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Legislative Issue

Old Shipwreck at Nags Head

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The 1955 General Assembly was the longest in North Carolina's history. It convened on Wednesday, January 5, and finally adjourned sine die on Thursday, May 26. Altogether its members introduced a total of 1999 bills and resolutions, 1406 in the House and 593 in the Senate. It passed 1376 new laws and 55 resolutions, for a total of 1431 legislative enactments. All of these figures are among the highest in history.

During the legislative session, the Institute of Government's legislative service staff worked right along with the General Assembly, as it has since 1933. Its members published daily bulletins summarizing all bills introduced and reporting all calendar action taken with regard to any bill. At the end of each week they published weekly summaries of the major legislative activity during the week, together with local bulletins describing for local governmental officials in each county the bills introduced and action taken relating to that county. At the end of the session they published a statement of final action taken on each bill introduced and local summaries of final action on all bills pertaining to individual counties. Finally, in the *Summary of 1955 Legislation, General Assembly of North Carolina*, they summarized all statewide legislation enacted (codified in General Statutes form so as to be useful as quasi-official supplements to the General Statutes until the supplements appear).

In this issue of *Popular Government* we have attempted to bring together the highlights of the legislation introduced which are of interest to particular state and local governmental officials. We have in many cases described local acts and acts that failed, as well as statewide legislation—for it is from these seedbeds that statewide legislation in future years will grow. We have in many cases described the background which led to particular bills—and the legal problems which might result from their enactment. Because of space limitations we have not been able to analyze all new legislation as fully as we might wish, but during the coming issues of *Popular Government* particular bills of importance will be discussed in detail.

In the meantime, if our readers have questions concerning any of the legislation discussed herein, we shall be happy to answer inquiries to the best of our ability.

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State Government

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

By
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Every legislative session customarily produces at least some minor changes in the organization or operation of agencies in the state government, creating this or that new board or commission, or adding or taking away this or that function. The 1955 General Assembly, while making no drastic, sweeping changes in the basic structure of North Carolina's state government, did provide for more than the customary amount and degree of change. Most of these changes grew out of recommendations by special study commissions authorized by the 1953 General Assembly, which were directed to report their findings and recommendations to the 1955 General Assembly.

Reorganization Commission Proposals

A nine-member Commission on Reorganization of State Government was authorized by Resolution 21 of the 1953 General Assembly. In the words of the resolution it was "to make a detailed and thorough study of all agencies, commissions, departments, and separate units of state government with a view of determining whether or not there shall be a consolidation, separation, change, or abolition of one or more of these several agencies, commissions, departments, and units in the interest of more efficient and economical administration. . . ." The late Governor William B. Umstead appointed the following as members of this commission: David Clark of Lincolnton, Harriet L. Herring of Chapel Hill, John D. Larkins, Jr., of Trenton, William F. Marshall of Walnut Cove, R. Grady Rankin of Gastonia, William B. Rodman, Jr., of Washington, W. Frank Taylor of Goldsboro, C. W. Tilson of Durham, and Thomas Turner of Greensboro. Mr. William B. Rodman, Jr., was elected chairman and Miss Harriet Herring was elected secretary of the commission, and the Institute of Government was designated official research agency for the commission. In November and December, 1954, the commission filed eight separate reports, the first describing the methods of research and study which the commission followed, and the other seven dealing with various areas of the state government and presenting specific recommendations for changes. Following is a summary of the commission's recommendations and the action taken on them by the 1955 General Assembly.

Tax Administration. It was recommended that the Tax Review Board be constituted the sole administrative appeal agency to consider appeals from decisions of the Revenue Commissioner, and to be responsible for making rules and regulations having to do with tax administration. It was recommended that the Revenue Commissioner be relieved of the duty to serve on the Tax Review Board and that a full-time board chairman be appointed, to serve with the State Treasurer and the Director of the Department of Tax Research, ex officio. It was recommended that the State Board of Assessment be abolished and that its function of hearing appeals from decisions on tax liability made by the Revenue Commissioner be transferred to the revised Tax Review Board, with the responsibility for initial assessment of property of public utilities to be transferred to the Revenue Commissioner.

Considerable opposition developed against some aspects of these recommendations. It was felt by some that while it was desirable to clarify the exact appellate functions of the Tax Review Board and to insure that an independent administrative appeal on state tax matters was obtained, it was not necessary to have a full-time chairman of the Board. Also, it was the opinion of some that the primary responsibility for initiating tax rules and regulations should be vested in the Revenue Commissioner rather than in the newly revised board, and that the State Board of Assessment should not be abolished but should continue with the responsibility for initial assessment of public utility property for local ad valorem tax purposes. In view of the expressed opposition, a bill embodying the original recommendations of the Reorganization Commission was never introduced. Toward the latter part of the session a compromise measure [Chapter 1350 (HB 1201)] was introduced and passed which contained elements of the original Commission recommendations. This act provides that the Revenue Commissioner is not to serve on the Tax Review Board except when it passes on petitions of foreign corporations seeking franchise or income tax formula adjustments, and that the regular membership of the board is to be comprised of the State Treasurer (as chairman), the Director of the Department of Tax Research, and the Chairman of the Utilities Commission, all serving ex officio. The right to appeal decisions on state tax liability to the State Board of Assessment was repealed, but that board retains its function of assessing public utility property. Responsibility for promulgating tax rules and regulations is vested in the Revenue Commissioner, subject to approval by the Tax Review Board, and detailed procedures for administrative review by the Tax Review Board, and in turn appeal to the courts, are spelled out.

Expenditure Control. It was recommended that the function of pre-audit and summary accounting duties incident thereto be transferred from the State Auditor to the Budget Bureau (which is a part of the Governor's office), leaving with the State Auditor the function of post-auditing all state agencies. The Commission felt that the combination of these two functions in the same agency violated the important principle that a post-audit should be wholly independent—that is, an audit by a party or an agency which was not involved in the transaction being audited. The Commission also found that under existing statutes the Auditor was subject to the budgetary control of the Governor to the same extent as all other state agencies, even though the Auditor had the responsibility of making independent audits of the expenditures of all executive agencies. This to the Commission was undesirable and potentially destructive of the complete independence of the Auditor from the agencies which he was charged with the responsibility of auditing. The same situation obtained also in the case of the State Treasurer, who had independent responsibilities in the custody and disbursement of state funds, yet was subject to budgetary control by the Governor. The Commission

recommended that the State Auditor and the State Treasurer be excepted from the budgetary control of the Director of the Budget (the Governor) and be subject only to such budgetary control as would be properly exercised by the Advisory Budget Commission.

Bills embodying the Commission's recommendations on these matters were introduced in the House early in the session (HB 213, HB 214, and HB 215), and although considerable opposition against transferring any functions from the Auditor's ffice was expressed, each of these measures won legislative acceptance. Thus, the Commission's recommendations on expenditure control of state funds were adopted in full, as Chapters 576, 577, and 578.

Personnel Management. The Reorganization 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, instead of operating under a separate merit system council; that the authority of the State Personnel Department to set the number of allowable positions in each agency be repealed; that salaries of administrative officers exempt from the State Personnel Act be set by the Governor subject to the approval of the Advisory Budget Commission; that consideration be given to the advisability of integrating the Teachers' and State Employees' Retirement System with federal old age and survivor's insurance; and that the State Personnel Director 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.

All of these recommendations were embodied in one bill introduced in the House on March 1st (HB 418) and referred to Judiciary Committee No. 2. Major opposition developed with respect to the main organizational change called for, that of placing merit system administration and other personnel administration together under one agency, the proposed new personnel council. Those opposing this change apparently felt that in some way the merit system administration would be more centralized under the State Personnel Department, with less flexibility permissible in the employing agencies than is the case under the present organization. In any event, the opposition to the change in administration of the merit system was sufficient to bottle up the measure in committee. Although the other changes proposed in the bill aroused no apparent opposition, HB 418 was never reported out of committee. However, the recommendation of the Reorganization Commission that an immediate study be made to determine advisability of integrating the Teachers' and State Employees' Retirement System with federal old age and survivor's insurance may have played a part in bringing about the study and subsequent enabling legislation which was passed. For details as to these changes, see the article on "Personnel."

Cultural and Historical Development. In its fourth report the Reorganization Commission recommended that full authority for selection, acquisition, restoration, and administration of historic properties be vested in the Department of Archives and History; that the Historic Sites Commission be abolished; and that a new state library agency be established to take over the present functions of the State Library, the State Documents Library, and the Library Commission, and these latter three agencies be abolished.

Bills to effect these recommendations were introduced in the House early in the session, and with the backing of the various state agencies concerned were enacted into law without opposition [Chapter 543 (HB 221) and Chapter 505 (HB 188)].

Agriculture. The Commission directed its attention in the field of agriculture to the existence of five small peripheral agencies, and to the question of their continued need. It was found that the Board of Farm Crop Seed Improvement, with the statutory duty of regulating and assisting in the production and distribution of pure bred farm seeds, had never met and was not functioning. On the other hand actual regulation and control of seed development, certification, and distribution was largely handled by private associations. It was recommended that the membership of the Board of Farm Crop Seed Improvement be revised, and that it be given the responsibility for the development, certification, and distribution of pure strains of crop seeds. This recommendation was contained in HB 392, introduced early in the session, and was adopted by the General Assembly (Chapter 330). It was also recommended that the Crop Pest Commission be abolished, along with the North Carolina Tobacco Commission, the State Board of Rural Rehabilitation, and the State Marketing Authority. The Commission found that these agencies were not functioning and that the needs for which they were originally established were either being adequately handled by the Department of Agriculture or such needs were no longer present. The General Assembly adopted the Commission recommendations with respect to the Crop Pest Commission [Chapter 189 (HB 193)], the North Carolina Tobacco Commission [Chapter 188 (HB 192)], and the State Board of Rural Rehabilitation [Chapter 190 (HB 194)]. However, HB 195 which provided for the abolition of the State Marketing Authority (which was set up as a means of providing adequate wholesale marketing facilities for farmers throughout the state) ran into opposition in the House Agriculture Committee. Although marketing assistance offered to the farmers of the state is now handled by the Markets Division of the Department of Agriculture, those opposing the Reorganization Commission recommendation felt that it was still advisable to retain the State Marketing Authority, which has certain authority to acquire and operate wholesale markets not possessed by the Department of Agriculture. Thus, HB 195 received an unfavorable committee report. All the Reorganization Commission proposals in the area of agriculture received legislative approval except the one calling for abolition of the State Marketing Authority.

