Popular Government

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A New Governor Takes His Oath of Office

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Just before Taking the Oath, November 9, 1954
Lieutenant Governor and Mrs. Hodges

LUTHER HARTWELL HODGES
Governor of North Carolina

LEGISLATIVE ISSUE

Table of Contents

Photos of oath-taking ceremony courtesy of Raleigh *News and Observer*.

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Governor Luther Hartwell Hodges: Facts of Record

High School

Schooling: Luther Hartwell Hodges was born on a tenant farm in Virginia, 8 miles from Leaksville in Rockingham County in 1898; attended the public schools in Spray and Leaksville; entered the University of North Carolina in 1915; graduated with the degree of Bachelor of Arts in 1919; received the honorary degree of Doctor of Laws in 1946 for distinguished achievement during the twenty-seven years since his graduation.

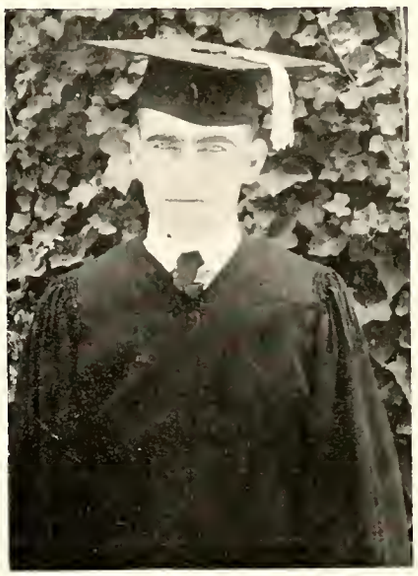
Army

Working: While attending the local schools in his community and between grade and high schools he worked as office boy for Marshall Field and Company, as handyman in his father's store, as "news butcher" on the Norfolk and Western Railroad, and in a multiplicity of odd jobs. While attending the University of North Carolina he worked as a waiter in the University dining hall, fired faculty home furnaces, ran a pressing club, worked his way through school in a variety of occupations, and during the summers worked as mill hand and book salesman. He had a total of $62.50 when he entered college and made the rest.

College Life: While studying and working his way through the University, he found himself in the thick of things—on his class football, baseball, and basketball squads; on the Varsity basketball squad and as manager of Varsity baseball; on the Y. M. C. A. Cabinet, regular attendant at Sunday School and Church; on the Student Council, Greater Council and Athletic Council; President of the Dialectic Society and of the Senior Class which carried the leadership of student government on the Campus and leadership of the student body; member of the Senior Order of the Golden Fleece and voted the best all-round man in his class.

Military Experience: As a student at the outbreak of war he joined the Student Army-Training Corps, attended the Officers' Training Camp at Plattsburg in 1918, won a 2nd Lieutenant's Commission, served in the Army at Camp Grant in Illinois until the end of the war, joined his local post of the American Legion and became its Commander.

Business Activities: He started in business in August, 1919, as secretary to the General Manager of the Marshall Field mills in Leaksville-Spray with the added duties of organizing the personnel department and educational work with employees, became Manager of the Blanket Mill in 1927, Production Manager of all mills in the Leaksville area in 1934, General Manager of all 29 Marshall Field Mills in the United States and foreign countries in 1938, Vice-President of Marshall Field and Company in 1943. Retired in 1950 to do public service.



College

Governmental Experience: He worked in varied civic capacities in the 1920's; with the State government as member of the Vocational Education Board and the State Highway Commission in the 1930's; with the Federal government as Price Executive of the Textile Division of the Office of Price Administration in 1944, as Special Consultant to the Secretary of Agriculture in 1945, as Ad-

Marshall Field Mills

"I do solemnly swear . . ."

visor on a special mission for the United States Army in 1948, as Chief of the Industry Division of the Economic Cooperation Administration in Germany in 1950 and Consultant on the International Management Conference in 1951; with the State of North Carolina since January, 1953, as Lieutenant Governor, Presiding Officer of the Senate, and Chairman of the State Board of Education.

Rotary Activities: He helped to organize the Leaksville-Spray Rotary Club in 1923, became its first Secretary, served as chairman of all local club committees, and later as President; became District Governor of Rotary in North Carolina in 1927, Chairman of the Rotary International Committee on Community Service in 1931, member, vice-chairman, and Chairman of the Post-War Committee of Rotary from 1943 to 1945, director of the New York City Rotary Club for three years and its President in 1946-47, and Chairman of the Rotary International Convention at Rio de Janeiro in 1948; represented Rotary International as Consultant and Observer at the organization of the United Nations in San Francisco in 1945, and thereafter before the Security Council of the United Nations; was Director of Rotary International in 1953-54.

Other Citizen Activities: His civic interests are further illustrated by his activities in local, State, and National Y. M. C. A. and Boy Scouts work; as founder of a vocational school; as lay leader and steward of the Leaksville Methodist Church; as State Chairman of the North Carolina Cancer Society, the Fund for Crippled Children, United Fund Campaign, and Director of the National Campaign for Attack on Leprosy in foreign countries; as member of the Southern Industrial Conference Board; as Trustee of the University of North Carolina, and Chairman of its Development Council, Trustee of the North Carolina Medical Foundation and Friends of the Library, and President of the North Carolina Business Foundation; as Trustee of Town Hall, and director of the New York City Y. M. C. A., the Institute of Textile Technology, the Cotton Textile Institute, and Peabody College; as officer and director in local and regional business enterprises.

Governor of North Carolina: In the Hall of the House of Representatives in the State Capitol in Raleigh, November 9, 1954, he took the oath of office as Governor of North Carolina. He brings to this office schooling as good as North Carolina could give him, tried and tested in experience as varied and informing on local, state, and national levels and beyond, as that of any of his predecessors in this generation.

He brings the capacities which worked his way—to leadership of the student body in which he started as a freshman, to leadership in the great business organization in which he started as an office boy, to leadership in civic activities in which he started as a member, to leadership of the State to which he came from a tenant farm and in which he has lived and moved and had his being for the better part of fifty years.

The people of North Carolina take hope and courage from these capacities as he comes to grips with governmental problems cutting as deep and ranging as wide as any problems North Carolina has faced in all of her history. The facts of his record lead them to expect, and those who know him best believe, that he will meet them with courage, with candor, and with conscience.

"I need your advice, your help, and your prayers."

Reorganization Commission Reports

By PAUL A. JOHNSTON, *Assistant Director, Institute of Government*

The 1953 General Assembly, in response to a request by the Governor, provided for a commission to study all agencies, commissions, departments, and separate units of state government and submit recommendations looking toward more efficient and more economical administration. This action by the legislature placed North Carolina among the ever-increasing number of states who have recently undertaken a reorganization of their governmental structures.

The movement for state government reorganization seems to have begun around 1910. It grew to become almost a fad by the late 1920's and early 1930's. It was during the early 30's that North Carolina, joining in the movement, received the controversial "Brookings Report." Interest in reorganization lessened considerably during the years immediately preceding World War II and did not reawaken generally until 1947, when the "Hoover Commission" filed its report on reorganization of the federal government. Since 1947 some thirty states have undertaken similar projects. North Carolina is the most recent of these.

Although the resolution which provided for North Carolina's Commission on Reorganization of State Government directed it to study *all* agencies, commissions, departments, and other separate units of state government, it also required the Commission to report to the Governor by November 15, 1954. Inasmuch as the members of the Commission were not appointed until October, 1953, they had only one year to complete the assigned task. Because of the shortness of time, and for other reasons which will be mentioned presently, the Commission limited the scope of its study to considerably less than all of the state agencies, commissions, departments, and other separate units of state government. Nevertheless, its reports contain far-reaching recommendations with respect to certain areas of state government, and it would seem that what with the other important issues which will be before the 1955 General Assembly, it is fortunate that the Commission saw fit to limit its field of activity.

Governor Luther Hodges began releasing the Commission's reports (of which there are several), in the latter part of November. In view of the completeness of the reports themselves, it would seem that the best method of discussing the Commission's work, is to consider briefly the contents of each report.

FIRST REPORT: "ORGANIZATION AND METHODS OF RESEARCH AND STUDY"

The first report of the Commission consists of an introductory statement explaining the Commission's plan for filing its subsequent reports, a brief discussion of the organization of the Commission, and a description of how the study was made and the recommendations formulated.

In the introductory statement it is pointed out that the filing of several separate reports is preferable to the filing of a single comprehensive document for two reasons: (1) It permits all interested persons, including officials and the press, to understand how the Commission went about its work, and (2) it permits the study of each set of recommendations separately, thereby encouraging full consideration and discussion.

In the section dealing with organization there is a listing of the names of the members of the Commission. These are David Clark of Lincolnton, Harriet L. Herring of Chapel Hill (secretary), John D. Larkins, Jr. of Trenton, William F. Marshall of Walnut Cove, R. Grady Rankin of Gastonia, William B. Rodman, Jr. of Washington (chairman), C. W. Tilson of Durham, and Thomas Turner of Greensboro. Also in this section is a statement of purpose which quotes from the resolution creating the Commission and a notation that the Institute of Government served as the research agency for the Commission.

The final section, dealing with methods of research and study describes briefly two Institute of Government reports which the Commission used throughout its study. These are (1) *Handbook of North Carolina State Agencies* and (2) *Preliminary Report on the Experience of Other States with Attempts to Reorganize State Government.* The Commission explains that information in these reports made clear the impracticability of any plan which, at one sweep, would propose to reorganize the entire state government. (The Handbook lists and describes 121 separate agencies and does not include the state's educational institutions.) The years of legislative experience possessed by most of the Commission members made them fully aware that a plan of such magnitude could not be thoroughly considered in a single legislative session. In addition, the record of experience in other states indicated that in the overwhelming majority of instances state legislatures had not accepted plans of a sweeping nature. It was largely on the basis of these findings, in addition to the time factor, that the Commission determined to limit the scope of its study and to propose that reorganization activity be recognized as a continuous process rather than as something to be considered every decade or two and in between times forgotten.

In the last section of the report it is explained that the Commission considered in entirety the following areas of state government: Finance and Fiscal Control, Personnel Management, Welfare, and Cultural and Historical Development. It is further explained that specific problems were dealt with in the following areas: Agriculture, Business Regulation, Labor, and Corrections. (The nature of these problems will be explained subsequently in the discussion of other reports of the Commission.) Also in the last section of the report is the statement that before final action was taken on any area, the officials whose agencies were to be affected by proposed recommendations were asked for their thoughts and advice and that final recommendations were made with consideration given to the positions taken by the agency officials.

The report contains an appendix setting out certain principles of administrative organization and a detailed description of how the Commission considered each area it studied.

SECOND REPORT: "FINANCE AND FISCAL CONTROL"

The Commission's second report is divided into three major sections. The first section deals with the agencies concerned with "tax administration"

functions; the second deals with agencies concerned with "expenditure control" functions; the third deals with agencies concerned with "custody and investment" functions. The sections will be discussed below in the order they appear in the report.

1. *Tax Administration.* The agencies considered in this section are the Department of Revenue, the State Board of Assessment, the Tax Review Board, and the Department of Tax Research. The Department of Insurance and Department of Motor Vehicles are also mentioned, but only by way of reference to taxes they collect.

The holding of quasi-judicial hearings by the Commissioner of Revenue was a point of concern. The Commission felt that such hearings imposed unduly on the time of the Commissioner of Revenue, and that hearings held by him should be administrative only (in the nature of a conference), with a quasi-judicial hearing made available before another agency independent of the Department of Revenue. It therefore recommended that all quasi-judicial hearings on tax matters be before the Tax Review Board and that the Commissioner of Revenue be relieved of having to serve on the Tax Review Board.

The Commission felt that possible conflict between the rule-making authority of the Department of Revenue, the Tax Review Board, and the State Board of Assessment should be eliminated. It therefore recommended that rule-making authority with respect to tax matters be vested solely in the Tax Review Board but that this Board be instructed to seek the advice of the Commissioner of Revenue on rule-making matters.

The fact that the Department of Revenue is already for the most part performing the fact-gathering part of the assessment functions of the State Board of Assessment and that all other functions of this Board can readily be transferred to the Tax Review Board led the Commission to recommend that the Department of Revenue be normally assigned all such assessment functions and that the State Board of Assessment be abolished.

