Stultz
(A.G.) The statute requires not only that an operator hold a valid operator's license but that he have it in his possession while operating on the highways of this State. The statute provides that an operator may not be convicted of the latter offense "if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest." The defendant holds a valid operator's license which has been physically taken from him in a manner that does not affect his right to drive in North Carolina, but he could and should have obtained a duplicate. In my opinion the court would be acting properly in finding the defendant guilty of driving without a license in his possession.

Retention of a Driver's License by a Patrolman. May a patrolman validly take into possession and retain the driver's license of a motorist whom he has arrested and whom he has instructed to follow his patrol car to the police station or magistrate's office?

To: Honorable Edward Scheidt
(A.G.) G.S. 20-29 provides that any person operating a motor vehicle must, when so requested by an officer in uniform, exhibit his license to such officer. The statute also requires such a person to surrender his license on demand of the Department. In my opinion, this statute does not authorize the patrolman to take the license and instruct the person to whom it belongs to drive the vehicle without it; and there is no statutory authority for the retention of the license by the patrolman during the journey to the police station.

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