Industrial Safety. The Reorganization Commission found both the Department of Labor and the Industrial Commission actively engaged in safety promotion work and in the reporting of industrial accident data, and to eliminate this duplication it was recommended that the safety promotion work of the Industrial Commission be transferred to the Department of Labor. Secondly, under the existing statutes, the Industrial Commission was set up as a unit of the Department of Labor. However, it was a part of the Department of Labor in name only, with no coordination of the administrative or housekeeping functions of the two agencies. Because of the essentially judicial nature of the work of the Industrial Commission, it was recommended that the statute making the Industrial Commission a unit of the Department of Labor (a requirement actually met in name only) be repealed.

These recommendations were included in HB 196 introduced February 9 and referred to the House Committee on Manufacture and Labor.

Meanwhile, the proposal to consolidate all industrial safety activities in the Department of Labor incurred opposition from some industrial interests in the state, apparently based on the reasoning that the present assignment of functions was working fairly well, so why change it. In any event, the opposition was sufficient to prevent a favorable report, and HB 196 was never reported out of committee. Thus, neither of the recommendations of the Reorganization Commission in the area of industrial safety received legislative approval.

Building Regulation. In order to eliminate serious confusion and conflict in the state's building laws, the Commission recommended a revised and enlarged Building Code Council, with clear authority to adopt, amend and interpret a state building code, and further recommended creating an interdepartmental building regulation committee to coordinate the activities of state agencies in the field of building regulation. These proposals were included in HB 310 introduced February 21 and referred to the Committee on Judiciary No. 1. A committee substitute for HB 310 was reported out and adopted by the House on April 26, which amended the original bill to change the membership of the Building Code Council, add air-conditioning systems to those subjects which could be regulated by code, provide that the code should not apply to agricultural buildings outside municipal limits nor to handling of liquefied petroleum gas, and make other minor changes. However, the measure was re-referred to the House Committee on Appropriations. Although the bill itself did not call for an appropriation, and technically was not required to be sent to the Appropriations Committee under the House rules, there was some feeling that to implement fully the provisions of the act and to provide adequate staff assistance to the revised Building Code Council, a rather considerable appropriation of state funds would be required.

The Appropriations Committee reported the bill unfavorably on May 19. It is possible that the nearness of the end of the session, the length and complexity of the bill, together with some misunderstanding concerning its provisions and intent, all combined to prevent legislative adoption of the Reorganization Commission's recommendations in this area.

The State Prison System. The sixth report filed by the Commission dealt with one of the most difficult and immediately pressing problems which the Commission considered, that of the feasibility of separating the prison system from the State Highway and Public Works Commission. The Reorganization Commission found two major obstacles in the way of immediate and complete severance of the two agencies: (1) the problem of providing suitable employment for the prisoners, and (2) the problem of financing the prison system from the General Fund in event complete separation were accomplished. The Commission also concluded that any improvements in the prison system which could be achieved independently during the next biennium could also be achieved by operating the prison system within the framework of the existing organizational structure, but giving it a greater degree of internal administrative independence. To this end, it was recommended that the administrative powers and duties respecting the prison system be vested in the director of prisons instead of directly in the Highway Commission, to be carried out by the director of prisons under rules and regulations established by him with the approval of the Prison Advisory Council, the Highway Commission, and the Governor; that the director be appointed for a four-year term, subject to removal only for cause after notice and hearing; that the authority for appointing and removing prison personnel subordinate to the director be vested in the director, instead of in the Highway Commission; and that prison supervisory personnel be prohibited from using their positions to influence elections or the political action of any person. These provisions were set out in HB 167, introduced February 7.

This measure had the backing of the Governor, the Highway Commission, the Prison Department, and legislators generally, and was enacted into law without any particular opposition (Chapter 238).

The Reorganization Commission also recommended that continuing detailed studies be made, particularly as to costs of the present prison operation, to determine the feasibility of separating completely the state prison system from the State Highway and Public Works Commission. This recommendation was adopted in Resolution 23 (HR 166), which directed the Chairman of the State Highway and Public Works Commission, the Chairman of the Prison Advisory Council, and the Director of Prisons to carry out such studies.

Mental Health. The Commission made only one recommendation with respect to mental health functions which required legislative action. This proposal was largely a clarifying amendment to the statutes, to establish clearly the respective responsibilities of the State Board of Health and the Hospitals Board of Control, which supervises the mental institutions, in the establishment and operation of outpatient mental health clinics. It was recommended that the State Board of Health be designated by statute as the state's mental health authority for purposes of administering federal-aid mental health funds and as the state agency for establishing and administering local community mental clinic standards, but that the authority of the N. C. Hospitals Board of Control to operate outpatient mental hygiene clinics at the various mental institutions be retained and clarified. The Commission bill also contained a statement of state policy with respect to establishing and administering community mental health clinics: that of a state-local partnership in financing and operating community health clinics, along with a specific grant of authority to local governmental units to appropriate funds for the support of such clinics. This measure had the approval of all agencies concerned and was enacted into law [Chapter 155 (HB 189)].

The Office of Governor. The Reorganization Commission recommended that the authority of the Governor to appoint forest rangers, justices of the peace, and notaries public be repealed; that requirement of Senate confirmation of various appointments of the Governor and requirement of Council of State approval of the Governor's appointments to the Board of Directors of the North Carolina Railroad, be repealed; that the Governor be authorized, in carrying out his ex officio duties, to designate his personal representative to attend meetings and act in his behalf; and that the Governor be authorized to appoint such personal staff as he deems necessary to carry out effectively the responsibilities of his office. These recommendations were contained in HB 366, introduced February 23 and referred to House Committee on Judiciary No. 1. The bill as reported out of committee was amended to retain the requirement that the Senate confirm the various appointments made by the Governor, and passed the House in that form. In the Senate committee, strong opposition was made to the provision which would

place on the clerks of the superior courts, instead of the Governor, responsibility for appointing notaries public; the clerks simply did not want this additional duty. There was less expressed opposition to the provision repealing the Governor's power to appoint justices of the peace and vesting such authority, upon a showing of need, in the superior court judges. As finally reported out of the Senate committee, the bill was amended to delete the provision that clerks of the superior courts should appoint notaries public, and this appointive duty was left in the Governor's office. As thus amended the measure passed the Senate, received the necessary concurrence on the part of the House, and was ratified (Chapter 910).

All of the Reorganization Commission's recommendations respecting the Governor's Office were adopted by the General Assembly except the one providing for repeal of statutes requiring Senate confirmation of appointments made by the Governor, and the one providing for appointments of notaries public by the clerks of the superior courts instead of by the Governor.

The General Assembly

The Secrecy Issue. In the course of committee hearings on the appropriations bill during the 1953 legislative session, representatives of the press were requested to consider a particular committee session as a closed session, with right of the press to remain and observe the proceedings but not to identify and quote directly what committee members or witnesses might say. Some of the press representatives declined to be bound by such agreement and contended the committee had no right to hold secret or semi-secret sessions. As a consequence, the General Assembly very soon thereafter enacted Chapter 501 of the 1953 Session Laws, providing that after public hearings have been held and opportunity has been afforded all persons to be heard, the joint appropriations committee or any subcommittee thereof could, within its discretion, hold sessions which only members of the committee and those designated by the committee might attend (but it was further provided that final action by the joint committee with respect to any appropriation should be taken in open session).

This act, giving express sanction to executive sessions of the joint appropriations committee or subcommittee touched off the most publicized issue arising from the 1953 legislative session. The press throughout the state was practically unanimous in its condemnation of what it termed secret legislative proceedings; and repeal of the act became an issue in many campaigns for the legislature during 1954, with several candidates pledging for repeal if they were elected.

On the first day of the 1955 session, the second bill introduced in the House provided for outright repeal of Chapter 501 of the 1953 Session Laws. In the Senate, the third measure introduced on the first day of the session authorized the Governor to appoint a nine-member commission, comprised of representatives from the public, from the press, and from the General Assembly itself, to study the 1953 "secrecy bill" and report its conclusions to the General Assembly. Both measures were referred to the Rules Committees of the respective houses for consideration. In the third week of the session, before these bills were reported from committee, the House (upon recommendation of its Rules Committee) adopted a new rule (House Rule 53½) which provided that *all* House committees and subcommittees shall permit other members of the General Assembly, the press, and the general public to attend all their sessions, but which also provided that upon the affirmative vote of a majority of the members of any standing committee or subcommittee, executive sessions may be held (but in no event is final action to be taken in executive sessions). Two days later the House passed HB 2 which provided for outright repeal of the 1953 act (which permitted executive sessions only by the joint appropriations committee or its subcommittee).

The following week the Senate also passed HB 2 (which became Chapter 5) and adopted Senate Rule 30½, which recognized the "inherent right of any committee or subcommittee to hold executive sessions" and then provided that committees and subcommittees must take all final action in open session.

This settled, at least for the 1955 session, the issue of legislative secrecy. The Senate resolution calling for appointment of a commission to study the matter remained in the Rules Committee until near the end of the session, and then was reported out merely to receive the procedural demise of "postponed indefinitely."

Legislative Reapportionment. Under the N. C. constitution the legislature is directed to reapportion the House and the Senate after each federal decennial census, in keeping with the population changes revealed by such census. Such reapportionment, based on the 1950 census, was not accomplished in the 1951 or the 1953 sessions.

On the second day of the 1955 session, identical bills (HB 5 and SB 10) were introduced in the House and the Senate, providing that the number of representatives from Alamance and Rockingham counties would be increased from one to two, and the number elected from Cabarrus and Pitt Counties would be decreased from two to one. The showdown on this proposed measure came in the Senate early in March. After a long and sometimes bitter debate, SB 10 was defeated on second reading by a large majority, and the identical House bill was never reported from committee.

Underlying legislative reluctance to reapportion in North Carolina is perhaps the requirement that both the House and Senate membership be reapportioned in accordance with population changes. Unlike the classic bicameral legislative body, such as the U. S. Congress, neither of the North Carolina legislative branches has a fixed membership based on geographical or political divisions and not subject to changes based on population.