The Commission felt that the functions of the Tax Review Board with respect to formulas used in certain corporate taxation should remain as is, but since the Commissioner of Revenue would no longer be a member of that Board, the Commission recommended that the Board should seek the advice of the Commissioner of Revenue in these matters.

Possible conflict in authority to engage in tax research, the Commission felt, should be eliminated by restricting such authority to the Department of Tax Research. It, therefore, recommended that this power be removed from the Department of Revenue and the State Board of Assessment.

In order to insure efficient and thorough handling of the rather comprehensive duties placed upon the Tax Review Board by these recommendations, the Commission recommended that this Board be composed of a full-time official as chairman, with the head of the Department of Tax Research and the State Treasurer continuing as at present to serve as members *ex officio*, and that the Board be provided with an appropriation and adequate staff and office space.

2. *Expenditure Control.* The agencies considered in this section are the Advisory Budget Commission (*ex officio* the Board of Awards), the Budget Bureau, the Division of Purchase and Contract, the Board of Public Buildings and Grounds, the State Personnel Department, and the Office of State Auditor.

In this section the Commission pointed out that it had considered the possibilities of various consolidations of related functions and agencies which would result in a department of finance or a department of administration or a department which combined the two. The conclusion reached was that no consolidation of agencies is at this time necessary.

A point of concern upon which the Commission did feel that a recommendation was necessary is with respect to the administration in a single agency (the Auditor's Office) of both the pre-audit function (*i.e.*, the checking of financial transactions *before* money is paid out) and the post-audit function (*i.e.*, the checking of transactions *after* the money is paid out). The Commission concluded that proper business practice demands that one who audits transactions (after the event) should not have been involved (before the event) to any extent in the transaction he is auditing; otherwise there is the possibility that the post-audit will not be as objective and disinterested as is desirable. It therefore recommended that the pre-audit function, with the related accounting functions, be transferred from the Auditor's Office to the Budget Bureau, and that the Auditor be left free to concentrate on post-auditing the financial transactions of the executive branch and its agencies. To insure complete independence of the post-auditing function, the Commission also recommended that the Auditor's Office be removed from under budgetary control of the Budget Bureau (an executive agency) and be subject to budgetary control by only th Advisory Budget Commission (in essence, a legislative agency).

3. *Custody and Investment of Funds.* The only agency given any substantial consideration in this section is the office of State Treasurer. There is also a mention of the Council of State, the Sinking Fund Commission, and the Local Government Commission.

The Commission saw two points in connection with the duties of the Treasurer which necessitate a brief discussion. The first of these has to do with the numerous ex officio duties placed upon the Treasurer (including his work with the Local Government Commission). After some brief observations on the historical accretion of these duties, the Commission concluded that more is to be gained from the Treasurer's performing these functions than is to be lost by the possible infringement upon the time of that official. It therefore proposed that this aspect of the office remain as is.

The Commission also felt that the Treasurer's Office should be made independent of budgetary control by the executive branch. It therefore recommended that the Office of the State Treasurer be excepted from budgetary control by the Budget Bureau (an executive agency) and be subject to such control only by the Advisory Budget Commission (in essence, a legislative agency).

THIRD REPORT: PERSONNEL MANAGEMENT

This report is principally concerned with conflicts which have existed between the State Personnel Department and the Merit System Council. Considered briefly are the Teachers and State Employees' Retirement System, the Law Enforcement Officers' Benefit and Retirement System, the Local Governmental Employees' Retirement System, and the State Agency (administers Old Age and Survivor's Insurance coverage agreements).

The Commission felt that "unnecessary confusion and delay" has resulted from jurisdictional disputes

between the Personnel Department and the Merit System Council over the authority to classify positions. It also found some duplication of effort (a) in the recruitment and referral of applicants, (b) in the application procedure, and (c) in the processing of appointments. After considering a number of possible organizational arrangements, the Commission recommended that the Merit System Office be established as a division of the State Personnel Department under the supervision of a new five-member Personnel Council. The new council would be appointed by the Governor for six-year over-lapping terms in accordance with requirements applicable to the present Merit System Council.

Other recommendations contained in this report are (1) authority of the Personnel Department to set the number of allowable positions in each agency should be repealed; (2) the salaries of upper echelon administrative officials not now subject to the State Personnel Act should be set by the Governor, subject to the approval of the Advisory Budget Commission; (3) a prompt study and report to the 1955 General Assembly should be made on the advisability of bringing all state employees under Old Age and Survivor's Insurance and integrating the Teachers' and State Employees' Retirement System with Old Age and Survivor's Insurance; (4) the State Personnel Director should serve *ex officio* as a member of the board of trustees of the Teachers' and State Employees' Retirement System and as a member of the board of commissioners of the Law Enforcement Officers' Benefit and Retirement Fund.

FOURTH REPORT: CULTURAL AND HISTORICAL DEVELOPMENT

This report is divided into three major sections. These are a section dealing with agencies concerned with preserving the state's historical heritage; a section dealing with agencies concerned with libraries; and a section dealing with agencies concerned with museums.

1. *History.* Agencies considered in this section are the Department of Archives and History, the Historic Sites Commission, the Department of Conservation and Development, the Tryon's Palace Commission, the Charles B. Aycock Memorial Commission, the Zebulon Baird Vance Memorial Commission, and the State Highway and Public Works Commission.

The Commission felt that the division of authority in the acquisition and preservation of historic sites—a condition involving principally the Department of Archives and History, the Department of Conservation and Development, and the Historic Sites Commission—has led to duplication, overlapping, and conflicts. It therefore recommended that all duties having to do with such acquisition and preservation now in the Department of Conservation and Development and in the Historic Sites Commission be transferred to the Department of Archives and History and that the Historic Sites Commission be abolished. The Commission also recommended that in the future special commissions created to promote individual projects be required to have plans for land acquisition and for restoration of the projects approved by the Department of Archives and History before state appropriations for the projects are released.

The fact that three different agencies are involved in the placing of historical markers—the Department of Archives and History, the State Highway and Public Works Commission, and the Department of Conservation and Development—was also of concern to the Commission, and it recommended that the Department of Conservation and Development be removed from participation in this activity.

2. *Libraries.* Agencies considered in this section are the State Library, the Library Commission, the Supreme Court Library, and the Department of Public Instruction.

The Commission felt that the existence of two general library agencies —the State Library and the Library Commission—with separately administered book collections tends to prevent savings in purchases and administration; to decrease the possibilities for improved services such as proper cataloguing, indexing of all library materials of state agencies, etc.; and to complicate unnecessarily the handling of requests for materials. It therefore recommended the abolition of the two agencies and the creation of a new library agency to assume the duties of the abolished agencies.

The only other point of dissatisfaction in this area expressed by the Commission has to do with the distribution of official documents and publications other than session laws, legislative journals, and court reports. The Commission did not feel that it was prepared to make recommendations on this point, but it did recommend that a study be made in the immediate future for the purpose of improving the existing situation.

The handling of school library advisory services was found by the Commission to be properly placed in the Department of Public Instruction, and the recommendation made is that these services remain with this Department. It was also recommended that the Supreme Court Library remain under the administrative supervision of the Supreme Court.

3. *Museums.* Agencies considered in this section are the Department of Archives and History, the Department of Agriculture, and the North Carolina State Art Society.

The Commission felt that although the administration of the state's various museums had much in common, the relationship between each museum and other state agencies dealing with similar substantive matters was stronger than the relationship of the museums to each other. However, the Commission suggested that all agencies responsible for museum operation cooperate to devise plans for a museum or fine arts center which, if and when constructed, would bring these agencies together for the common good of all.

FIFTH REPORT: AGRICULTURE, INDUSTRIAL SAFETY ACTIVITIES, AND BUILDING REGULATION AND INSPECTION

The Commission pointed out in its introductory report (*Organization and Methods of Research and Study*) that in some areas of government no attempt had been made to consider all of the agencies and functions. Instead, only certain specific problems which seemed to call for examination were studied. This sixth report is composed of the Commission's findings and recommendations with respect to certain problems found to exist in three areas. In the area of Agriculture, the problem is the existence (or statutory provision for existence) of several small agencies apparently unnecessary to a proper administration of the state's agricultural functions; in the area of Labor, the problem is an apparent duplication of effort in carrying out the state's industrial safety activities; and in the area of Business Regulation the problem is one of confusion and conflict in the administration of the state's regulations of building construction.

1. *Agriculture.* In the area of Agriculture, the Commission recommended repeal of the statutory references to

the Crop Pest Commission. This was proposed because the membership of the Crop Pest Commission is the same as that of the Board of Agriculture and no reason was apparent why the same persons should function as two different agencies. On the same grounds, it recommended that the State Marketing Authority be abolished. All powers and duties of the Crop Pest Commission and of the State Marketing Authority are to be given the Board of Agriculture. Repeal of those sections of the General Statutes providing for the North Carolina Tobacco Commission was also recommended. This agency was created to function only if no federal control of tobacco planting came into existence. Since a federal program did come into being, it was felt that no need continues to exist for this legislation. Also recommended for repeal are those laws providing for a State Board of Rural Rehabilitation. The reasons given are that this was depression legislation which was never used and serves now only to clutter up the statutes. The Commission also recommended that the membership of the Board of Farm Crop Seed Improvement be reconstituted as follows: the Commissioner of Agriculture (a member of the present Board), the head of the Seed Testing Divison of the Department of Agriculture (not a member of the present Board), the Dean of Agriculture of N. C. State College (a member of the present Board), the Director of the N. C. Agricultural Experiment Station (not a member of the present Board), and the President of the N. C. Farm Crop Improvement Association (not a member of the present Board). The reason given for this recommendation is to encourage the control of seed improvement by a state agency rather than leaving it in private hands where it has been because of the failure of the present Board of Farm Crop Seed Improvement to function.

2. *Industrial Safety.* In dealing with apparent duplication existing in the administration of the state's industral safety activities, the Commission felt that one agency could for the most part handle both safety inspection and safety promotion in connection with industry. At present all safety inspection except inspection for the prevention of asbestosis and silicosis is handled by the Department of Labor. The State Board of Health inspects factories and mines and examines employees in connection with the prevention of asbestosis and silicosis for the Industrial Commission. Both the Industrial Commission and the Department of Labor are actively engaged in safety promotion work. The Commission recommended that the safety promotion activities of the Industrial Commission should be transferred to the Department of Labor.

Because of the judicial nature of the work of the Industrial Commission, the Commission also recommended the repeal of the statutory provision which placed the Industrial Commission in the Department of Labor. The repeal of this statutory provision will not alter the present relationship, as the Industrial Commission has been a part of the Department of Labor in name only, but it will clarify the legal basis of the relations between the two agencies.

3. *Building Regulation.* In connection with the state's regulation of building construction, the Commission found serious confusion in the state's building laws and an unduly complicated administrative structure for their enforcement. It found building regulation activity by 12 state agencies, the General Assembly, cities, counties, sanitary districts, and local boards of health, not to mention six professional licensing agencies dealing with members of the construction industry.

To remove some of the confusion and to give citizens "one-stop" plan approval services by state agencies, the Commission recommended creation of an expanded and more powerful Building Code Council and creation of a new inter-departmental building regulation committee.

The Building Code Council would be enlarged to include representatives of the state agencies primarily interested in building regulation, a municipal enforcement official, and an electrical contractor. It would be given the duties of (a) adopting a state building code including all building regulations promulgated by any state agency, (b) amending the code from time to time, (c) giving interpretations of the code, (d) hearing appeals from decisions of the state's enforcement agencies in the field of building regulation, (e) advising the General Assembly as to desirable statutory changes in the field of building regulation, and (f) studying the enforcement of the building code and building laws to determine what duties can be shifted to local officials or special private inspectors.

The inter-departmental building regulation committee would have the duties of (a) establishing procedures for the exchange of building plans among interested agencies, (b) arbitrating disputes between state agencies as to the interpretation of the building code or laws, and (c) giving informal interpretatons of the building code to interested persons.

SIXTH REPORT: STATE PRISON SYSTEM

The Commission in this report revealed that it had given a great deal of thought and study to the possible separation of the prison system from the State Highway and Public Works Commission. It found that the preparation of a plan for any such move would involve making a multiplicity of policy decisions, for which supporting facts were presently unavailable. Under these conditions, it decided to recommend (a) that steps be taken to provide this basic information during the next biennium and (b) that certain improvements in the organization of the system be adopted so as to smooth the way for whatever action might be taken in 1957.