Meanwhile, early in the session attention was given to the question of reapportioning the Senate. The Senator from Mecklenburg County, the most populous county in the State introduced SR 11, authorizing the President of the Senate to appoint a commission composed of nine senators to study senate reapportionment and report back within 45 days a bill to carry out senatorial redistricting in accordance with the state constitution. The resolution was amended to delete the requirement that the commission report a proposal for legislation to carry out the constitutional redistricting mandate, and was then adopted.

This study commission was appointed and eventually reported back to the Senate. Its recommendation was: continue further study of the problem but take no action on redistricting the Senate at this time.

Reapportionment activity continued in the House, with introduction of HB 476, which proposed an amendment to the state constitution which would have made it the duty of the Secretary of State, instead of the General Assembly, to make the necessary apportionment in the House of Representatives in accordance with

each decennial census. This bill was referred to the House Committee on Senatorial Districts, from which it never emerged.

One noteworthy bill concerning the reapportionment problem was passed by the General Assembly. This was a joint resolution [Resolution 48 (SR 363)] providing for the appointment of a nine-member commission to study the entire problem of legislative reapportionment and report back to the 1957 General Assembly. This resolution provides that three members of the commission are to be appointed from the Senate by the President of the Senate, three from the House by the Speaker of the House, and three from the public at large by the Governor. (At this writing appointment of this commission has not been announced.) Under the resolution, this commission is directed to study the whole problem of reapportionment; to reexamine the theory, practice, and bases of representation in both houses of the General Assembly; to study the experience of other states; and to examine new theories of representation. This commission is to file a report with the Governor and with the 1957 General Assembly, containing a statement of its investigations, findings, and recommendations.

Annual Legislative Sessions. Approximately a third of the states throughout the country now have annual legislative sessions. The increasing length of North Carolina's legislative sessions, together with the greater complexity of problems which confront the legislature, and in particular the difficulty of enacting a realistic state budget more than two years in advance, have all combined to produce a considerable sentiment in North Carolina for annual, instead of biennial, legislative sessions. During the 1953 session, a proposal to amend the state constitution so as to provide for annual sessions mustered a majority of the votes in the House, but failed to get the necessary three-fifths required on proposed constitutional amendments.

At this session the proposal was revived in HB 831 (which also included provisions for increasing pay and expense allowances for legislators). This measure came up for vote on second reading in the House on April 26, amid indications that the proposal for annual sessions would be approved by the House. However, on this vote the bill failed by three votes to obtain the necessary three-fifths (72) affirmative vote. The next day the vote by which the bill failed to pass second reading was reconsidered, and the bill was again placed on the calendar for consideration. The following week the bill again came up for vote in the House and passed the second and third readings without difficulty. The House-backed measure was then sent over to the Senate where it ran into anticipated difficulty, and it received an unfavorable committee report. This ended the efforts at this session to obtain approval of a constitutional amendment calling for annual sessions; however, in view of the increasing support which the idea has picked up over the last few years, it may be anticipated that the proposal will again be placed before future sessions of the General Assembly.

Lgeislators' Pay. The state constitution sets the pay for members of the General Assembly at $15 per day, with $20 for the presiding officer of each house, but such pay is allowable for not more than 90 days during a regular session. There is no provision under the present law for reimbursing members of the General Assembly for travel, hotel, and meal expenses while attending a legislative session. The growing length of legislative sessions, together with the greatly increased cost of living during the past decade, have combined to impose an increasing, personal financial burden on the individual legislator. Although the compensation allowed North Carolina legislators has probably never been sufficient, or intended, to cover all out-of-pocket expenses incurred in attending the average session, the disparity has markedly grown during the past few sessions. The members of the 1955 General Assembly received compensation for only 90 days of a session which lasted almost five months. Against this background it was only natural that considerable sentiment should develop to increase the amount of compensation or expense reimbursement which legislators could obtain.

Several proposed amendments were offered. One was included in HB 831 which provided for annual legislative sessions, discussed above. This proposal would have provided $800 compensation for each regular session ($1200 for presiding officers), plus per diem and travel allowances at the same rate that other employees of the state receive. This pay proposal of course failed of adoption along with the annual session proposal.

Another proposal was contained in HB 856. This would have amended the constitution so as to provide members of the General Assembly $10 per day expense allowance, in addition to the present pay of $15 per day for members and $20 per day for the presiding officer of each house. There would have been no limitation on the number of days pay could be received, for either regular or special sessions. This proposal was never reported from the House Committee on Constitutional Amendments.

Still another proposal was introduced in HB 1031, to retain the compensation at the present rate of $15 per day for members and $20 per day for presiding officers, but to extend the allowable period from 90 days to 120 days for a regular session. This measure received an unfavorable report from the House Committee on Constitutional Amendments.

The proposal which finally received approval was contained in HB 1300. This proposed an amendment to the state constitution to provide that members of the General Assembly would receive compensation at present rates for 120 instead of 90 days during a regular session, and for 25 days in extra session; and in addition, members and presiding officers would receive while engaged in legislative duties subsistence and travel allowances established by law, but not to exceed those set for members of state boards and commissions generally (Chapter 1169). This proposed amendment will be submitted to the qualified voters of the state at the 1956 general election.

Convening Date of Sessions. Also approved by the 1955 session of the General Assembly was a proposed amendment to the North Carolina constitution which would fix the convening date for legislative sessions on the first Wednesday after the first Monday in February (instead of on the first Wednesday after the first Monday in January), unless otherwise provided by law [Chapter 1253 (SB 544)]. If this amendment is approved by the voters of the state, the convening of the regular legislative session will be in February rather than in January, unless the General Assembly has provided, by general law, for a different convening date. This proposed amendment will also be submitted at the next general election.

New State Agencies Created

Board of Paroles. A three-member Board of Paroles was established with authority to grant or revoke paroles, and to aid the Governor in granting pardons, reprieves, and commutations [Chapter 867 (SB 182)]. The members are appointed by the Governor for staggered six-year terms, and are removable by the Governor only for

total disability, inefficiency, neglect of duty, or malfeasance. The board is authoriezd to hire its staff of investigators, parole supervisors, and clerical help. This agency was created in compliance with a constitutional amendment adopted by the voters at the 1954 general election, which placed authority to grant and administer paroles in a board to be set up by law. Prior to this amendment parole authority was, under the constitution, vested in the governor.

State Board of Higher Education. The 1953 General Assembly provided for appointment of a seven-member commission on higher education, whose duty was to make a comprehensive study of the organization and operation of each of the state-supported institutions of higher education, and to make recommendations for improvements to the 1955 session of the General Assembly. Following the recommendations of this study commission, the 1955 session established a nine-member State Board of Higher Education with authority to determine the general functions and activities of each institution and to co-ordinate their operation so as to avoid duplication and overlapping of educational effort. In the House, the original bill was amended to provide that not more than one graduate from each institution could be on the board at the same time; that decisions of the board on matters of both a fiscal and educational nature should be subject to approval of the Governor; that the board should appoint a director of higher education, rather than an executive secretary; that the board should not divest trustees of the individual institutions of their powers with respect to internal affairs except as expressly set out in the act; that the act would not apply to the operation of State College Agricultural Experiment Station and the Cooperative Agricultural Extension, nor to the North Carolina Memorial Hospital and Psychiatric Center in Chapel Hill. Upon consideration by the Senate, the bill was amended again to delete the requirement that not more than one person with an undergraduate degree from any one institution under the board should be a member of the board at the same time, and further amended to make the act apply to operations of State College Agricultural Experiment Station and the Cooperative Agricultural Extension. The House concurred in the Senate amendments, and the bill was ratified in that form [Chapter 1186 (HB 201)].

State Board of Refrigeration Examiners. A seven-member board of refrigeration examiners was established by the 1955 General Assembly, to regulate and license those engaged in installation and servicing of refrigeration equipment. Refrigeration business is defined in the act as not including installation of household appliances, or devices using gas as a fuel, or ice using or storing equipment, nor does it apply to persons or firms engaged in selling, installing, or servicing air conditioning units or systems. The act is applicable to cities and towns which attain or have attained a population of more than 10,000. Persons having an established business prior to January 1, 1956, are to be granted a license without examination, upon application to the board and payment of license fee [Chapter 912 (HB 514)].

Structural Pest Control Commission. Chapter 1017 (SB 414) creates a five-member Structural Pest Control Commission and prescribes its duties and powers. The act makes it unlawful to engage in structural pest control (defined as control of wood destroying organisms or fumigation) without a license from the Commission, but this does not apply to governmental agencies nor to work done on one's own property. Applicants for license must have either two years' experience in pest control or a degree from a recognized college with training in entomology, sanitary or public health engineering, or related subjects; and sufficient practical experience under supervision. The act sets ont procedures for license examination and provides for an annual license fee of $25. Those engaged in the pest control business for at least six months before the effective date of the act (July 1, 1955) are not required to take an examination in order to be licensed.

Board of Water Commissioners. Chapter 857 (HB 962) creates a seven-member Board of Water Commissioners of North Carolina and prescribes its duties and powers. The Board is directed to carry out a program of planning, research and education concerning the long range use of the State's water resources; and to file a biennial report with the Governor and General Assembly containing an account of its activities and presenting its recommendations for the improvement of existing water resources or for their conservation and use. The board is authorized to conduct investigations with respect to any water emergencies, and upon recommendation of the board, the Governor is authorized to declare an emergency for a particular area, thereby restricting the consumption of water. The board is authorized to employ a full time executive secretary to exercise the administrative powers delegated by the board.

For additional details concerning the duties of this board, see the article on "Legislation of Interest to Municipal Officials."

New Studies Authorized

Tax Study Commission. Resolution 49 (HR 846) authorizes the Governor to appoint a nine-member tax study commission, with one member from the Senate, two from the House, and the remaining members to represent the various economic interests of the state. The study group is directed to make a detailed study of the state's revenue laws, recommend any desirable changes in the basic tax structure and rates of taxation, and make recommendations for long range revenue planning. It is directed to report by November 10, 1956. Its expenses are to be met from the Contingency and Emergency Fund. The Governor has recently announced appointment of the following as members of this commission: Brandon Hodges of Canton, Chairman; R. Grady Rankin of Gastonia; Representative J. Y. Jordan of Asheville; Howard Holderness of Greensboro; Representative E. M. O'Herron, Jr., of Charoltte; Representative W. P. Kemp of Goldsboro; Frank A. Daniels of Raleigh; Representative C. Gordon Maddrey of Ahoskie; and Senator James M. Poyner of Raleigh.