The major problems disturbing the Commission were those of (1) providing suitable employment for the prisoners and (2) financing the prison system.

The Commission pointed out that inmate idleness was the chief cause of riots found by the Committee on Riots of the American Prison Association in its investigation of the recent uprisings in state prisons throughout the nation. It then noted that existing prison industries could employ only 500 prisoners, even if operated at full capacity, and that the prison farms could employ only some 1,500 prisoners. With 8,000-odd prisoners currently employed on the highways, obviously large-scale measures would be necessary to furnish these prisoners with useful employment.

Dr. MacCormick's prison report in 1950 recommended that short-term misdemeanants and felons unresponsive to ordinary methods of rehabilitation and training should continue to be employed on the roads, at an increased rate of pay. The highway engineering firm of Parsons, Brinckerhoff, Hall and MacDonald recently recommended that only long-term honor grade prisoners selected on the basis of their potential efficiency on the job be employed on the highways, and suggested that current rates of pay were too high for what the Highway Commission is getting in the way of work.

(Continued on page 9)

General Statutes Commission Program

By CHARLES G. POWELL, JR., *Revisor of Statutes*

In 1945 the General Assembly created the General Statutes Commission and assigned to it the duty of advising and counseling with the Attorney General on all problems relating to continuous statutory research and correction and in the publication of modern codes of law. It soon became apparent that the limited type of form revision associated with codification work would not keep the General Statutes abreast of changing conditions in the State, and in 1951 the General Assembly gave the General Statutes Commission the additional duty of recommending substantive changes in the law to achieve this purpose.

The republication of the General Statutes is proceeding on schedule and according to the general plan suggested by the Commission in its report to the 1951 General Assembly. Recompiled Volumes 2A, 2B, and 2C were officially adopted by the 1951 General Assembly and recompiled Volumes 3A, 3B, and 3C were officially adopted by the 1953 General Assembly. Recompiled Volumes 1A, 1B, and 1C have been issued and will be submitted to the 1955 General Assembly for adoption.

The Attorney General, acting under authority of Chapter 1150, 1951 Session Laws, has authorized the Michie Company to begin with the recompilation of Volume 4 of the General Statutes. This decision was made and concurred in by the Commission after the Michie Company had disclosed that it had the paper and other printing supplies on hand necessary to complete this work and that any appreciable delay would add to the cost due to the increase in cost of printing supplies. The Michie Company also disclosed that since it planned to do extensive revision and expansion of the index to the General Statutes, it would like to begin the work immediately while its staff is available. The agreement with the Michie Company provides that Volume 4A will contain the Constitution of North Carolina, the Constitution of the United States, and all of Division XX, Appendix. Volume 4B will contain the general index, which will be completely checked, expanded, and corrected. Every effort will be made to produce an elaborate, thorough, and effective general index, with every index line checked for accuracy and completeness and with new lines being added where necessary. Special emphasis will be made in adding cross-references under such headings as the user may reasonably be expected to look.

The price of a set of recompiled Volumes 4A and 4B will be $25 to the individual subscriber and $12 to the State of North Carolina. The price of the entire set of the General Statutes after the republication of Volumes 4A and 4B will be $105 instead of the present price of $86.25. Upon the sale of a complete set, the Company agrees to include the then current supplements at no additional cost. Also, when a complete set is ordered and paid for in cash, a ten percent discount will be extended so that, after the republication of Volume 4, a complete set of the General Statutes, including the current supplements, may be purchased for the cash price of $94.50.

Bills Proposed

The completed bills which the Commission will recommend to the 1955 General Assembly, followed by a brief explanatory note regarding the intended purpose and effect of each, are as follows:

1. An act to rewrite Chapter 55 of the General Statutes relating to business corporations. In response to repeated demands by businessmen and members of the Bar that the corporation laws be amplified and modernized, the General Statutes Commission in 1951 appointed a Drafting Committee composed of Mr. E. R. Latty and Mr. M. S. Breckenridge, corporation law teachers from Duke University and the University of North Carolina, respectively, and Mr. Leonard S. Powers of the law faculty of the Wake Forest College Law School, to do the necessary research and initial drafting. This committee found that the Model Business Corporation Act prepared by the American Bar Association represented the best single source for a modern general corporation law, and the committee has drawn upon that act and the corporation laws of selected states in preparing for North Carolina an up-to-date Corporation Code. The Drafting Committee held in excess of 95 meetings, during which time each section of the proposed act was discussed and revised. Its work was then thoroughly reviewed by the full General Statutes Commission, with the Commission and the Committee meeting for a total of 40 days during a sixteen-month period. It would be impossible to give in this report a summary of even the most important features of the Code, but the December issue of the *North Carolina Law Review* will carry an article dealing with this act, and the Commission will be glad to send, within the limits of its supply, a copy of the proposed Code to any interested party.

2. An act providing for a nonprofit corporation code. This recommendation would insert a new chapter in the General Statutes of North Carolina dealing exclusively with nonprofit corporations. The Commission feels that the differences between business corporations and nonprofit corporations have become so great that both subjects can no longer be covered by the same law. The Commission has a limited supply of extra copies available for those who may be interested in this proposal.

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

4. An act to provide a method for establishing deposit accounts in banks and other depository institutions as co-owners with right of survivorship. The present law in North Carolina regarding the right of survivorship in joint bank accounts is not as clear in some respects as the Commission thinks it should be in a modern system of laws. A survey of the legal profession has disclosed that there are many differences of opinion on this subject. The Commission's bill would provide a statutory method of establishing joint bank accounts with right of survivorship, based upon a contract between the parties to follow the provisions of the statute. The bill codifies the prevailing majority rules on the subject. It permits withdrawal by either co-owner, provides a rebuttable presumption that the co-owners own equal shares in the balance during their lifetime, provides a method of termination, and provides that upon the death of one of the co-owners the balance becomes the absolute property of the survivor. The provisions of the bill are not exclusive.

5. An act to amend the rules of descent so as to allow father and mother to inherit from children. This proposal changes the present rules of descent by amending Rule 6 of G.S. 29-1 so as to provide that in all cases where the person seized leaves no issue capable of inheriting, the inheritance shall vest in the father and mother as tenants in common if both are living, and if only one of them is living, then in such survivor. The Commission feels that the father and mother of a decedent who leaves no issue have a better right to the property than a brother or sister.

6. An act to rewrite G. S. 28-47 and G. S. 28-113 relating to the advertisement for claims by executors, administrators, and collectors and settlement of claims. The amendment to G.S. 28-47 reduces from 12 months to 6 months the period during which claimants are to submit their claims to an executor, administrator, or collector. The amendment to G.S. 28-113 in effect reduces from 12 months to 6 months the period during which the personal representative must hold the assets of an estate before making any payment or distribution thereof with the assurance that he will not be held responsible for claims not presented within the prescribed time.

7. An act to amend G. S. 47-41 relating to the form of acknowledgment for corporate conveyances. This bill amends the first form of acknowledgement in G.S. 47-41 so as to make that form applicable to corporations whose principal officer has a title other than president or vice-president.

8. An act to provide for the transfer of property by will to the trustee of a trust created during the lifetime of the deceased. This bill by its terms authorizes a testamentary disposition where property is added to a trust established in writing during the testator's lifetime, which trust is subject to modification or which in fact was modified subsequent to the execution of the will. This proposal makes it possible for the decedent, if he chooses, to make dispositions by trust amendments which in substance are testamentary without complying with the formalities of existing wills statutes.

9. Miscellaneous bills. (a) An act to allow the judge or clerk in his discretion to determine whether a sale conducted under Article 29A of Chapter 1 relating to judicial sales shall be a public or private sale.

(b) An act to amend G.S. 1-568.11 relating to the procedure for examination before trial.

(c) An act to exempt state agencies from paying fees to the Utilities Commission.

(d) An act to exempt state agencies from posting prosecution bonds.

(e) An act amending G.S. 44-78 (b) (3) relating to the place for filing notice of assignment of accounts receivable. This proposal in effect specifies that such assignment shall be recorded in the same place as deeds of trust and conditional sales contracts covering personal property.

Possible Proposals

The following bills have been considered at some length by the Commission and in all probability will be recommended to the 1955 General Assembly, although they have not been approved in final form:

1. An act to abolish the Rule in Shelley's Case in North Carolina. The wisdom of the adopting of the Rule in Shelley's Case has been the subject of much curious and learned speculation (*Welch v. Gibson*, 193 N.C. 684). The Rule has been called "The Don Quixote of the law, which, like the last knight errant of chivalry has long survived every cause that gave it birth and now wanders aimlessly through the reports, still vigorous, but equally useless and dangerous." *Stamper v. Stamper*, 121 N.C. 251. Thirty-two states have repudiated the Rule by express statute and it is not recognized in Vermont by court decision. The proposed bill provides that if an estate is given to a person for his life, and after his death to his heirs, or the heirs of his body, or his issue, or descendants, such estate shall be construed to be an estate for life only and a remainder in fee simple to his heirs, or the heirs of his body, or his issue, or descendants.

2. An act providing that unless a will specifically provides otherwise, real property of a decedent which passes to a devisee or descends to a distributee shall be taken subject to any specific lien thereon. Under the terms of this proposal, real property of a decedent which passes to a devisee or descends to a distributee is taken subject to any specific lien thereon and such property shall not be entitled to exoneration out of the other assets of the estate, and a lien holder is barred from participation in other assets unless he files his claim prior to the time fixed by G.S. 28-113.

3. An act providing for ancillary administration of estates, and making uniform the laws relating thereto. It is common for a decedent to leave property, debtors, and creditors in a jurisdiction other than the one in which he was domiciled. This gives rise to the problem of the necessity of ancillary administration and of the relationship between the domiciliary administration and the ancillary one. If there is a will, there are further questions as to the effect of domiciliary probate or rejection on the estate in the ancillary jurisdiction, and as to the procedure for the probate there. The basic philosophy of this act is to regard the entire estate as a unit with the domiciliary administrator as the primary one, but with the domiciliary representative serving in both jurisdictions, thereby effecting a smoother, speedier, and less expensive administration than would result if different persons were acting in the domiciliary and the ancillary states. There are safeguards, such as allowing other persons to intervene in the appointment of the domiciliary representative as ancillary administrator, and any local creditor can also initiate ancillary administration if he so desires, thereby cutting off the right of the domiciliary representative to serve in both capacities.

4. An act to modify the application of the Rule against Perpetuities. This statute aims to eliminate certain anomalies that have crept into the application of the Rule against Perpetuities in the nearly three centuries of its existence. It allows the court to determine the validity of a gift by examining the actual facts as they appear at the death of the first taker. The statute makes no change in the basic rule and adopts what can be termed as a "wait-and-see" doctrine by allowing the court to consider facts existing at the termination of previous valid estates rather than making the court consider, not what happened, but what might have happened as viewed at the testator's death.

5. An act to amend G. S. 45-21.27 and G. S. 1-339.25 relating to the time for making upset bids in sales under a power of sale and judicial sales. The object of this proposal is to make certain when an upset bid can be made in sales conducted under a power of sale and in judicial sales, thereby removing any doubt which exists under our present statutes.

Commission Members

The Commission is presently composed of the following nine members: Robert F. Moseley, Chairman, appointed from the State Bar; Henry A. McKinnon, appointed from the Bar Association; William F. Womble and James H. Pou Bailey, appointed from the General Assembly; Frank W. Hanft, from the University of North Carolina Law School; Robert E. Lee, from the Wake Forest College Law School; William Joslin and Buxton Midyette, appointed by the Governor; and E. C. Bryson, from the Duke University Law School. The writer, as Revisor of Statutes, is *ex officio* secretary.

Reorganization Commission

(Continued from page 6)

To resolve such conflicts as these, the Commission recommended that the State Highway and Public Works Commission, the Director of Prisons, and the Prisons Advisory Council determine the number and type of prisoners who could profitably be employed on the highways and those who could be employed in other types of activities. In addition, it recommended that they conduct a series of pilot programs to test the effectiveness and determine the costs of different methods for aiding in the rehabilitation of prisoners classified and segregated according to their individual needs. Only after such measures could a rational determination be made of what employment could or should be provided for the prisoners.