Commission on Reorganization of State Government. The Reorganization Commission set up by the 1953 General Assembly, and which reported to the 1955 session, recommended that studies of the state government be continued and provision for a new commission be made. Resolution 52 (HR 1271) authorizes the Governor to appoint a nine-member Commission for 1955-57, to study and make recommendations concerning the state government, and to report its findings and recommendations by November 15, 1956. All expenses of the commission are to be met from the Contingency and Emergency Fund. The Governor has recently announced appointment of the following as members of this Commission: Representative David Clark of Lincolnton, member of the previous reorganization commission; W. Frank Taylor of Goldsboro, lawyer, former Speaker of the House, and member of the previous reorganization commission; Harriet Herring of Chapel Hill, Sociology Professor, and member of the previous reorganization commission;

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Legislation of Interest to County Officials

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

By
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The 1955 General Assembly enacted a substantial amount of legislation of interest to county officials. It passed five of the eight bills sponsored by the State Association of County Commissioners: (1) authorizing a board of county commissioners to designate its own clerk, (2) authorizing a board of county commissioners to obtain liability insurance, (3) creating a pooled fund to partially finance the costs of hospitalization of public assistance recipients, (4) changing the term of office of county boards of public welfare, and (5) bringing the procedure for signing welfare administration checks into conformity with the County Fiscal Control Act. It passed a bill sponsored by the State Association of County Accountants rewriting the County Fiscal Control Act. It passed a bill sponsored by the county attorneys modifying procedures required by the Old Age Assistance Lien Law. And it passed bills authorizing boards of county commissioners to (1) appoint a medical examiner, (2) finance the dog warden from the general fund, (3) construct water and sewer lines, and (4) appropriate money for historical societies and museums, art galleries, and construction of National Guard armories. All of these acts are discussed in this article, together with some other legislation of general interest to county officials.

The Legislature also passed a number of bills sponsored by the tax supervisors' and tax collectors' associations. This legislation is discussed in the article entitled "Local Property and Poll Taxes." Particular county officials will be interested in that article as well as the following articles: "Public Health," "Public Welfare," "Domestic Relations," "Election Laws," "Public Schools," "Personnel," "Courts, Judges, and Related Officials," and "Law Enforcement."

Clerk to the Board

The Constitution of North Carolina has since 1868 provided that the register of deeds shall be ex officio clerk to the board of commissioners (Article VII, section 2), and in most counties the register of deeds serves as clerk today. Since 1875, however, when a constitutional amendment authorized the General Assembly by statute to modify certain constitutional provisions, including those concerning the register of deeds (Article VII, section 13), several counties have obtained special legislation designating some other official as clerk to the board or authorizing a board to designate its own clerk. As the years have passed, the register of deeds' own work has become more specialized, and the work of the board of county commissioners has become more complicated. The State Association of County Commissioners, at its 1954 convention, was of the opinion that the time had come to allow each board to choose its own clerk, so that the county accountant, the county manager in counties having a manager, the county attorney, or some other individual similarly familiar with the work of the board could be designated as the clerk. The Association therefore recommended to the General Assembly a bill, which became Chapter 247 (HB 379), providing that on and after the first Monday in December, 1956, a board could appoint some official other than the register of deeds as clerk, to serve at the will of the board and to be compensated for such duties as the board deems wise. In the absence of action by the board, the register of deeds will continue to serve as clerk. The act by its terms does not apply to counties where a special act governs the appointment of the clerk, nor does it apply to Avery, Caswell, Catawba, Dare, Davie, Guilford, Hyde, Jones, McDowell, Polk, Randolph, Richmond, Transylvania, Tyrrell, and Washington Counties.

Liability Insurance

Counties, as governments created by the state, are immune from suits by persons injured by the officers and employees of the county when the latter are in the performance of governmental activities. An individual so injured, of course, has a right to sue the officer or employee if the latter has acted improperly, but this right has often been of little value because of the limited financial resources of such officers and employees. Many county officials have been of the opinion that counties should be authorized to obtain insurance to protect third parties injured by their officers and employees, particularly in the event of automobile accident, boiler explosion, and elevator accident. The State Association of County Commissioners therefore recommended to the General Assembly a bill providing that "the board of county commissioners of any county, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive the county's governmental immunity from liability for damage by reason of death, or injury to person or property, caused by the negligence or tort of the county or by the negligence or tort of any official or employee of such county when acting within the scope of his authority or within the course of his employment." A liability insurance policy "may cover such negligent act or torts and such officials and employees as the board of county commissioners may decide", and a board "may purchase one or more contract of insurance . . ., each contract covering different negligent acts or torts or different officials or employees from every other contract."

Other sections of the bill provided that the county's immunity was waived only to the extent that the county is "indemnified by insurance", that the county is authorized to pay premiums, and that the waiver of immunity applies only after insurance has been taken out and only while insurance is in force.

The bill was passed as Chapter 911 (HB 441), applicable to all counties except Davie and Scotland. In addition to authorizing a county to take out liability insurance it validates acts of boards of commissioners which have heretofore obtained such insurance.

Chapter 1256 (SB 566) contains similar provisions authorizing county and city boards of education to secure liability insurance to protect third parties against the negligence or tort of "agents or employees" of such boards.

Welfare Administration

The State Association of County Commissioners, after consultation with the State Board of Public Welfare, sponsored three bills designed to simplify welfare administration procedures, and the General Assem-

bly enacted all three bills. Chapter 969 (SB 163) creates a pooled fund for the hospitalization of public assistance recipients effective July 1, 1955. The fund will be made up of county payments averaging less than $.10 per month per recipient, state payments matching the county payments, and federal payments matching both county and state payments. Public assistance recipients are eligible for hospitalization under the same procedures as existed previously, and the hospitals will be paid $6.00 per day on behalf of each recipient hospitalized. Heretofore, in order to obtain any state and federal funds toward the cost of hospital care of such recipients, it was necessary to follow a very complicated procedure which had the effect of increasing the hospitalized recipient's monthly grant to the maximum and using the increase to finance a portion of the cost of hospitalization. The increase in the grant paid for hospitalization at the rate of between $6.00 and $8.00 per day of care, but actual payments to hospitals had to be spread over a number of months, complicating the accounting procedure. Moreover, if a recipient died or if the grant was at the maximum, no state and federal funds were available to meet any part of the cost of hospital care. Counties will still have to meet a portion of the cost of hospital care for public assistance recipients in cases where such care costs the county more than $6.00 per day, but the counties will benefit by the simplified procedures.

Chapter 310 (HB 438) provides that checks in payment of welfare administration expenses are subject to the provisions of the County Fiscal Control Act. Consequently, bills for administration expenses must be approved by the county welfare superintendent prior to payment and then signed and countersigned in the same manner that general fund checks are signed. It is not necessary that the signatures of the welfare superintendent or the chairman of the welfare board appear on these checks, but those signatures are still required to appear on checks in payment of public assistance grants.

Chapter 249 (HB 397) provides that members of county boards of public welfare shall hereafter take office on July 1 instead of April 1. Heretofore a new appointee took office on April 1, and one of his first duties consisted of budget preparation. Under the new act, each new appointee will have approximately nine months of experience before being called on to assist in budget decisions.

A fourth bill affecting public welfare programs will be of interest to county officials. Chapter 1099 (SB 289) makes it a misdemeanor for a person of full age to neglect to support his or her parents where such parents have not sufficient income to support themselves and where such person has sufficient income after reasonably providing for his or her own immediate family. The act, of course, is designed to force children who are financially able to do so to support their indigent parents and to keep such parents from becoming welfare recipients. Whether or not this provision will be as effective in reducing the number of persons receiving assistance as was the 1951 Old Age Assistance Lien Law remains to be seen. It will be recalled that the lien law reduced the number of old age assistance recipients for the state as a whole by around 15 per cent.

New County Fiscal Control Act

The original County Fiscal Control Act was passed in 1927. In the years since, the experience of county officials under the act has suggested some changes. During much of 1954, a committee of the State Association of County Accountants worked on a revision of the Act, and this revision was completed and presented to the full association at the 1954 convention. It was approved first by that association and then finally by the State Association of County Commissioners.

The new act, substantially as recommended by the original committee, was passed by the General Assembly as Chapter 724 (SB 156). The major change is the authority granted boards of commissioners to adopt the budget prior to the beginning of the fiscal year and so to set the tax rate prior to the time for accepting pre-payments. Additional changes of interest include (1) the authority granted boards of commissioners to authorize officers collecting money to deposit the same only when they have as much as $250 in their possession (previously such officers were required to deposit daily, regardless of the amount of funds on hand) and (2) the authority granted boards of commissioners to relieve the accountant of the necessity of examining each month the records of all officers handling money of the county, including justices of the peace and other judicial officials, where such officers are audited annually by a certified public accountant or a registered public accountant. Affirmative action by the board of county commissioners is required before the daily deposit requirement may be modified or the accountant's monthly examination can be eliminated.

Lien Law Amendments

The lien law (G.S. 108-30.1 to 108-30.3), since its enactment in 1951, has had a beneficial effect on the number of people receiving old age assistance. Not only did the law reduce the number of people receiving assistance by 15 per cent in the first few months of operation, but it has also had a deterrent effect on persons applying for assistance. Because of the strict enforcement by welfare departments throughout the state, the benefits of the act have been realized in keeping down the number of recipients rather than in large recoveries of funds from the property or estates of ex-recipients.

Administering the lien law has, however, been a burden on county attorneys. They have been required to follow certain procedures, even when it was obvious to all concerned that the chances of recovering money were nil. At a meeting of county attorneys in Chapel Hill in September, 1954, the subject was discussed and a committee appointed to work with the State Board of Public Welfare in providing a more feasible procedure from the attorney's point of view.

The attorneys worked out a bill which was passed without amendment by the General Assembly [Chapter 237 (HB 152)]. The act provides that county welfare departments, upon the termination of assistance grants, are to notify their county attorneys only when an examination of the case record, tax records, and record of administrators reveals that the ex-recipient had or has property or that an administrator has been appointed. Upon such notification, the county attorney is to take such steps as he deems necessary to enforce the lien. In cases where the county welfare department determines from the records examined that there is no property from which recovery can be had and that no administrator has been appointed an entry is made in the case record of the recipient in lieu of notification to the county attorney.

Another important change authorizes amounts collected under the lien law to be used to meet "all costs of services in the filing, processing, investigation, and collection of such claim," and this would of course include a fee for the attorney from the amount collected. Thus not only will the county attorney's work load in connection with the new act be sub-

stantially reduced, but amounts collected may be used in part to reimburse him for his work.

Other important changes provide (1) that an action to enforce a lien may be brought within three years of the death of a recipient instead of only one year, and (2) that the board of commissioners and board of welfare acting jointly may subordinate any OAA lien to a lien created against the property of a resident for necessary repairs or improvements to the property.

Medical Examiner Bill

Chapter 972 (HB 147) authorizes county commissioners to appoint medical examiners to supplement the work of their coroners. For a more detailed discussion of this act, see the article on "Law Enforcement."

Dog Warden and Dogs

Financing the dog warden

The county dog warden act passed in 1951 (G.S. 67-30 *et seq.*) authorizes a board of county commissioners to appoint a county dog warden and to pay his salary and travel allowance out of the proceeds of the county dog tax. In some counties, the proceeds of the county dog tax are insufficient to meet the salary and travel allowance of the dog warden, and it has been generally assumed that there was no authority to use any other funds to meet these expenses. Chapter 1333 (HB 271) remedies this situation by providing that when the dog tax proceeds are insufficient to pay the salary and travel allowance of the county dog warden, the board may appropriate money from the general fund or use any non-tax or surplus funds to supplement the dog taxes.

The same chapter contains an additional amendment to the dog warden law. When a board of commissioners appoints a dog warden, it may also establish a dog pound under the supervision of the dog warden. Heretofore, lost and stray dogs could be impounded therein for a period not to exceed fifteen days, during which time the warden was to make "every reasonable effort" to locate the owner or to find a new owner. Chapter 1333 provides that the period of impounding is to be set by the board of commissioners in lieu of the mandatory maximum fifteen-day period.

Chapter 804 (HB 718) amends G. S. 14-84, which heretofore made the larceny of a dog a misdemeanor only if the license tax has been paid. Under the new law, the larceny of any dog is a misdemeanor, whether or not the tax has been paid, and punishment is set at fine or imprisonment in the discretion of the court. The previous law had as one of its aims the encouragement of the payment of the dog tax. Whether the new law will have an adverse effect on dog tax listing remains to be seen.

Water and Sewer Lines

Many counties are being called upon to construct or assist in the construction of water and sewer lines to industrial sites, both to serve existing industries and to encourage the location of new industries. Several counties obtained authority to appropriate money to construct water and sewer lines in the 1953 General Assembly, and several additional counties obtained similar authority early in the 1955 session. To forestall additional special legislation and provide authority state-wide, Chapter 370 (SB 176) was passed authorizing any board of commissioners to appropriate surplus or non-tax funds "for the purpose of building water and sewer lines from the corporate limits of any municipality in said county to communities or locations outside the corporate limits of any municipalty therein." The act provides that "said water lines shall be built and constructed for the purposes of public health and to promote the public health in communities and locations in the State where large groups of employees live in and around factories and mills and where said water and sewerage is necessary to promote industrial purposes." It may be that this latter provision limits the broad authority to construct lines to instances where the lines will meet all conditions of the quoted provision.

While Chapter 370 is aimed at encouraging industrial development through governmental construction of water and sewer lines, another tack to the same end has been taken in five counties. Madison, New Hanover, Anson and Union (with the approval of the voters), and Wayne Counties are now authorized by special acts to appropriate money to encourage the industrial development of the county.

New Activities

Counties and municipalities have long had authority to appropriate money to National Guard units and to provide for maintenance of armories (G.S. 153-9(36), 127-101, and 143-236). Chapter 1181 (SB 560) authorizes counties and municipalities, separately or jointly, to appropriate money to supplement available federal and state funds for the construction of armory facilities for the North Carolina National Guard. With the approval of the voters, funds for the local governments' share of construction costs may be raised by the issuance of bonds or the levy of special taxes. Federal funds are available for each year of the 1955-57 biennium in the amount of $750,000, which can be used to meet 75 per cent of the cost of the construction of any armory, and state funds of $62,500 have been appropriated for each year by Chapter 1347 (HB 1132). The state funds may be used to assist local governments in matching available federal funds for armory construction, where the North Carolina Armory Commission determines that a county or municipality has made "every reasonable effort to provide for its armory construction requirements" but has not been able to raise sufficient money to meet its share of the cost. The state's share in no event can exceed 17½ per cent of the cost of any single armory project.

Chapter 371 (SB 206) authorizes counties or municipalities to appropriate revenue from non-tax sources to "a local historical society, historical museum, or other historical organization." These appropriations may be spent to preserve historic sites or buildings, to record and publish materials relating to the history of the area, to establish or maintain museums, to pay salaries, and to acquire and maintain materials and equipment. County or municipal governing bodies and custodians or governing bodies of schools or libraries are also authorized to set aside available rooms or space in buildings under their jurisdiction for the use of such societies, museums, or organizations.

Chapter 1338 (HB 723) authorizes counties or municipalities to establish and support "a public art gallery, museum or art center, using for such establishment and support any non-tax revenues which may be available for such purposes." The money may be used to purchase land, buildings, paintings and other artistic works, and materials and equipment, and to pay personnel. In addition, the governing body of any county or municipality may submit to the voters at a special election the question of the levy of a special tax not to exceed 10 cents on the $100 valuation of property for the support of an art gallery, museum, or art center; and if the voters approve, the governing body may then levy such tax as is needed to meet appropriations approved by the governing body.

Chapter 1195 (HB 809) authorizes a county to join with other counties and municipalities to organize an authority to acquire and operate water systems and sewer systems for the participating governmental units.

This new act has been discussed in detail in the article entitled "Legislation of Interest to Municipal Officials."

Other Acts of Interest

Prior to the recent session of the General Assembly, G.S. 15-78 provided that the state should pay the travel expenses incurred by the sheriff or the agent of the sheriff in the extradition of a fugitive from justice alleged to have committed a felony. In cases where the fugitive was alleged to have committed a misdemeanor, the travel expenses were required to be paid by the county. This section had been interpreted to mean that where a fugitive felon waived extradition, the county had to bear the travel expense. Chapter 289 (HB 287) amends G.S. 15-78 to add a provision which states that where a "fugitive from justice is an alleged felon, and he be returned without the service of extradition papers by the Sheriff or the agent of the Sheriff of the County in which the felony was alleged to have been committed, the expense of said return shall be borne by the State of North Carolina." The Governor is directed to make necessary rules and regulations to carry out the purpose of the chapter.

Heretofore, G.S. 15-161 required each justice of the peace on or before Monday of every term of superior court in his county to furnish the clerk of the superior court with "a list of the names and offenses of all parties tried and finally disposed of by such justice of the peace, together with the papers in each case, in all criminal actions, since the last term of the superior court." Chapter 869 (SB 204) requires each justice of the peace to furnish such a list and the papers to the clerk on or before the 25th day of each month. Failure of a JP to file the report without just cause constitutes a misdemeanor punishable in the discretion of the court.

Bills that Failed

Three bills sponsored by the State Association of County Commissioners failed to pass. The 1954 convention of the association unanimously resolved to ask the General Assembly to reinsert in the law the provision requiring that all meetings of boards of commissioners be open to the public. This provision had been in the law for 80 years but had been inadvertently omitted when G.S. 153-8 governing meetings of boards was rewritten in 1951. Perhaps because of its own position that legislative committee meetings could under certain circumstances be closed, the General Assembly refused to require meetings of boards of commissionrs to be open. As a result, HB 36, which would have required open meetings in all counties, was passed as a special act applicable only to Guilford, Harnett, Moore, Nash, Orange, and Person Counties (Chapter 677).

SB 129 would have required justices of the peace in criminal cases to use pre-numbered warrants and receipts and would have required county commissioners to provide for an audit of JP criminal records at least once a year. The bill passed the Senate, but was killed by the House. Three other bills were designed to improve the administration of JP courts: SB 202, SB 203, and SB 205, which would have standardized fees in JP courts and required all fees to be paid into the county treasury; authorized a payment from the county to each justice of the peace of $3.60 for his services in each criminal case regardless of whether or not the defendant was found guilty; and put the punishment for operating a motor vehicle without a license, reckless driving, and speeding within the jurisdiction of a justice of the peace. SB 202 was killed by the House, the other two by the Senate.

SB 226 would have provided 4-year staggered terms for all county commissioners not now elected in accordance with a staggered-term system. The bill was not approved by the Senate committee to which it was referred upon introduction. This is the second time a state-wide bill providing for staggered terms has been turned down by the General Assembly, even though in session after session a number of special acts providing staggered terms in particular counties are passed without question. While the state-wide bill was being defeated this time, six counties were obtaining special acts to put their commissioners on the four-year staggered-term basis, bringing to a total of 36 the number of counties with special acts providing for the election of commissioners for staggered terms. It seems clear that counties wishing to adopt the staggered-term system must do so by special act, working out with their legislator or legislators the exact machinery for conversion to the new system.

The registers of deeds sponsored two bills concerning bonds of county employees. HB 1000 would have rewritten G.S. 109-4 to make it clear that a board of commissioners could take out a blanket bond on all officers, assistants, deputies, and employees not required by law to give an individual bond or take out one or more bonds on some combination of such officers, assistants, deputies, and employees. The bonds would have been conditioned on faithful performance of duties and would have been payable to the state, and the premiums would have been paid by the county. HB 1001 would have amended G.S. 109-34 to authorize any person injured by the official act of a bonded assistant, deputy, or employee to sue such person and the surety on his bond, just as a person injured by a principal officer may under the present G.S. 109-34 sue such officer and the surety on his bond. Though passed by the House, the bills were not approved by the Senate committee to which they were referred. It may well be that counties may do under G.S. 109-4 as it now stands what they could have done under the proposed legislation, and some counties today have obtained one blanket bond covering all assistants, deputies, and employees in the courthouse under the authority contained in that section. The advantage of the proposed legislation, however, was that it would have made perfectly clear that this was possible and would have provided that such bonds should run to the state of North Carolina. As the law now stands, such bonds should probably run to the county, naming as joint insureds under the bond the principal officers under whom the bonded assistants, deputies, and employees work.

Two other bills were sponsored by the registers of deeds. HB 79 would have exempted registers of deeds from liability for losses occurring without fault of the register, his assistants, deputies, and employees. After introduction, it was thought that the provisions of the bill ought to state the exemption from liability more specifically and ought to cover other county officers. Therefore, HB 1004 was introduced to provide that county officers would not be liable for the destruction of records or other property by fire, act of God, or act of the public enemy, when such officer was in no way negligent in keeping such records or property. Both of these acts were disapproved by the House committee to which they were assigned.