Secondly, the Commission found itself hampered by the lack of accurate information as to the cost of the prisons system, on which it could plan the finances of a separate department. The recent Parsons, Brinckerhoff report recommended: "A system of cost accounting should be established for all functions [of the State Highway and Public Works Commission] including improvements and maintenance. As previously described, it now is extremely difficult, and in some cases impossible, to determine certain elements of costs with any degree of accuracy." The Commission on Reorganization encountered the same difficulties, and recommended (a) that cost studies be made and (b) that a formula be devised, after cost accounting analysis, for a fair rate of pay for prison labor employed on the roads.

The Commission felt that it could recommend four changes to be made immediately: (a) that the Director of Prisons be appointed for a fixed term of four years (overlapping any incoming Governor's term by one year) rather than being subject to removal at the will of the Highway Commission and the Governor; (b) that the Director of Prisons be given sole authority for the hiring and firing of all prison personnel; (c) that the Director of Prisons be given full responsibility for the administration of the prison system, in accordance with rules and regulations approved by the Governor, the Highway Commission, and the Prison Advisory Council; and (d) that political activity by supervisory prison personnel be restricted. These steps, it felt, would go a long way toward correcting many of the conditions about which complaints have been raised while at the same time placing the prisons system in a better position to begin independent operation if that should prove desirable.

School Law Study Commission to Report

The 1953 General Assembly authorized the appointment of a Commission on the Revision of the Public School Laws, whose duty it was to rewrite the public school law so as to eliminate the ambiguities and uncertainties found therein. That commission, under the chairmanship of Mr. Fred Folger, Mount Airy attorney, with Mr. Stacy Weaver, superintendent of the Durham city schools, as secretary, has been at work on the revision for the past year. It had not completed its deliberations at the time this issue of *Popular Government* went to press but was expected to be ready to submit its report by the time the 1955 General Assembly convened.

Other commission members are R. L. Harris, Roxboro, former lieutenant governor; H. J. Truett, Swain County clerk of superior court; Charles McCrary, former president of the North Carolina State School Board Association; Fred C. Hobson, superintendent of the Yadkin County schools; and C. Reid Ross, superintendent of the Fayetteville city schools.

SEVENTH REPORT: WELFARE AND MENTAL HEALTH

The seventh report is actually two reports, each dealing with a separate problem. The reports were put together under a single cover simply as a matter of convenience. Each will here be discussed separately.

1. *Welfare.* This report deals briefly with the following agencies: the State Board of Public Welfare, the State Commission for the Blind, the Eugenics Board, the State Board of Pensions, and the Confederate Women's Home Association.

The Commission felt that, after close examination of the state's welfare functions and agencies, the existing administrative organization was the best that could be had at this time. It therefore recommended that no changes be made in this area.

2. *Mental Health.* This report considers the mental health activities of the following agencies: the State Board of Health, the State Board of Public Welfare, the Eugenics Board, the Medical Care Commission, the Hospitals Board of Control, the University of North Carolina Medical

(Continued on inside back cover)

Judicial Council Offers 30 Bills

Printed below are excerpts from the Judicial Council's summary of legislation recommended by the Council to the 1955 General Assembly. A copy of any of the recommended bills may be obtained by addressing a request to Box 1841, Raleigh, North Carolina. In addition to the bills recommended in this report, there are several other important bills before the Council which may be approved in time for submission to the coming General Assembly.

I. REDISTRICTING

During the year covered by this report, the subject of providing more superior court judges on a uniform basis has been given more attention by the Council than any other. At nearly all meetings of the Council and at committee meetings this matter has been foremost on the agenda. The Council feels that the deplorable condition of our superior court dockets will be and must be corrected by reducing the size of the present districts and by scheduling an adequate number of courts for counties with congested dockets.

There are at the present time twenty-one judicial districts in the state, divided into the Eastern Division, with ten districts, and the Western Division, with eleven districts. There are twenty-one regular superior court judges and ten special judges. The redistricting plan presented by the Council calls for thirty districts, and there is provision for thirty-two regular judges. In recognition of the fact that the contemplated additional judicial manpower should be placed where it is most needed, Mecklenburg and Guilford counties have been made one-county two-judge districts, and Wake, Durham, Forsyth, and Buncombe are proposed as one-county one-judge districts. The multi-county districts will each have one resident judge. It is recommended that provision be made for the appointment of one special judge for each judicial division. The Council has deemed it advisable to present its plan for redistricting in the form of three separate bills. The first bill we present deals solely with the proposed new districts. The matter of the number of judicial divisions into which these districts are to be divided is considered subsequently. A third bill will provide a calendar of courts for the new districts. . . .

To make better use of the additional judicial manpower which will be made available by passage of the redistricting bill, we are convinced that the state must be divided into more than two judicial divisions. With our present two divisions, judges must frequently travel great distances between their homes and the counties in which they are assigned to hold court, resulting often in their inability to spend a full day in court on the days they are traveling. Shortening the travel distance by decreasing the sizes of divisions would do much to remedy this, and also give the judges more time with their families. At the time of the printing of this report, the Council is considering several plans for more divisions, and we will include our final recommendation on this subject in a supplemental report. . . .

II. RULE-MAKING BY THE SUPREME COURT

The Judicial Council recommends that the General Assembly give to the Supreme Court unrestricted and unqualified power to prescribe rules of practice and procedure for the superior courts. Our present code of civil procedure is deemed inadequate for present-day purposes, and we make this recommendation believing that it is the best means of effecting the procedural reforms we need now and may need in the future.

The power to prescribe rules of procedure for the superior courts is vested in the legislature by the Constitution, Article IV, § 12, and by statute the legislature has committed this to the Supreme Court. G.S. 7-20, 21. But this is only a limited grant of the rule-making power, for the Supreme Court may prescribe such rules only where the legislature has failed to do so, and also subject to legislative modification.

Under the Council-sponsored bill, the Supreme Court would be free to adopt new rules of procedure, and there is no requirement that the rules be approved by the legislature. The only legislative control over court-made rules would be the power to repeal or to amend the enabling act. This degree of control cannot be avoided unless the rule-making power is vested in the court by amendment to the Constitution of North Carolina. . . .

III. VACANCIES IN JUDICIAL OFFICES

Section twenty-five of Article IV of the North Carolina Constitution provides the manner of filling vacancies occurring in judicial offices. It directs that such vacancies shall be filled by the appointment of the Governor and that such appointees shall hold their places until the next regular election for members of the General Assembly that is held more than thirty days after such vacancy occurs. The Council feels that the Governor alone should not have the responsibility of making appointments to fill vacancies on the Supreme Court and superior court bench. Therefore, we propose a bill providing that this section of the Constitution be amended to provide that vacancies in these high offices shall be filled by appointment of the Governor, but that the appointment shall be from three nominees whose names are submitted to the Governor by a Judicial Commission. The manner of selection of the Judicial Commission will be determined by the legislature. . . .

IV. ARREST WITHOUT WARRANT

The Council has given much consideration to the law of arrest since the opinion in the case of *State v. Mobley*, 240 N.C. 476 (1954), was handed down. We recognized from the beginning that the problems we faced in re-examining and making recommendations concerning such a vital area of the law as arrest without warrant were indeed complex. We have sought to devise an amendment to our arrest statute which will clothe officers of the law with sufficient powers to protect the public but not so much power that it becomes out of balance with the rights of individuals.

We believe there is definitely a need for statutory authority for officers to arrest without a warrant for all offenses committed in their presence. In addition, this power should extend to cases where the offense is not committed in the officer's presence but the officer has reasonable ground to believe that the person to be arrested has committed an offense and will evade arrest if not immediately taken into custody. These powers are defined in the bill which we suggest to the General Assembly. We also are

recommending elaboration of the statute relating to procedure following arrest without warrant so that it will provide safeguards to the individual consistent with the enlarged power of arrest.

There is another modification of the law of arrest which we propose. G.S. 20-183 gives peace officers power to arrest, with or without warrant, "any person *found violating* the provisions of" the motor vehicle act. In suits for false arrest and in prosecutions for resisting arrest, the language of this statute could cause much uncertainty to arise concerning the right of the officer to arrest. We believe that it should be amended to give officers power to arrest when they have *reasonable ground to believe* that a person is violating the provisions of the motor vehicle act.

V. SUMMARY JUDGMENTS

A need that has long existed in the North Carolina law of procedure will be filled by the passage of a bill which we propose providing for the entering of a summary judgment. The summary judgment, as its name indicates, is a final judgment entered summarily by the court upon a showing that there is between the parties to a civil action no genuine issue of material fact requiring a formal trial of the action. Through its use immediate adjudication is obtained of matters which ought not to be the subject of prolonged, time-consuming, and expensive judicial proceedings.

The bill we recommend allows either party to move for summary judgment in his favor upon all or any part of the action. The adverse party, prior to the hearing on such motion, may serve opposing affidavits. Upon the hearing of the motion for summary judgment, it will be granted if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The summary judgment may also be rendered on one or more issues of the case and the cause retained for trial of any issues remaining. Immediate appeal is available from a final summary judgment. The judge may refuse the application or order a continuance to permit the party opposing the motion additional time in which to present facts essential to justify his position.

VI. ABATEMENT OF ACTIONS FOR WANT OF PROSECUTION

Another measure proposed by the Council which will expedite trials and relieve congested dockets is a bill providing for the abatement of civil actions and special proceedings for want of prosecution. There is currently no authority for clerks of court to strike from the docket actions and proceedings which have been pending for several years with no indication of being prosecuted. We suggest a bill which will direct the clerks of all trial courts to place upon an inactive docket all civil actions and special proceedings which have been pending for a period of four years or more, and in which no order has been entered looking toward the trial or determination thereof. Notice of the transfer to this docket is required to be given to the parties. Our bill provides that all actions that have remained on the inactive docket for one year shall be deemed abated and stricken.

Once an action is transferred to the inactive docket, it cannot be restored to the civil issue docket except upon the presentation of a petition within a year after such transfer showing meritorious cause and due diligence. Disposition of the petition is in the discretion of the judge entertaining it. There is special provision for litigation pending at the time of the enactment of the bill. Right of appeal from any order entered under the act is preserved. . . .

VII. SMALL CLAIMS COURT

In 1951 the General Assembly enacted a bill providing for the establishment of a small claims court for Forsyth County. Under this Act the clerk of superior court is directed to maintain a small claims docket, whereon is docketed claims for a money judgment not exceeding $1000 (exclusive of interest and costs). Advance court costs are one-half the usual amount. If the defendant demands affirmative relief for other than a money judgment or demands a jury trial, the action is transferred to the regular civil issue docket; in either event, defendant must pay the remaining one-half of advance court costs and file a prosecution bond. Otherwise, no jury trial is had, resulting in a much swifter trial in each case and the overall effect of reducing congestion in the civil issue docket.

The small claims court in Forsyth County has met with marked success. The need for expediting the adjudication of small claims is as great in most of the other counties as it was in Forsyth. Therefore, we are recommending to the General Assembly that a small claims act for the entire state be enacted. The bill we propose is similar to the one passed by the 1951 General Assembly for Forsyth County.

VIII. REFORM IN JURY SELECTION

In our jurisprudence the jury occupies a crucial position. Jury service is the chief governmental function in which lay citizens take a direct and active part. We must have the most capable juries which our citizenship can furnish, for the quality of verdicts varies in direct proportion with the quality of jurors rendering them.

It seems plain to us that we do not now uniformly enjoy such juries Over and over again, from all sections of the state, we hear of verdicts which shock the conscience of the community. These inferior juries can largely be traced to the present method of preparing the jury lists. It is impossible for the character of our juries to be superior to the lists from which they are drawn. At the present time, the preparation of these lists is the responsibility of the county commissioners. Many county commissioners have rendered excellent service in discharging their responsibility, but there are weighty reasons, we think, for now placing it in other hands. . . .

As a remedy for these difficulties, we propose the establishment in each county of the office of Jury Commissioner, to be filled by appointment by the Resident Judge of the Judicial District in which the county is situated. We propose that this commissioner serve at the pleasure of the Resident Judge. The jury list will be prepared by the Jury Commissioner, a person with this single public duty and selected for the position by reason of his special competence. . . .