HB 988 and HB 989, as originally introduced, would have authorized counties and municipalities to purchase supplies and equipment under contracts negotiated by the Division of Purchase and Contract for the purchase of supplies and equipment by state agencies. A House amendment

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Legislation of Interest to Municipal Officials

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[Municipal officials will also find items of interest in the articles on "Local Property and Poll Taxes," "Election Laws," "Courts, Judges, and Related Officials," "Law Enforcement," "Motor Vehicles and Highway Safety," "Personnel," and "Public Schools."]

Enactment of all three bills included in the League of Municipalities' legislative program—a new Fiscal Control Act and legislative authority for erection of "yield" signs and for subdivision regulation—and defeat of an unexpected proposal to grant a larger measure of "home rule" to North Carolina cities were probably the major legislative developments of interest to municipal officials during the 1955 General Assembly. As usual, the great bulk of municipal legislation took the form of special acts, but a number of statewide acts attacked particular troublesome problems.

Home Rule

The problem of "home rule" for North Carolina cities and counties has been with us for a long time (for a detailed background, see the Report of the Commission on Public-Local and Private Legislation and supporting data in *Popular Government*, February-March, 1949). It has been charged over a long period of years that an inordinate amount of legislators' time is taken up with consideration of local matters that might be dealt with by local governing bodies. In the recently concluded session of the General Assembly, for instance, 991 of the 1999 bills and resolutions introduced in the two houses were by their terms applicable to fewer than ten counties, and an indeterminate number of nominally "public" bills were aimed at specific situations in one or two counties.

Expressing some irritation at this state of affairs, Representative Clyde Shreve, chairman of the House Committee on Counties, Cities and Towns, introduced two bills (HB 810 and HB 811) designed to authorize local governing bodies to exercise more authority. The municipal bill (HB 810) would have put before the state's voters a constitutional amendment providing that the voters of any municipality could adopt a home rule charter. Any municipality which adopted such a charter could "exercise any power or perform any function which the General Assembly has power to devolve upon any municipality and which is not denied to that municipality by its home rule charter and which is not inconsistent with general laws applying to every municipality." However, the municipality could not change its borders, extend its powers beyond its borders, nor define or provide for punishment of a crime. After adoption of the charter, no special act could be adopted affecting the municipality except acts (1) changing its boundaries, (2) extending its powers beyond its boundaries, (3) providing "permissive procedures governing relationships between the municipality and other political subdivisions," and apparently (4) authorizing the levy of taxes or incurring of debts.

Like the county bill, the municipal home rule proposal was tabled in the House.

Organization, Procedures, and Officers

No major changes were enacted on a statewide basis with regard to municipal organization, procedures, and officers. There were several minor acts. One [Chapter 489 (HB 528)] increased the maximum limit on the number of Planning Board members from five to nine, which brings the law into accord with the practice in many municipalities over the state. A second [Chapter 451 (HB 529)] places municipalities on the same basis as counties with respect to photographic reproduction of records. It authorizes them to purchase and use reproduction equipment and makes the reproductions as valid as the original records for all purposes. A third [Chapter 1280 (HB 1174)] may have made it possible for a municipality to purchase group life insurance for its employees, although there is a problem of legal interpretation of the act's effect.

Several minor bills in this area failed. HB 134 would have provided that where an ordinance fails to secure the two-thirds vote necessary for passage on the date on which it is introduced, it might still be considered and adopted at any subsequent meeting without first a motion to reconsider. HB 752 would have repealed the present 90-day limit on the period within which a quo warranto action may be brought to try title to an office after the officer is inducted. HB 1356 would have modified slightly the petition requirements for annexation of an area in which there are less than 25 eligible voters.

Local Acts

Three new towns were added to the state's list of incorporated municipalities: Yaupon Beach and Long Beach in Brunswick County and Stanfield in Stanly County. The town of Webster was reactivated, and the town of Harrells Store was converted into a reactivated and enlarged town of Harrells. A bill to reactivate the town of Archdale was not reported out of a Senate committee. The Town of Jacksonville's name was officially changed to the City of Jacksonville. The charters of Laurinburg and Lowell were revised and consolidated.

The effects of the rapid fringe-area development around municipal limits all over the state were reflected in a sizeable number of acts. Despite the simplified procedure for municipal annexation of such areas provided in 1947 by Article 36 of Chapter 160 of the General Statutes, many municipalities still find it less cumbersome to extend their boundaries by special act. Altogether, 30 bills introduced in this General Assembly modified municipal boundaries in some way. In addition, a special act applying to municipalities in Wake County [Chapter 177 (HB 332)] provides that upon annexation, taxable property in the area annexed shall be treated as "discovered" property for purposes of taxation, but the penalty provisions applicable to discovered property shall not apply.

Elections on the adoption of the city manager form of government (in most cases with some modifications from the General Statutes Plan D—G.S. 160-338 to 160-352) were authorized by special acts for Graham, Louisburg, Southport, Tarboro, and Washington. The Kinston charter was revised to permit the dismissal of the city manager by majority vote of the city council, without the neces-

sity for notice and a public hearing

Chapter 515 (HB 704) offered the voters of Rocky Mount four alternative proposals as to the election of their mayor and councilmen: (1) retaining the present system, under which the mayor is elected at large and 13 councilmen are elected by voters of particular wards; (2) electing the mayor and seven councilmen at large; (3) electing the mayor and seven councilmen by citywide vote, but with a requirement that each councilman reside in a particular ward; (4) electing the mayor at large and seven councilmen by wards. Special acts designated wards in Long View and Washington, created a new ward with council representation for newly-annexed portions of Roanoke Rapids, and abolished use of the ward system in elections of the school board for Kings Mountain.

A continuing movement towards staggered terms for city councilmen (in most cases with a four-year term per councilman) was apparent from the passage of acts of this type for Benson, Clayton, Grifton, High Point, Lincolnton, Long View, Oxford, and Wrightsville. A bill proposing staggered terms for the Wadesboro council failed. Battleboro, Clarkton, and East Bend elections were changed from an annual to a biennial basis, and the mayor's term in Granite Falls was increased from one to two years. A special act for Shelby provides that in the future appointments to fill vacancies shall expire as of the next municipal election, rather than at the end of the unexpired term.

With regard to municipal elections, acts providing for party primaries in Concord and Lincolnton passed, but a similar measure for Sylva was reported unfavorably. On the other hand, New Bern elections were made nonpartisan, and the Mooresville election laws were changed to provide for nonpartisan municipal primaries. Reflecting difficulties which arose in several municipalities this spring, an act was passed for Leaksville providing that candidates and their sponsors in municipal elections need not be registered if they are otherwise qualified electors. Another act for Salisbury dispenses with the necessity for holding a municipal primary where the number of candidates does not exceed the number of nominees to be chosen, while a Denton act provides that a plurality shall be sufficient in the elections for mayor and aldermen. An act applying to Statesville provides for the recall of elective officers.

An unusual number of bills provided for increases in the salaries of mayors and aldermen. These are discussed in the article, "Public Personnel."

Among the statutes providing for changes in municipal procedures was one of general interest. Salisbury, Spencer, and East Spencer were authorized by identical acts to adopt standard plumbing, electrical, fire prevention, building, and other codes (and amendments thereto) by reference. To insure that copies will be available to the public, at least three copies of each code adopted must be filed in the city clerk's office for public examination prior to adoption. These acts deal with a legal situation which has not been altogether clear in North Carolina and are worthy of study by other municipalities.

Municipal Finance and Fiscal Control

The original Municipal Fiscal Control Act, passed in 1931, was merely an attempted adaptation of the County Fiscal Control Act to municipalities. Because the Act was not tailored to fit the municipal situation, it gave rise to many questions of interpretation. During 1954, a committee of the Public Finance Officers Association drafted a bill that retained most of the basic principles of the original act, made some changes to bring the new provisions into line with modern accounting principles, and put the whole act into municipal terms to eliminate all uncertainties and ambiguities.

The bill as drafted by the committee was approved first by the Association and then by the League of Municipalities at its annual convention. As approved, it became part of the League legislative program. The bill substantially as recommended by the original committee was passed by the General Assembly as Chapter 698 (SB 157).

One important change involves the designation of the "municipal accountant." Under the old law, the governing body was required to appoint or designate the accountant. The new law provides that in the absence of a charter provision making specific provision for the accountant, the accountant shall be appointed or designated as follows: (1) In city manager cities, the manager, or some person appointed or designated by the manager, shall be the accountant. (2) In cities with a full-time mayor, the mayor, or some person appointed or designated by the mayor, shall be the accountant. (3) In other cities and towns, the clerk, or some other person appointed by the governing body, shall be the accountant. The experience, training, and qualification of any person designated as accountant are to be approved by the Local Government Commission, just as they have been required to be approved in the past, and if the accountant is also a tax collecting official, the governing body must have his books audited by a certified public accountant or registered public accountant at least once a year. The budget and accounting duties of the accountant are set forth in detail in the Act.

A second change made by the new Fiscal Control Act is the authority granted to governing bodies to adopt the budget prior to the beginning of the fiscal year and officially set the tax rate prior to the time for accepting pre-payments. A third change authorizes governing bodies to permit officers collecting money to make a deposit in a bank or with the treasurer only when they have as much as $250 in their possession; heretofore, every officer collecting money was required to make a daily deposit regardless of the amount of funds on hand.

Two bills affecting municipal finance resulted from efforts to strengthen the state's stream pollution laws. Chapter 1131 (SB 251) provides that when an order of the State Stream Sanitation Committee is served upon a municipality to abate discharge of untreated or inadequately treated sewage and other waste, the governing body must provide funds necessary for compliance with the order, either by issuance of general purpose bonds or by issuance of revenue bonds. The approval of the Local Government Commission is still required for the issuance of such bonds, however. Chapter 1045 (SB 426) provides that the limitation on issuance of municipal bonds found in G.S. 160-383(2) shall not apply to bonds issued for construction of sewage disposal facilities under order of the State Stream Sanitation Committee.

[Chapter 1131 also provides that no permit from the State Stream Sanitation Committee shall be required for the construction or alteration of a disposal system if, prior to the effective date applicable to the watershed where the system is located, the municipality has obtained approval from the State Board of Health and entered into a contract for construction, or construction has begun, or a bond election therefor has been authorized.]