Our bill specifies that the jury list shall consist of "those persons, not exempt by law from jury service, who are residents of the county, over twenty-one years of age and who are known to be of good moral character and are known to have sufficient intelligence to serve as members of grand and petit juries." It also leaves to the good faith of the Jury Commissioner the choice of specific sources from which names are drawn and the method by which names are selected from these sources.

In preparing this bill we have written in limitations on expenses by providing that the county commissioners shall set the Jury Commissioner's compensation at not less than $10.00 nor more than $25.00 per day for the time actually consumed in performing

his duties. County commissioners are authorized to furnish clerical assistance to the Jury Commissioner if they deem it advisable. . . .

IX. PRIORITY OF FUNERAL EXPENSES

If a decedent's estate is not sufficient to pay his debts in full, they are paid in classes, with those of the last class, if and when reached, sharing ratably in what is left. The only debts which are favored over funeral expenses of the deceased are those which have a specific lien on his property. The Council is proposing an amendment to G.S. 28-105, outlining the order of the payment of debts, which limits the priority of funeral expenses to an amount not exceeding $300. We believe that giving greater priority than this to funeral expenses is inequitable and works a hardship upon other creditors. . . .

X. PERIOD OF PROBATION OR SUSPENSION OF SENTENCE

When a defendant has been convicted of, or has entered a plea of guilty or of nolo contendere to, any offense not punishable by death or life imprisonment, the judge may suspend the imposition or execution of sentence and put the defendant upon probation, but the period of probation may not exceed five years. We are of the opinion that the judge should be given authority to prescribe periods of probation of longer duration. Cases arise where sentence should be suspended for a considerably longer time than the law now allows. We suggest a bill which will increase the permissible period of probation to ten years.

XI. SUMMONS IN MISDEMEANOR CASES

In most instances where a misdemeanor has been committed, the defendant will willingly appear for trial when ordered to do so. Only where the offense is a serious misdemeanor or where an unreliable person is involved is there any real need for the issuance of a warrant of arrest. We propose a bill which will permit officers authorized to issue warrants to issue a summons instead of a warrant when he has reasonable ground to believe that the person accused will appear in response to same. The summons would simply command the accused to appear at a given time and place. Under this bill magistrates, in proper cases, can avoid subjecting the accused to the humiliation and inconvenience of an arrest, to say nothing of the expense of bail.

Our proposed bill provides for punishment of the accused if he fails to appear as commanded by the summons, and also specifies that in that event a warrant of arrest shall be issued. It also permits the magistrate to issue a warrant at any time after the issuance of summons if it appears that the accused will not appear. . . .

XII. CERTIFICATES OF DECISION

The Council recommends a bill to shorten the time in which the Clerk of the Supreme Court shall transmit certificates of decisions of the Supreme Court to the superior court. Under present law, a delay in transmitting certificates of decisions of as much as forty days often occurs.

G.S. 7-16 requires the Clerk to transmit certificates of decisions on the first Monday in each month. This much delay is far more than is needed. We suggest that this statute be amended to require transmittal on the second Monday after decisions are filed. This will entail a delay of only twelve days.

XIII. CROSS ACTION IN ACTION FOR DIVORCE

Under G.S. 50-16 a wife, under certain conditions, can sue for "alimony without divorce." This right must now be asserted by independent action. We propose an amendment which will broaden this section in these two particulars: (a) allow the wife to set up a cross action for alimony without divorce in her husband's suit for divorce, and (b) allow the husband to seek a decree of divorce in his wife's suit for alimony without divorce. We know of no reason why these matters should not be litigated together. The determination of the respective rights of the spouses will be swifter and surer if they are brought before the court in one action.

XIV. INSTRUCTIONS IN WRITING DISCRETIONARY WITH JUDGE

At the present time a trial judge has no discretion as to whether he will put his instructions to the jury in writing, if he is requested to do so by a party to the action. G.S. 1-182. This statute further provides that he must allow the jury to take his written instructions with them on their retirement, if either party makes such request. We do not believe that it is the best policy to require the judge to commit his instructions to writing in any and every case in which he might be requested to do so. This, we feel, should be left to the discretion of the superior court judges, for them to determine in each case whether the ends of justice would be served by such action. We therefore are submitting a bill which so provides.

XV. ALIMONY PENDENTE LITE

A superior court judge before whom a suit for divorce is brought cannot award alimony to the wife during the prosecution of the action, or pendente lite, until he passes upon the truth or falsity of the evidence and makes a detailed finding as to the truth of the essential facts on which the allowance is predicated, in the same manner that a jury is required to find the facts on the pertinent issues. We believe that this requirement places an unreasonable and unnecessary burden on the judge hearing the preliminary motion and that it would be more desirable for the judge to find only that there is sufficient evidence to support the charges or allegations which would operate as a prima facie showing, this being the requirement for similar motions under G.S. 50-16. Accordingly, we are proposing a bill which will amend G.S. 50-15 so as to allow the judge to award alimony pendente lite upon a finding that the wife has a prima facie case. The bill is designed to permit the judge to make such allowance on the same basis as he would under G.S. 50-16. . . .

XVI. ENFORCEMENT OF ALIMONY PENDING APPEAL

We feel that there should be authority for the judge of superior court to enforce payments of alimony during the time in which an appeal from the award of alimony is pending. The right of appeal from a decree awarding alimony should not be available to a husband as a means of avoiding his duty of support pending the appeal. Therefore, we are suggesting to the General Assembly a bill which will authorize the enforcement of such payments pending appeal by contempt proceedings in the same manner as if no appeal had been taken.

XVII. STATUTE OF LIMITATIONS IN CAUSES OF ACTION ARISING OUT OF STATE

Our statute of limitations specifies that if, when a cause of action accrues against a person, he is out of the state, an action may be com-

menced within the stated time "after the return of the person into this State." G.S. 1-21. A case was recently before our Supreme Court in which the cause of action arose out of the state between parties who were non-residents of the state when the action arose. The Court, in line with decisions elsewhere, held that the above mentioned statute is applicable as a matter of procedure, and therefore it, and not the *lex loci*, applies, and the non-resident plaintiff is entitled to the benefit of its provisions tolling the running of the statute. *Bank v. Appleyard*, 238 N.C. 145 (1953). In that case the statute of limitations of the state where the cause of action arose had not run out.

The Council's recommendations would not change the result of the above cited case, but would clarify the law in this area and bring North Carolina in line with several other states which have enacted legislation to the effect that where the cause of action has arisen out of the state, an action cannot be maintained in this state if it is barred by the laws of the state where it arose, unless the action originally accrued in favor of a resident of this state. . . .

XVIII. APPEAL FROM INTERLOCUTORY ORDERS

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

XIX. REMOVAL OF PENALTY FOR REFUSAL TO GRANT APPLICATION FOR WRIT OF HABEAS CORPUS

If any judge authorized to grant writs of habeas corpus refuses to grant such writ when legally applied for, he is subject to a personal liability to the person prosecuting the writ of $2,500.00. It is this penalty against which we offer a recommendation.

We, of course, regard the writ of habeas corpus as a great bulwark of liberty and would sanction nothing which would render it less effective. We do not believe, however, that our judges should have to labor under the threat contained in the present statute, particularly since application for the writ can be made only to justices of the Supreme Court and superior court judges. Neither do we believe, on the other hand, that one should be without remedy when a judge wrongfully refuses an application. Accordingly, we propose an abandonment of the present "penalty" remedy and ask for a new statute which would require a judge to put his reasons for the refusal of the application in writing and would provide for immediate review by the Supreme Court by a writ of certiorari. . . .

XX. DETERMINATION OF PATERNITY

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

XXI. BURIAL EXPENSES FROM RECOVERY IN WRONGFUL DEATH ACTIONS

We propose a change in the law relating to the distribution of damages recovered in wrongful death actions. G.S. 28-173 specifies that the amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, but shall be disposed of as personalty would be in case of intestacy.

The Council is of the opinion that the burial expenses of the deceased should be paid out of such recovery only to the extent that the assets of the general estate of the deceased are insufficient to make payment thereof. We are recommending a bill to this effect to the General Assembly.

XXII. STATUTE OF LIMITATIONS IN MISDEMEANOR CASES

A situation particularly needful of attention has to do with the statute of limitations in misdemeanor cases. Under G.S. 15-1 it is provided that all misdemeanors shall be presented or found by the grand jury within two years after the commission of the offense. This statute obviously is founded on the idea that most misdemeanants will be tried in the superior courts. It makes no provision for cases instituted in the inferior courts where trial is upon a warrant. Hence, it is entirely possible for prosecutions to be instituted in these inferior courts at a period almost at the end of two years from the commission of the alleged offense, and by the time the offense is tried in the inferior court upon a warrant and an appeal is had to the Superior Court, the two years would have elapsed before any opportunity to have a bill found by the grand jury or to try the case in the Superior Court upon a warrant within the two-year period. The result is that an offender may escape punishment merely because of the congestion of a particular docket or because he was successful in gaining a continuance of his case. We therefore offer a bill which provides that the issuance of a warrant as well as an indictment tolls the statute of limitations.

The bill we propose also changes G.S. 15-1 in another respect. That section now brings within its scope the crime of petty larceny where the value of the property does not exceed five dollars. It is evident that this valuation has long since been out of date, since G.S. 14-72 now provides that the larceny of property or the receiving of stolen goods of the value of not more than $100 is a misdemeanor. Acordingly, our bill strikes out the words "five dollars" in the present statute and inserts in lieu thereof the words "one hundred dollars."

XXIII. EXHIBIT EVIDENCE

Under present law, it is error for the trial judge to permit the jury, when it retires for deliberation, to take anything to the jury room other than a copy of the judge's charge. This rule restricts the thoroughness of the jurors' examination and its removal likely would make for fewer differences of opinion on their part where exhibit evidence has been received in the trial. We believe that there are certain cases in which the

(Continued on Page 15)

A Ten-Year Highway Program

The engineering firm of Parsons, Brinkerhoff, Hall, and MacDonald presented a report to the State Highway and Public Works Department on November 26 which may bear long-range implications for the 1955 and succeeding General Assemblies. Based upon extensive study of deficiencies in the state's highway system, the report detailed both the steps which should be taken during the next ten years to correct these deficiencies and a number of alternative means for financing them. Many of the report's recommendations can be effectuated by administrative decision, but a number will require legislation.

The report laid its emphasis on primary system roads, pointing out that about seven per cent of the mileage in the state-maintained roads carries well over 60 per cent of the total traffic and that growing traffic totals will strike hardest at this system. However, it considered also a number of problems relating to the 56,293 miles of county system roads.

While it is not possible to make a detailed review of all the material presented in the 123 pages of the report and its 37 pages of appendices, many features are of statewide interest.

Largest System In the Nation

The engineering experts, who were assisted by local economists and others, first traced the development of the highway system and its finances in North Carolina from the primitive roads in the Albemarle region of 1650 to the 68,190 miles in the state system today, which includes rural roads whose paved area is 9.5 times as large as the total land area of Raleigh. They pointed out that the State Highway Commission today has under its jurisdiction the most extensive highway plant in the nation, equal to more than the combined state mileage of Alabama, Florida, Georgia, South Carolina, and Tennessee.

They then made a study of North Carolina's probable highway needs over the next ten years. This study involved (1) a determination of highway use trends, from which a forecast of future traffic volumes could be made, (2) a determination of engineering standards which should be met in order to handle various levels of traffic loads, (3) a detailed, highway-by-highway examination of present highways and structures to determine deficiencies, in terms of failure to meet the standards for present or anticipated traffic loads, and (4) preparation of a program of improvements which would correct these deficiencies.

These studies revealed a probability that motor vehicle registration will increase by 21.8 per cent between 1955 and 1965 and that motor vehicle travel will increase by 26.4 per cent during this period.

To handle the resulting volumes of traffic, the engineers found that 9,266 miles of rural roads and 936 miles of municipal streets on the primary highway system will have to be improved; 1,219 miles of new rural roads and 91 miles of new municipal streets will have to be constructed; and 1,814 structures such as bridges will have to be repaired, replaced, or constructed. In addition, it was estimated that 1,718 miles of county system highways will have to be resurfaced, 3,981 miles will be given stone or soil all-weather surface treatment, 1,400 miles will be given bituminous surfacing, 3,000 miles of new highways (900 of them hard surfaced) will be added to the system, and 8,960 bridges will have to be repaired or rebuilt.