Two acts brought existing provisions of the General Statutes up to date. Chapter 1276 (HB 1144) amends

G.S. 159-42 so as to make the Local Government Act override contrary provisions in any general or special acts enacted through 1955 (instead of 1949). Chapter 704 (HB 414) amends G.S. 160-389 to provide that bonds authorized prior to July 1, 1952, may be issued prior to July 1, 1957 (instead of 1955), and that notes issued in anticipation of the sale of such bonds must be paid not later than that date.

Only one minor change was made in cities' powers to levy Schedule B license taxes. Chapter 1315 (SB 337) prohibits municipalities from levying a peddlers license tax on a wholesaler who has established a warehouse in the state and who sells only to merchants for resale. For changes in other local tax laws, see the article on "Local Property and Poll Taxes."

Other sources of revenue were affected in minor ways. The power to levy local assessments for particular improvements was widened by Chapter 1177 (SB 347), which permits assessment of the cost of installing water works systems against abutting property owners in the same manner as now provided for the costs of installing sewerage systems. In addition, it extends the period over which assessments may be collected from five to ten years. Chapter 675 (SB 313) authorizes the state (through the Governor and Council of State) or any state agency (with the approval of the Governor and Council of State) to petition a municipality for street improvements abutting land owned by the state or state agency; payment of the state's share of the costs is to be made from appropriated funds not needed for other purposes or from the contingency and emergency fund. Chapter 707 (HB 540) provides for the distribution of fines and forfeitures paid to or collected by a municipal recorder's court in a municipality whose corporate limits include parts of two or more counties, but it does not apply to Alamance, Cabarrus, Catawba, Edgecombe, Guilford, and Nash Counties.

Municipal expenditures are authorized by Chapter 1338 (HB 723) for art galleries, museums, or art centers (using either non-tax funds or the proceeds of a special tax up to ten cents approved by the voters); Chapter 371 (SB 206) for local historical societies, museums, or historical organizations (using non-tax funds; in addition space may be assigned in schools, libraries, or public buildings for such activities); and Chapter 1181 (SB 560) for National Guard armories, either separately or in conjunction with county appropriations (using taxes levied or bonds issued with the approval of the voters).

Two interesting bills designed to lower the cost of municipal equipment met unfavorable reports in the Senate. HB 989 as originally proposed would have permitted counties and municipalities to purchase supplies and equipment through the state Division of Purchase and Contract. A House committee substitute reduced this authority so as to permit only the purchase of motor vehicles by this means and then only "to the extent deemed possible and practical" by the Director of Purchase and Contract; but even this failed. HB 988 was a companion measure designed to eliminate any additional competitive bidding requirements where counties or municipalities made use of the above authority.

Another bill (SB 553) would have permitted municipalities to take combined bids on two or more parts of work to be done, where this would result in a saving of money. (At present, under G.S. 160-280, separate specifications and bids are required for different parts of a public job.) This also received an unfavorable committee report in the Senate.

Local Acts

Chapter 383 (HB 239) sets forth complete purchasing and contract procedures for the city of High Point. Special acts authorize Kernersville and Wrightsville Beach to purchase supplies and equipment costing up to $2,000 (rather than $1,000) without complying with the procedures specified in G.S. 143-129.

As usual, a large number of bills (25 in all) granted particular municipalities power to dispose of unwanted real estate. Six of these bills authorized transfer of land to other governmental units, five authorized disposition of dedicated but unopened streets, and three authorized disposition of old city halls to be replaced by new ones. Ayden was given power to levy assessments for the cost of drainage facilities constructed by the town after petition.

Durham and Durham County were authorized to use A.B.C. revenues for industrial development purposes. New Bern was granted authority to appropriate up to $1,000 to agricultural, animal, and poultry exhibits in the county. Kinston and Lenoir County may join in purchasing land for the Governor Caswell Memorial.

Planning and Zoning

In addition to the act mentioned above (Chapter 489) providing for larger planning board membership, there were several acts of interest in the field of planning and zoning. Perhaps the most important of these was Chapter 1334 (HB 579), granting municipalities more specific authority to regulate the subdivision of land in and around their boundaries. This act was first proposed by the North Carolina section of the American Institute of Planners and became a part of the legislative program of the League of Municipalities. As passed, it applies to 46 counties; a number of other counties already had special acts of their own.

Under the act, a municipality may, after an advertised public hearing, adopt an ordinance regulating the platting of land within the municipality or within one mile of its limits. After a copy of this ordinance is filed with the register of deeds, no plat of land within the municipal jurisdiction may be recorded without approval by the city council. Thereafter, sale of land by reference to an unapproved plat shall constitute a misdemeanor, and in addition the municipality may secure an injunction against such sale. The act is drawn so as to exempt from its provisions certain types of land transactions.

The subdivision regulations which are the basis for approval or disapproval of a plat "may provide for the orderly development of the municipality and its environs; for the coordination of streets within proposed subdivisions with existing or planned streets or with other public facilities; for the dedication or reservation of rights of way or easements for street and utility purposes; and for the distribution of population and traffic which shall avoid congestion and overcrowding, and which shall create conditions essential to public health, safety, and general welfare."

Another act of interest [Chapter 1252 (SB 543)] is designed to enable North Carolina municipalities to take advantage of the provisions of the federal Housing Act of 1954 which authorize grants to assist metropolitan planning agencies. The act authorizes municipal, county, or joint planning boards (with the concurrence of the governing bodies to which they are responsible) to enter into contracts with the federal government for such assistance and to carry out the requirements of such contracts. Eligibility of particular planning agencies to receive such grants is still to be determined by the federal Housing and Home Fi-

nance Agency, which is charged with administration of the federal program.

The amendments to the urban redevelopment law which were sought by several cities in 1953 were finally adopted this year [Chapter 1349 (HB 1160)]. But the act applies only to cities of more than 30,000 population in counties where there are two or more such cities, and nine counties have specifically been removed from its coverage. The act permits condemnation of standard properties in areas where the planning board finds that at least two-thirds of the buildings are "blighted," and it also simplifies somewhat the required procedures for a redevelopment project. It apparently clears the way for the Greensboro Redevelopment Commission to go forward once more with its plans that were interrupted in 1953 by the Housing and Home Finance Agency's decision to withhold further funds until the state enabling act had been made more workable.

A bill (HB 422) that would have made zoning regulations overrule deed restrictions received an unfavorable report from a House committee.

Local Acts

Possibly because of fear that the statewide subdivision act would not pass, four cities (Charlotte, Chapel Hill, Jacksonville, and Raleigh) secured special acts along the same lines. In addition, Charlotte, High Point, and Jacksonville were granted authority to zone the fringe areas outside their limits. The subdivision-regulation authority granted to Conover in 1953, under which the register of deeds might refuse to record an unapproved plat, was repealed.

Chapter 172 (HB 136) provides that only ten days' notice (rather than 15) need be given prior to hearings on zoning amendments in Durham. No other acts affecting zoning procedures were enacted.

The state's enabling act under which minimum housing standards ordinances may be adopted (Article 15 of G.S. Chapter 160), which applies to municipalities having a population of 5,000 or more, was made applicable to the towns of Maysville and Raeford. This is the act authorizing the "fix up or tear down" program which has been so successful in Charlotte and several other North Carolina cities.

Streets, Traffic, and Parking

Perhaps the most important statewide act passed with reference to streets, parking, and traffic is Chapter 398 (SB 100). Where formerly municipal authorities were empowered to fix speed limits only at intersections, this act permits them to fix limits "on any street or highway in the vicinity of a public, private, or parochial school or recreational area." In addition, Chapter 555 (SB 193) authorizes local governing boards, after a determination on the basis of an engineering and traffic investigation "that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic," to fix minimum speed limits below which no person may operate a motor vehicle except when necessary for safe operation because of mechanical failure or in compliance with the law. In order for such limits to be effective, appropriate signs must be erected on that part of the highway.

Another major enactment was Chapter 295 (HB 384), authorizing the erection of "yield" signs. This was a part of the League of Municipalities' legislative program and was jointly sponsored by the League and the State Highway and Public Works Commission. Failure to yield right-of-way in compliance with a sign is a misdemeanor punishable by a fine not exceeding $10 or imprisonment not exceeding 10 days. Another act dealing with signals [Chapter 384 (HB 248)] requires stop lights erected in municipalities to have the red light at the top and the green at the bottom.

Chapter 875 (SB 420) will effect savings for municipalities in a few cases. It provides that where the State Highway and Public Works Commission determines that a by-pass is needed around a town but topography of the surrounding country makes it impractical to construct such a by-pass, the Commission may construct the highway through town and relieve the municipality of its obligation to pay one-third of the right-of-way costs. We have already mentioned Chapter 675, authorizing the state to pay its share of local assessments for street improvements abutting state property.

Local Acts

Chapter 672 (SB 161) revises Raleigh's charter provisions relating to street assessments (a) to permit use of assessments in connection with the improvement of streets lying on the city limits, (b) to require property owners to maintain their sidewalks and driveways in good repair and safe condition, and (c) to modify slightly the provisions for assessment without petition of abutting property owners in special cases. Other acts concerning street assessments without petition were passed for Charlotte and Jacksonville. The Canton assessment provisions were modified so as to authorize the town board to adjust assessments in cases where they are found to be unjust, to cancel assessments against church property, and to cancel sewer assessments against corner lots for a distance not exceeding one-fourth of the perimeter of the lot or where the sewer line on one side is of no benefit to the corner lot.

Several acts were designed to help cure the serious parking situations confronting many of our cities. Chapter 364 (HB 530) authorizes the city of Durham, after a vote of the people, to spend revenues derived from on-street parking meters to acquire, construct, reconstruct, operate, lease, and maintain off-street parking facilities and to pay interest and principal on revenue bonds issued for providing such facilities. Asheville was added to the coverage of the 1953 statewide act authorizing use of on-street meter receipts for off-street parking facilities [G.S. 160-200(31)].