Finances

The total cost of making the suggested improvements on the primary system over the ten-year period was estimated at $609,761,000. The cost of improvements on the county system was estimated at $109,146,000. These costs, when added to other expenses of the Highway Fund, make a total budget of $1,464,301,000 for the ten years. Estimated revenues for the period, with no changes in the present laws or financial practices, would amount to $1,441,782,000, leaving a difference of $22,519,000 to be made up by other means.

This difference amounts to only 1.5 per cent of the total budget for the period. However, the consultants laid heavy stress on the desirability of making the bulk of the suggested improvements in the first six years of the decade, which would result in a deficit of $142,205,000 during the early period.

The report suggests that the additional funds required might be secured through (a) deficit financing, (b) increasing the motor fuels tax rate, (c) instituting a number of reforms in the present financial structure, or (d) a combination of two or more of these measures, in which case there would be reductions in the amounts which each would be required to produce.

Deficit Financing

With no change in the present revenue structure, the program would require borrowing $38,993,000 in the 1955-57 biennium, $52,544,000 in the 1957-59 biennium, and $61,139,000 in the 1959-61 biennium. Some of these debts could be repaid in the final four years of the decade, leaving $41,000,000 to be paid out of surpluses after 1965. The report notes, however, that North Carolina's current highway debt is nigher, in relation to annual revenues, than that of any other southeastern state, due largely to the greater mileage involved in the state system.

Increase in Gas Tax

A second approach would be to increase the motor fuels tax as necessary to cover the costs. The program could be financed by an increase in North Carolina's present 7.25 cent tax rate to 8.625 cents in the 1955-57 biennium, nine cents in 1957-59, and 9.125 cents in 1959-61. Thereafter the rate could be cut back to 5.875 cents in 1961-65 and 3.875 cents in 1963-65, as a result of the increased revenues from increased use. The report notes, however, that the state's current gasoline tax is as high as that of any other state.

Financial Reforms

The engineers also recommended a number of lesser measures which would make available revenues to pay for the proposed improvements. Some of these would create additional sources of revenue. Others would merely amount to shifting a burden of taxation from the highway user to some other taxpayer. All of them together could cover the proposed program and actually produce a surplus of $218,242,000 for the decade.

Among the additional sources of revenue, the most lucrative would be to change the registration fees for

private and farm trucks to the same basis as the fees for contract carriers. This would produce a ten-year total of $101,614,000. Other measures would recognize the fact that North Carolina is a "bridge" state through which North-South carriers pass without necessarily having to purchase their fuels here. By imposing a fuel use tax, plus a highway use tax to make up for lack of registration in the state, the engineers estimate $10,125,000 could be collected during the period. Finally, by increasing the tax on Diesel fuel from seven cents to 11 cents, to take account of the greater mileage per gallon possible with such fuel, $9,559,000 would be earned.

Among the steps designed to shift burdens to non-highway taxpayers are (a) a proposal to shift the costs of the Prisons Department, Board of Paroles, and Probation Commission to the General Fund, which would free the Highway Fund of an estimated $33,005,000 of costs (assuming that the cost of hiring labor and machinery for maintenance purposes does not exceed the amounts spent for prison labor at $3.60 per day for prisoner); (b) a proposal to shift the costs of investigating bus franchises, proper reporting and payment of vehicle taxes, etc., by the Utilities Commission to the General Fund, which would free the Highway Fund of $1,390,000 of expenditures; (c) a proposal to shift 50 per cent of the construction cost of county system roads to the counties (presumably to be paid through *ad valorem* property taxes), on the theory that these roads benefit local property owners as well as general highway users and that they rarely are travelled enough to produce adequate motor fuel tax revenues for their support; this would produce an estimated $30,000,000; (d) a proposal to shift the entire surplus from the motor fuel inspection tax from the General Fund to the Highway Fund, producing $30,717,000; (e) a proposal to eliminate the motor fuel tax refunds currently made to non-highway fuel users (such as gasoline-powered farm implements); this would produce $24,306,000.

In addition, the report pointed out certain economies which could be made to stretch funds. It suggested that no streets in fringe-area residential subdivisions be accepted for maintenance by the state which were not built to minimum state specifications, including an asphaltic wearing course of suitable thickness. It advised against providing all-weather surfaces for roads carrying less than 50 cars per day or bituminous surfaces for roads carrying less than 100 cars. And it recommended the securing of authority to create limited-access highways, which would be protected against impairment by unrestricted roadside development.

Highway Commission Recommendations

Following receipt of the report, the staff of the Highway Department immediately began consideration of the various recommendations to determine the outlines of a feasible program. The staff's suggestions will be presented to the State Highway and Public Works Commission on December 22. Highway Commission recommendations, in turn, will be presented to the Governor for his consideration, and it is expected that a number of legislative proposals will result.

Judicial Council

(Continued from Page 13)

jury should be permitted to take exhibits which have been received in evidence with it on retirement for the purpose of verifying or rejecting a point made. Therefore, we are suggesting a bill which will give the judge the authority to permit the jury to have for inspection such exhibit evidence. We have deemed it advisable not to attempt to enumerate in this bill instances in which the jury should have the benefit of such exhibits in its deliberations. It is our opinion that the trial judge can safely be trusted in this matter.

XXIV. INVOCATION OF SUSPENDED SENTENCE

Under the statute governing the revocation of probation and the execution of suspended sentences, there is no authority given for the judge, out of term time, to order that a suspended sentence be executed, although he can at any time revoke an order of probation. We believe that a defendant at liberty under a suspended sentence who is arrested for violation of the conditions thereof should be carried before the judge immediately, whether in or out of term time, for the judge to determine whether the sentence shall be executed. We urge the adoption of a bill which so provides.

XXV. NONSUPPORT OF CHILDREN

Under the "abandonment and nonsupport statute" (G.S. 14-322) wilful failure of a father to support his children does not constitute an offense unless preceded by abandonment, and under the "nonsupport statute" (G.S. 14-325) it is no crime for one to wilfully fail to support his children unless he is at the time "living with his wife." We believe a need exists for an amendment which we offer to G.S. 14-322 which specifies that wilful failure to support one's children is a misdemeanor, regardless of the element of abandonment.

XXVI. SERVICE ON MINORS

G.S. 1-97 (2) directs that service of summons on a minor under the age of fourteen must be by delivering the summons to the minor personally, and also to his father, mother, or guardian. We feel that where service is to be made on a minor who has a general guardian, the minor's interests are adequately protected by service upon such guardian and that the additional requirement that the minor be served personally is useless. Therefore, we are recommending a bill which will amend the above statute so as to render it unnecessary for summons to be delivered to the minor personally in such cases.

XXVII. SUITS BY AND AGAINST UNINCORPORATED ASSOCIATIONS

Under present law all unincorporated associations doing business in North Carolina can be sued in their common name, but in only two isolated instances can they bring suit in their own name. We see no benefit to be gained by leaving the majority of unincorporated associations without a simple methed of litigating their rights. We therefore urge adoption of the bill we propose which will authorize all unincorporated associations to sue in their common name.

XXVIII. RESIDENT MOTORISTS WHO DEPART FROM THE STATE

We propose an amendment to the statute providing for constructive service of summons on nonresident motorists which will make its provisions applicable to persons who are

(Continued on Page 19)

County Commissioners Seek Eight Acts

At its 1954 convention, the State Association of County Commissioners unanimously resolved to request the 1955 General Assembly to enact legislation on the following subjects:

1. Providing staggered terms for county commissioners. A number of counties now have staggered terms, and the Association requests that this method of selection be extended to all counties. The Association has drafted legislation which would provide that in all counties not now having staggered terms, candidates for the board receiving the highest number of votes in the general election in November, 1956, would be declared elected for four years and the remainder of the board elected for two years; thereafter all commissioners would be elected for four years. In counties having an odd number of commissioners, a majority would be elected for four years in 1956 and a minority for two years; in counties having an even number of commissioners, half would be elected for each term.

2. Authorizing each board to designate its clerk. For over 80 years the register of deeds has been by general law the *ex officio* clerk to the board of county commissioners. A number of counties in recent years have designated some other official by special act, since the register of deeds is often overly burdened with his own work and since some other county official, such as a county manager or accountant or attorney, is more familiar with the general county business than is the register. The Association has drafted legislation which would provide that each board could, if it so desired, designate some official other than the register of deeds as *ex officio* clerk to the board, to serve as clerk at the will of the board.

3. Re-inserting in the law the requirement that all meetings of the board be open to all persons. For over 80 years meetings of boards of commissioners were required to be open to all persons, but when G.S. 153-8 was rewritten in 1951, this requirement was inadvertently omitted from the rewritten section. The Association has drafted legislation which would reinsert the open meeting requirement.

4. Authorizing boards of county commissioners to obtain public liability and property damage insurance. In recent years several counties have obtained authority to secure public liability and property damage insurance, so that they can protect their citizens injured by the negligence or tort of officials and employees of the county acting within the scope of their authority. As a general rule, counties are not now authorized to secure such insurance, because the county is not liable for negligence and torts of its officials and employees, and the Supreme Court has held that when a government is not liable it may not take out insurance. The Association has drafted legislation which would authorize a county, in the discretion of the board of commissioners, to secure liability insurance to cover such negligent acts or torts of such officials and employees as the board may designate, waiving the county's governmental immunity from liability to the extent of, but not beyond, the insurance coverage. In this manner citizens could be protected from such negligent acts and torts, but the county could in no event be liable beyond its insurance.

5. Requiring justices of the peace to use pre-numbered warrants and receipts and to be audited at least annually. In recent years several counties have obtained legislation requiring justices of the peace to use pre-numbered warrants and receipts and to be audited annually, in order that proper bookkeeping practices may be employed by these officials who handle county funds. The Association has drafted legislation which would fix these requirements on a statewide basis, with the necessary expenses of auditing being borne by the county.

6. Changing the beginning of the term of office of county boards of public welfare. At the present time members of county boards of public welfare take office on April 1, and their first duty is the preparation of a budget for the coming year. The Association is supporting legislation being drafted by the State Board of Public Welfare providing that members of these boards take office on July 1, after the budget has been prepared, so that they would have almost a year's experience on the board before they were required to participate in the budget process.

7. Eliminating the requirement that superintendents and chairmen of welfare boards sign checks paying administrative expenses. At the present time welfare superintendents and chairmen of welfare boards are required to sign checks in payment of administrative expenses. Checks for administrative expenses in other departments of the county are not required to contain department heads' signatures. The Association is supporting legislation being prepared by the State Board of Public Welfare providing that welfare administrative checks be signed like all other county checks.

8. Creating a pooled fund plan for the hospitalization of public assistance recipients. Some state and federal aid is now available to pay for the cost of hospitalization of public assistance recipients, but the main burden falls on the county and the bookkeeping required is extremely complicated. Under federal regulations, a pooled fund may be created with federal, state, and county contributions which would be used to pay hospital bills of public assistance recipients. This procedure would relieve the counties from the extensive bookkeeping now required and would shift a larger portion of the cost of hospitalization, now borne by the counties, to the state and federal governments. The Association has requested that legislation be prepared by the State Board of Public Welfare to set up a pooled fund, in order to lighten the county financial and bookkeeping load.

In addition to the foregoing, the State Association of County Commissioners has reviewed the legislative programs of the State Association of County Accountants, the Tax Supervisors' Association, and the Tax Collectors' Association, and it has decided to support the legislation contained therein. These programs are set forth elsewhere in this issue of *Popular Government*.

County Attorneys Ask Changes In Old Age Assistance Lien Law

County attorneys attending a school sponsored by the Institute of Government in September, 1954, appointed a committee to consider and recommend changes to be made in the old age assistance lien law (G.S. 108-30.1 through 108-30.3) for presentation to the 1955 General Assembly.

The committee, after seeking suggestions from all county attorneys, recommended the following:

1. That the act be amended to provide that no action to enforce the lien may be brought more than three years after the death of a recipient, rather than one year after the death of a recipient. The committee felt that the one year limitation was unduly restrictive as it often required the county attorney to bring an action to enforce the claim in cases where a collection could be made without court action if more time were available.

2. That the act be amended to provide that execution in enforcement of the lien may not be levied upon any real property so long as such property is occupied as a homesite by the recipient or by an adult child of the recipient who is incapable of self-support because of total mental or physical disability. The present law only protects the spouse of a recipient and the minor dependent children of the recipient in this respect. They would continue to have such protection.

3. That the act be amended to provide that upon termination of the old age assistance grant, the county department of public welfare is to examine its records, the tax records, and the record of administrators to determine if the recipient owns or has owned property from which a collection might be made, or to determine if an administrator has been appointed. If property is owned or an administrator has been appointed, the county department is to turn the information over to the county attorney, who is to take such action as he deems necessary to enforce the claim and lien. If no property is owned or no administrator has been appointed, no action to enforce the claim or lien will be required of the county attorney.

The present law requires the county attorney to file a claim against the estate of all deceased recipients. This change would eliminate that requirement in those cases in which the county department of public welfare's records, the tax records, and the record of administrators indicate that the recipient does not own or has not owned any property from which a collection could be made, and that no administrator has been appointed.

4. That the act be amended to provide that all necessary costs and expenses incurred in the enforcement of the act shall be borne by the county from its general fund and that the county is to receive 25 per cent of all sums collected or repaid as reimbursement for those costs and expenses. The remaining 75 per cent would be apportioned between the federal, state, and county governments in accordance with the matching formulas in effect during the period old age assistance payments were made.

Under the present law the federal, state, and county governments share in the costs of collection but all other costs must be borne by the county. The committee felt that the county should not be required to bear the brunt of the expenses involved without some compensation therefor. This would also allow the county commissioners funds with which to pay the county attorney a reasonable fee for the time and effort he spends in making collections. Under the present law, attorneys' fees may not be included within the costs of collection.

County Accountants Sponsor Revision of Fiscal Control Act

The State Association of County Accountants has recommended revision of the County Fiscal Control Act, passed twenty-eight years ago and substantially unchanged since that date, in four minor particulars:

1. The powers that have been read into the present law by interpretation should be spelled out in clear terms, so that a person who reads the statute can find all powers granted thereunder. For example, specific language should state the authority to transfer appropriations, to appropriate revenues in excess of estimates, and to appropriate unappropriated surplus—powers that have been read into the present law by interpretation.

2. Counties should be authorized to adopt their budgets in advance of the beginning of the fiscal year if they so desire, thus enabling them to set their tax rates in advance of the date for accepting pre-paid taxes and simplifying their tax collection machinery. Under the present law, a county may adopt an appropriation resolution prior to July 1, but it can not pass its tax levying resolution until after the first Monday in July. Moreover, counties should be required to levy taxes as soon as they make their appropriations, and in practice they generally do.

3. County officers collecting money are under present law required to make a deposit each day, even if they have in their possession only a few dollars, and they are required to make deposits into bank accounts maintained in the name of the county. The board of commissioners should be allowed to modify the daily deposit requirement, so that officers would be required to make a deposit only when they have as much as several hundred dollars in their possession. Moreover, deposits should be authorized in bank accounts in the official name of the depositing officer, with a monthly settlement with the county accountant, thus simplifying bookkeeping procedures while retaining adequate control over funds.

4. The law should be modified to simplify accounting requirements so as to eliminate duplication and to reduce the required contents of published financial statements.

The proposed act, drafted by a committee of county accountants and approved by the State Association of County Accountants and the State Association of County Commissioners, makes these revisions.

Tax Officials' Legislative Programs

Tax Supervisors

After prolonged study and discussion, the tax supervisors of the counties of this state have prepared for introduction in the 1955 General Assembly eight bills designed to accomplish the following things:

1. Authorize boards of county commissioners, in their discretion, to appoint assistant tax supervisors and designate their fields of work.

2. Subject to approval by the county commissioners, permit the appointment of more than one list taker for any township, and permit the tax supervisor to assign duties among the list takers of a given township as he thinks most effective.

3. Authorize travel expense reimbursement for members of boards of equalization and review required to make investigations for the board.

4. Grant boards of county commissioners discretionary power to require all tax listing to be done at the courthouse, or to require certain categories of property-owners to list their property with the tax supervisor.

5. Modernize the standard tax abstract by deleting certain obsolete items and by adding spaces for listing modern agricultural and household machinery and equipment.

6. Authorize the Commissioner of Motor Vehicles to charge counties the actual cost of preparing lists of motor vehicle owners for tax purposes.

7. Without changing the intention of the existing law, clarify and simplify the statutes dealing with "discovered property," "carrying property forward," and computation of the late listing penalty.

8. Expand the assessment statutes to permit revaluation of a piece of real property in a non-revaluation year if, subsequent to a revaluation:

   (a) Something happens to the particular property which materially decreases or increases its market value—that is, something other than general shifts in value resulting from general shifts in the economy.

   (b) It is reliably determined that, at the last revaluation, the acreage or dimensions of the land were erroneously entered on the tax records and that, as a result of this error, the assessment computed and recorded at the revaluation was improper.

9. Exempt from the property tax:

   (a) Land and buildings owned and held by rural fire protection districts if used wholly and exclusively for public purposes.

   (b) Personal property of rural fire protection districts if used wholly and exclusively for rural fire protection district purposes.

   (c) Community buildings if used exclusively for community or public purposes and operated completely without profit.

Tax Collectors

Working over a period of two years, the tax collectors of the counties, cities, and towns of the state have prepared for introduction in the 1955 General Assembly eight bills designed to accomplish the following things:

1. Allow counties and municipalities, if their governing bodies think it desirable, to appoint deputy tax collectors legally qualified to act for the collector—especially in levy and garnishment proceedings.

2. Allow a tax collector handling the tax bill of another unit to add the statutory collection fee to the amount to be collected (rather than subtract it from the amount collected, as the law now provides).

3. Change the collector's settlement oath so that, in swearing he has made diligent effort to collect unsecured personal property taxes, the unit governing body will know that his efforts have been consonant with the "facilities available to him" for collection; abandon the term "insolvent" as a description of uncollected personal property taxes.

4. Extend to municipal governing bodies the discretionary power now held by county commissioners to release the tax collector from the charge of "insolvent" taxes five or more years delinquent if considered uncollectible.

5. Where a taxpayer owns only one parcel of real estate in the taxing unit, clarify the procedure by which the collector may release the land from the unit's lien for all the taxpayer's real, personal, poll, and dog taxes for a given year.

6. Remove the $5 limit on the attorney's fee chargeable as part of the costs in tax foreclosure suits, and allow the court to fix this fee in each case. (The compensation to be paid the attorney by the taxing unit is not affected by this proposal.)

7. Allow the collector, upon authorization of the governing body, to call on any peace officer (including the sheriff, a township constable, a municipal policeman) to make tax levies and hold sales for him.

8. Remove the existing limitations on tax levy and sale fees and allow the collector to charge the fees allowed by the general execution law.

9. Allow the unit governing body to set the fee for serving tax garnishment notices and allow boards of county commissioners to set the fees which justices of the peace may charge in garnishment proceedings.

10. Permit the tax collector to use levy and garnishment at any time after the listing date if there is reasonable ground for believing that the listing taxpayer (a) is about to remove his property from the taxing unit, or (b) is about to transfer the listed personal property to another person.

11. (a) Give the taxing unit a lien (attaching as of the listing date) on the stocks of goods of wholesale and retail merchants.

(b) Allow the collector to levy on the property of wholesale and retail merchants and those who buy their stocks at any time after the listing date if current and delinquent taxes on the stocks are not paid within 30 days after sale or termination of business—provided the collector acts within 60 days of the transfer or termination.

(c) In the event of such a transfer after the first Monday in October, allow the collector to levy on the property of the purchaser if the taxes on the stock of goods are not paid within 30 days of the transfer—provided the collector acts within 60 days of the transfer.

(d) Make the purchaser of a merchant's stock of goods personally liable for the taxes on the property he purchases so that if the regular remedies for collection fail the collector may bring a personal action against the purchaser.

League Of Municipalities' Proposals

The North Carolina League of Municipalities, looking back on substantial achievements during the past few legislative sessions, decided at its October convention in Winston-Salem to request legislative approval of just three measures in 1955.

Subdivision Control

Possibly the most important act recommended would permit cities to regulate all subdivisions of land (with a few stated exceptions) within their borders and for one mile beyond their limits. The ordinances now adopted by many North Carolina cities have no firm statutory basis and cannot be enforced. The proposed act would permit (not require) cities to adopt valid ordinances, and no subdivision ordinance could become effective without (1) an advertised public hearing, (2) adoption of the ordinance by the city governing body, and (3) filing of the ordinance with the county register of deeds.

The act requires that a preliminary plat of a proposed subdivision must be submitted to the city Planning Board for recommendations and that tentative approval must be given before any improvements are installed in the subdivision.

In the subdivision ordinance the city may require (1) coordination of streets in the subdivision with the city's street system, (2) dedication or reservation of streets, recreation sites, and school sites, and (3) grading and pavement of streets and installation of curbs, gutters, sidewalks, and utility mains by the developer. In lieu of installation prior to final approval of the plat, the developer may be permitted to post bond or file a petition for assessing the costs of improvements. Enforcement measures (1) prohibit the register of deeds from recording unapproved plats, and (2) make the sale of land by reference to an unapproved plat a misdemeanor.

Municipal Fiscal Control Act

This act is essentially a re-enactment (using municipal terms) of the County Fiscal Control Act which since 1931 has regulated the financial affairs of municipalities, a situation which has given rise to much confusion.

In addition to re-phrasing the fiscal control provisions in municipal terms, the act changes the present law in three ways. First, it spells out city powers which have been read into the present law by interpretation, such as the power (1) to transfer appropriations, (2) to appropriate revenues received in excess of estimates, and (3) to appropriate unappropriated surplus.

Second, the act makes some minor procedural changes, such as (1) designating the official responsible for municipal accounting where no accountant is appointed, (2) permitting the governing body to adopt a budget ordinance which makes appropriations and levies taxes at the same time (rather than in two ordinances) and to adopt this ordinance prior to the beginning of the fiscal year so that the tax rate may be determined prior to the date set by law for accepting prepaid taxes, and (3) permitting the governing body to change the daily deposit requirements so that deposits by officials collecting revenues would be necessary only when an official has accumulated as much as $250.

Finally, the act generally simplifies accounting requirements to eliminate duplication and reduces the required contents of published financial statements.

Yield Right of Way

The last bill on the League's legislative program would give statutory confirmation to the use of "yield-right-of-way" signs which are now in general use in many cities and on many highways. The statutes now permit the use of "stop" signs requiring vehicles approaching main or through highways to come to a full stop before entering the highway. As proposed, the new act would permit the State Highway and Public Works Commission and governing bodies of cities and towns, with respect to streets in their jurisdiction, to erect "yield-right-of-way" signs requiring persons approaching an intersection with a main-travelled or through highway to yield the right of way to any vehicle on the through highway travelling at such a rate of speed that it would arrive at the intersection at approximately the same time.

CORRECTION

Two errors have been called to our attention in connection with the budget figures tabulated at pages 10-13 of our November, 1954, issue. The 1953-55 appropriation for Old Salem, Inc., should have been shown as $35,000, and its request for 1955-57 as $165,000. The 1955-57 request for the Junior Order Orphanage should have been shown as $100,000.

Judicial Council

(Continued from Page 15)

residents of this state at the time of an accident, but who subsequently depart from this state and remain absent therefrom for a period of thirty days. While personal service can be had on a nonresident motorist by service of summons on the Commissioner of Motor Vehicles, the provisions of the statute do not allow such substitute service upon a resident of this state who departs from the state after the accident. We feel that constructive service must be authorized as to persons who are residents when the accident occurred and who subsequently leave the state; otherwise, such residents who subsequently leave the state are in a favored position as compared with nonresidents. Enactment of the bill we propose will bring North Carolina in line with many other states which have wisely erased this inequity with provisions similar to those in the bill we offer.

Note: The present membership of the Judicial Council is as follows: Supreme Court Justice J. Wallace Winborne; Superior Court Judges J. Will Pless, Jr., and Leo Carr; Assistant Attorney General Ralph Moody; Superior Court Solicitors Malcolm Seawell and Charles T. Hagan, Jr.; E. T. Bost, Jr., John C. Rodman, State Senator Nelson Woodson, State Representative David Clark, Fred B. Helms, Don A. Walser, Z. V. Norman, and Louis J. Poisson. Dewey W. Wells is its Executive Secretary.

Books of Current Interest

Model Ordinances

NIMLO MODEL PURCHASING ORDINANCES — ANNOTATED. *Edited by Charles S. Rhyne. Washington 6, D. C.: National Institute of Municipal Law Officers, 726 Jackson Place, N.W. 1954. $2.00. Pages 22.*

This publication, one of a series of model ordinances prepared by NIMLO to assist local governmental attorneys, contains "guide" provisions to be considered by municipalities wishing to adopt centralized purchasing. The ordinance was prepared by NIMLO in cooperation with the National Institute of Governmental Purchasing, and contains provisions creating a department of purchasing, the office of purchasing agent, and a committee on standardization and specifications, as well as provisions on bidding, warehousing, inspection and testing, emergency purchasing, and cooperative purchasing.

NIMLO MODEL ZONING ORDINANCE. *Edited by Charles S. Rhyne. Washington, D. C.: National Institute of Municipal Law Officers, 726 Jackson Place, N. W. 1954. $2.00. Pages 43.* Unduly complicated for most North Carolina municipalities, this ordinance nonetheless includes a number of ideas worth incorporating. It should be examined by the planner or city attorney engaged in drafting or revising a zoning ordinance for his city.

IOWA MODEL ORDINANCES. *Iowa City: Institute of Public Affairs and College of Law of the State University of Iowa in Cooperation with the League of Iowa Municipalities. 1953. $10.00.*

These ordinances were prepared as a cooperative project and will be added to from time to time to conform with changing conditions in local government and new statutory provisions and court decisions. While the ordinances reflect the special conditions prevalent in Iowa, the principle of a set of model ordinances designed for the use of the average small or medium size city or town is one to be commended. Furthermore the ordinances, having been subjected to close study by both legal and municipal officials contain many good ideas on subject matter and procedure. (GHE)

Municipal Government

MUNICIPAL YEARBOOK, 1954. *Chicago: International City Managers Association. 1954. $10.00. Pages 613.*

Long the standard reference for city managers and city administrative officials, the 1954 Yearbook contains additional sections which enhance its value. A new section on "Urban Counties" will be of interest to county officials in the larger North Carolina counties. Additional information on services in fringe areas in metropolitan regions makes the Yearbook the best source of information on fringe area problems in the country. Other new sections of interest to North Carolina city officials are those dealing with sewer service charges and refuse collection and disposal practices. (GHE)

NIMLO MUNICIPAL LAW REVIEW. *Edited by Charles S. Rhyne and Brice W. Rhyne. Washington: National Institute of Municipal Law Officers. 1954. $10.00. Pages 504.*

This annual volume, successor to *Municipalities and the Law in Action*, contains not only the very helpful proceedings of the Institute's 1953 conference and the reports of its committees, but also ten law review articles prepared by city attorneys on questions of interest to municipal attorneys. The winning law review article on legal procedures for the elimination of unsafe buildings is excellent. Other articles deal with such subjects as municipal business taxes, the maintenance of cash surplus funds by cities, problems in the collection of real property taxes, the regulation of obscene literature by cities, public inspection of investigatory reports of city officials, state prosecution of municipalities for water pollution, and the ability of cities to meet tort liability claims. (GHE)

REFUSE COLLECTION AND DISPOSAL FOR THE SMALL COMMUNITY. *A Joint Study and Report of U. S. Department of Health, Education, and Welfare, Public Health Service, Washington, D. C., and American Public Works Association, 1313 East 60th Street, Chicago, Illinois. 1953. $2.00. Pages 39.*

This excellent manual will be indispensable to city officials in small towns who are considering ways and means of collecting and disposing of garbage and other refuse. The manual sets forth procedures, discusses and analyzes methods of and equipment for collection and disposal of refuse, and contains a short discussion of financing refuse collection and disposal by the fee method. Sample ordinances governing refuse storage, collection and disposal are included. (GHE)

POLICE PLANNING. *By O. W. Wilson. Springfield, Illinois: Charles C. Thomas, 301-327 East Lawrence Avenue. 1952. Price $7.75. Pages 492.*

This book, written by the dean of the school of Criminology and professor of Public Administration at the University of California, takes the police chief or police officer in charge of planning for medium and large-size police departments through the whole process of re-examining the operation of his department. Designed as a guide to a complete police department survey, the volume will be helpful not only to police officials with basic administrative responsibility but also to managers, councilmen, and other city officials having responsibility for and interest in more effective police administration. (GHE)

Governmental Finance

THE LAW OF REVENUE BONDS. *By Lawrence E. Chermak. Washington 6: National Institute of Municipal Law Officers, 726 Jackson Place, N. W. 1954. $5.00. Pages 236.*

This book is a comprehensive survey of the basic concepts of the law governing the issuance of revenue bonds by states and local governments and provides a ready access to citations of the cases and writings in the field for the lawyer practicing in this field on infrequent occasions. In addition, fundamental debt considerations applicable to both general obligation and revenue bond issues by governmental units have been reviewed, and several pages with an extensive compilation of cases are devoted

to the various methods of financing improvements by governments, including the use of general obligation bonds, special assessment bonds, purchases subject to mortgage, bonds payable from special taxes, leases with option to purchase, conditional sales contracts, and revenue bonds.

Among the topics discussed are the statutory power to issue revenue bonds; the purposes for which revenue bonds may be issued; the security given to revenue bondholders, including mortgages, pledges of revenues, and liens on revenues or special funds; the application of proceeds; the power to fix rates charged for the use of the facilities being constructed and rate covenants; the use of other covenants, including retention of engineers, filing of budgets, sales or encumbrances, free service, audits, and many others; and the remedies available to bondholders.

The book will be extremely helpful to the attorney for a local unit charged with guiding through an issue of revenue bonds, and it will be invaluable to the attorney involved in drafting a special act authorizing the issuance of revenue bonds in a particular situation. (JAM)

PAPERS ON MUNICIPAL NONPROPERTY TAXES IN MICHIGAN. *By Arthur M. Wisehart. Ann Arbor: The University Press, 311 Maynard Street. 1954. $2.00. Pages 94.*

These papers concern the admission tax and the income tax as sources of revenue for Michigan municipalities, but there is much of interest to officials in other states who are interested in the utilization of nonproperty taxes to assist in financing municipal services. The discussion of both taxes includes a summary of governments using the tax, revenue raised, persons and corporations subject to the tax, exemptions, and intergovernmental questions that arise when several levels of government impose these taxes. Also included is a general bibliography of publications relating to municipal nonproperty taxes. (JAM)

THE ECONOMICS OF PUBLIC FINANCE. (Revised Edition). *By Philip E. Taylor. New York: The Macmillan Company. 1953. $5.50. Pages 565.*

While written for an undergraduate course in public finance, this textbook has a clarity in the discussion of complicated fiscal problems that will make it useful to public officials studying the problem of a stable fiscal policy for state and local government. (GHE)

Inter-Governmental Relations

FEDERAL-STATE-LOCAL RELATIONS — A SELECTED BIBLIOGRAPHY. *Chicago: Council of State Governments and American Municipal Association, 1313 East 60th Street. 1954. $1.50. Pages 39.*

At a time when public officials on every level of government are reexamining the respective obligations of federal, state and local governments, when a commission appointed by the President is making an intensive study of federal-state-local relations, and when a reallocation of responsibility for governmental functions is imminent, public officials and citizens will find this detailed bibliography covering all subjects in federal-state-local relations indispensable. (GHE)

HANDBOOK ON FEDERAL GRANTS-IN-AID. *New York 17, N. Y.: American Parents Committee, Inc., 52 Vanderbilt Ave. 1953. $1.50. Pages 216.* Descriptions of the principal federally-aided programs, the amount going to each state, and how to find out the amount going to your community are the core of this volume. The Handbook discusses twenty-eight federal grant-in-aid programs of general interest and lists twenty-two other federal aid programs for which no detailed descriptions are given. A list of the various programs of federal aid to individuals and non-governmental agencies is also presented.

This handbook is one of the best in its field and should be of great value to citizens concerned and interested in federally-aided programs.

Population

COHORT FERTILITY—NATIVE WHITE WOMEN IN THE UNITED STATES. *By Pascal K. Whelpton. Princeton, N. J.: Princeton University Press. 1954. $6.00. Pages xxv, 492.* This book makes a significant contribution, both in its methodology and in the statistics it presents, to the city planner or other official whose duties require the making of population studies and estimates. By breaking down crude birth rates to reflect such matters as the age of the mother, number of children already borne, etc., the author permits better analysis of the effects of war and economic conditions. Such analysis will add soundness to any population forecast.

Reorganization Commission

(Continued from page 9)

School and Training Hospital, and the Mental Health Council. Also considered are the six mental health clinics operating in the state and the non-statutory interagency council, the School Health Coordinating Service.

After discussing the possible advantages and disadvantages of centralized mental health services in a Department of Mental Health, the Commission concluded that, for the present at least, more could be accomplished by a decentralized arrangement with emphasis on participation by local communities. However, concern was expressed over the possible conflicts which might eventually arise if more than one agency was authorized to administer mental health clinics other than such as were connected with mental institutions. The Commission therefore recommended that only the State Board of Health be authorized to operate such clinics when operated otherwise than in connection with mental institutions.

The report also contains a brief discussion of the administration of mental institutions under the Hospitals Board of Control. The Commission's only suggestion here was that perhaps more effort should be made to collect payment for services rendered to patients who were financially able to share the expense of their treatment.

EIGHTH REPORT: THE GOVERNOR'S OFFICE

At the request of Governors Umstead and Hodges, the Commission will also file a report dealing with the Governor's office. At the time of this writing, this report has not been released and is not available for review here. Its important provisions will be reviewed in a subsequent issue of *Popular Government.*

Institute of Government

University of North Carolina

Chapel Hill

The Institute of Government grew out of the classroom of a teacher in the Law School of the University of North Carolina in the 1920's. It developed into a program of action supported by city, county, state, and federal officials in North Carolina during the 1930's. It became an integral part of the structure of the University of North Carolina in January, 1942.

The Institute of Government unites public officials, private citizens, and students and teachers of civics and government in a systematic effort to meet definite and practical needs in North Carolina.

(1) It seeks to coordinate the efforts and activities of city, county, state, and federal officials who have been working for one hundred and fifty years on the same problems, for the same people, in the same territory, in overlapping governmental units, without coming together in systematic and continued cooperative effort—in the effort to eliminate needless duplication, friction, and waste.

(2) It seeks to bridge the gap between outgoing and incoming officials at the end of their two- or four-year terms by organizing and transmitting our steadily accumulating governmental experience to successive generations of public officials—in the effort to cut down the lost time, lost motion, and lost money involved in a rotating governmental personnel.

(3) It seeks to collect and correlate for each group of public officials the laws governing their powers and duties now scattered through a multiplicity of books to the point of practical inaccessibility in constitutional provisions, legislative enactments (including public-local and private laws), municipal ordinances, and court decisions—in the effort to make them conveniently available for practical use.

(4) It seeks to collect and compare the different methods of doing similar things rising out of the initiative and resourcefulness of officials in a hundred county courthouses, three hundred city halls, scores of state departments, and federal agencies—in the effort to raise the standards of governmental performance by lifting the poorest practices to the level of the best.

(5) It seeks to bridge the gap between government as it is taught in schools and as it is practiced in city halls, county courthouses, state departments, and federal agencies.

(6) It seeks to provide the machinery for putting the people in touch with their government and keeping them in touch with it.

(7) It seeks to build a demonstration laboratory and clearinghouse of governmental information to which successive generations of officials, citizens, students and teachers of government may go to see demonstrated in one place the methods and practices in government they would now have to go to one hundred counties, about three hundred cities and towns, and a score or more of state departments to find—and would not find practically available for use when they had reached these sources.

The Institute of Government is working with officials and citizens and the schools to achieve the foregoing objectives through comparative studies of the structure and workings of government in the cities, counties, and state of North Carolina, by staff members going from one city hall, county courthouse, state department, and federal agency to another, collecting, comparing, and classifying the laws and practices in books and in action. It is setting forth the results of these studies in guidebooks, demonstrating them in laboratories, teaching them in training schools, keeping them up to date, and transmitting them through a clearinghouse of governmental information for officials, citizens, and teachers of civics and government in the schools.