Two acts represent direct efforts to overcome the limitations imposed by the case of *Britt v. Wilmington*, 236 N.C. 446 (1952), which denied the city of Wilmington the authority (a) to pledge on-street meter receipts as security for bonds issued for an off-street parking facility and (b) to use its police power to enforce regulations as to the use of the facility. The crux of the case was the court's finding that the particular facility involved was a proprietary rather than governmental function of the city. To meet this objection, Chapter 1009 (HB 1227) authorizes Wilmington to establish a "unified" parking system to relieve traffic congestion, which would include both on-street and off-street facilities as integral parts. Such a system would presumably be regarded as a governmental function, and the act specifies that criminal processes for enforcement would apply to all parts of the system.

Chapter 1170 (HB 1309) authorizes the city of Kinston to lease off-street parking lots (paying a portion of operating receipts as rentals), improve such lots, regulate the use of the lots, put any operating profits into a fund to be used for the purchase of additional lots, and appropriate non-tax surplus funds for such facilities. For parking lots which are not metered, the city's

regulations may provide that any motorist not paying his parking fee may be denied the right to remove his vehicle without payment and may thereafter be deprived of the privilege of using the facility until he has made an advance deposit. For metered lots, the regulations may prescribe an over-parking penalty not to exceed $1.00 and provide that the privilege of using the facility will be denied the motorist until the penalty is paid.

Water and Sewerage Systems

As a result of the serious water shortages of the past several years, two important acts providing for joint construction and operation of water and sewerage facilities were passed. Chapter 1195 (HB 809) is the so-called "seven cities" bill. Briefly, it authorizes any two or more political subdivisions (cities or counties) to join in the organization of a Water and Sewer Authority, which is to be incorporated by the Secretary of State. The Authority would thereupon be authorized to acquire (condemning land, however, only after issuance of certificate by N. C. Board of Water Commissioners), lease, build, and maintain water and sewer systems. It could issue revenue bonds to construct facilities and charge fees for services rendered. Member political subdivisions would be entitled, with the approval of the voters, to lease or sell all or part of their water and sewerage systems to the Authority.

Chapter 1201 (HB 1035) provides a somewhat simpler procedure for joint action. It authorizes any two or more municipalities to join together (1) in the acquisition of land and water rights along a stream to the extent deemed necessary to build a dam, (2) in the construction of storage dams, (3) in the operation of such dams, and (4) in the acquisition and construction of necessary facilities for furnishing water from such reservoirs to each municipality. This act is an outgrowth and modification of a similar 1953 act which gave Lexington and Thomasville power to jointly construct, own, and maintain a water works reservoir.

An act of potentially great importance to water-short communities is Chapter 857 (HB 962), creating the Board of Water Commissioners. This Board is directed to make studies of the state's water resources and notify municipalities of potential shortages, making recommendations for conserving or increasing the supply of water. Unless a municipality reasonably follows such recommendations, it is entitled to no further assistance under the act.

When an actual emergency arises, the Board must, upon the request of a local governing board, conduct an investigation and hold a public hearing on the question of sources of water to relieve the situation. If it finds an emergency and determines a source of relief water, the Board is to notify the Governor, who may thereupon declare an emergency within the area. The Board may then authorize diversion of water from the emergency source and promulgate regulations as to conservation of water. Such diversion must cease upon termination of the emergency or violation of the Board's regulations. Compensation must be paid by the municipality to persons suffering damage from the diversion of the water or from construction of temporary water lines to effectuate such diversion.

Once there has been a diversion under the act, no further diversion will be permitted the same municipality in subsequent years unless the Board finds that it has made reasonable plans and acted with due diligence to enlarge its own water supply so as to eliminate further emergencies.

Municipal officials will also be interested in Chapter 370 (SB 176), which authorizes counties to appropriate non-tax and surplus funds to build water and sewer lines from municipalities to unincorporated communities in the county. This act raises some potential dangers to municipal expansion, but insofar as it transfers the expense of constructing such lines to the governmental unit which will collect taxes from outside users, it represents a step forward.

We have mentioned earlier Chapter 1177 authorizing assessment of the costs of water works systems against abutting property owners and Chapters 1131 and 1045 pertaining to the construction of sewage treatment facilities under order of the State Stream Sanitation Commission.

A bill (HB 1324) which would have given the power of eminent domain to private sewer companies received an unfavorable committee report in the House.

Local Acts

Special acts authorized Albemarle to contract to furnish water and sewer services to outside consumers for purposes of industrial development and Gastonia to enter contracts to furnish water for periods not exceeding 25 years with other Gaston County municipalities or with private persons. Carrboro was authorized to extend its water and sewer lines for two miles beyond its limits and to furnish water, sewer, and garbage collection services to outside customers, while Roxboro was empowered to extend its water and sewer lines beyond its limits.

The Concord Board of Light and Water Commissioners was authorized to install and operate a sewerage system, both within and outside the city, to fix and collect charges for the use thereof, and to provide additional charges for wastes which must be specially treated. Another act ratifies a provision in a contract between Morehead City and the local water company providing that water service will be discontinued to property for which the town's sewerage charge has not been paid.

Fire Protection

Chapter 744 (SB 309) adopts on a statewide basis the provisions of a 1953 special act applying to Guilford County, which makes it unlawful to drive a motor vehicle over a fire hose or other equipment being used at a fire or to block fire fighting apparatus from its source of supply, regardless of distance from the fire. A similar act [Chapter 173 (HB 184)] makes it unlawful, outside an incorporated municipality, to follow fire apparatus at a distance closer than 400 feet when it is traveling in response to a fire alarm or to drive into or park within a distance of 400 feet from where apparatus has stopped in response to a fire alarm.

Chapter 228 (HB 429) authorizes the Insurance Commissioner to pay organized fire departments their shares of the state Firemen's Relief Fund for 1953 despite failure to file the certificate required by law, provided they otherwise meet requirements and now file certificates. Chapter 498 (HB 656) enables colored volunteer fire departments to qualify for the fund by sending accredited delegates to the colored State Firemen's Association annual meeting.

Chapter 746 (SB 442) authorizes the organization of cooperative associations to purchase, maintain, and use fire-fighting equipment. Municipal officials may also be interested in amendments to the state's rural fire protection districts law (Article 3A of G.S. Chapter 69) which make it possible to change the boundaries of an established district [Chapter 1270 (HB 871)].

HB 1003, which would have author-

(Continued on page 34)

Local Property And Poll Taxes

Chapter numbers given refer to the 1955 Session Laws of North Carolina HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

By

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Sixteen bills—eight initiated by the Tax Supervisors Association and eight initiated by the Tax Collectors Association—formed the core of property tax legislation before the 1955 General Assembly. The State Association of County Commissioners endorsed all sixteen proposals, and the League of Municipalities gave its approval to those affecting tax collection. Five of these bills were enacted without amendment; five failed to pass at all; two were amended so as to apply to a limited number of counties only; and four were subjected to varying modifications prior to enactment.

As might have been expected, most of these 16 proposals were aimed at administrative matters rather than at matters of substantive property tax law. Proposals from other sources for state-wide changes in the property tax in most cases, although not always, dealt with more substantive matters—e.g., exemptions and deductions.

Property Assessment

As was to be expected, the General Assembly again authorized boards of county commissioners to postpone real property revaluation [Chapter 1273 (HB 907)]. Despite both statutory changes and administrative erosion of the quadrennial revaluation policy, county tax authorities have remained strictly limited in their power to change assessments on real property "in other than quadrennial years." One of the measures sponsored by the tax administrators [Chapter 991 (SB 66)] is designed to broaden the scope of this annual assessment power: It directs assessment of real property in a non-revaluation year if its value has increased as much as $100 "by virtue of circumstances other than general economic increases or decreases since the last assessment of such property." This offers considerably wider leeway than the language it replaces, which required not only that the circumstances be "extraordinary" but that they be of "unusual occurrence in trade or business." The same act adds another basis on which annual assessment of real property is required. It directs revaluation if it is demonstrated that the last assessment of the particular piece of land was an improper one on account of "an error in the listing of the number of acres in the tract or parcel or in the listing of the dimensions of the lot." Heretofore it has been doubtful that this kind of error furnished sufficient legal reason for revaluation in a non-quadrennial year.

Listing Mechanics

Chapter 1012 (SB 64) permits the appointment of more than one list taker for any township if the county commissioners give their approval, and it also permits the tax supervisor, with the commissioners' approval, to assign the listing duties among the list takers in a particular township in any way he thinks will bring the best results. Heretofore the Machinery Act has authorized appointment of more than one list taker in only those townships containing an incorporated town or part of one.

The commissioners of 79 counties, under the provisions of Chapter 866 (SB 63), are authorized, upon the recommendation of the tax supervisor, to appoint one or more assistant tax supervisors (in addition to clerical assistants) and prescribe their duties.

The general principle or rule about listing personal property is that it "shall be listed at the residence of the owner." In almost all instances the statutes have considered "residence" in terms of "county," but, there being a number of instances in which "residence" needs to be defined more closely for listing purposes, Chapter 1012 (SB 64) rewrote the general rule to read as follows: "Except as otherwise provided in this section [G.S. 105-302], all tangible personal property and polls shall be listed in the *township* in which the owner thereof has his residence. . . ."

Two other acts of administrative significance should be noted. One modernizes the lists of personal property that must be printed on the abstract form [Chapter 34 (SB 67)], and the other makes it plain that the Commissioner of Motor Vehicles may charge counties the actual costs incurred in preparing requested lists of motor vehicles taxable in the various counties [Chapter 98 (SB 68)].

Board of Equalization and Review

A proposal of the Tax Supervisors Association to authorize counties to pay the necessary travel expenses of members of the board of equalization and review when they are required to make special investigations as members of committees of that board, as finally passed, was made applicable to only eight counties (Cabarrus, Edgecombe, Guilford, Lincoln, Nash, Person, Warren, and Wilkes) [Chapter 1098 (SB 62)].

Exemptions and Rate Reductions

The Tax Supervisors Association proposed exemption for the real and personal property ofrural fire protection districts, and the General Assembly accepted the idea [Chapter 230 (SB 65)]. The legislature did not, however, accept the Association's suggestion that community buildings be granted tax-free status. Other exemption proposals came from other sources.

Chapter 1100 (SB 308) exempts facilities, equipment, and real property used exclusively for sewage and waste disposal or water pollution abatement plants. But significantly this exemption is granted the owner only upon condition that he secure for the tax supervisor a certificate from the State Stream Sanitation Committee stating that the Committee has found as a fact that the installation has actually been constructed or put in place, that it meets the Committee's standards for such installations, that the plant or equipment is being effectively operated under Committee approval, and that the primary purpose of the installation is to reduce water pollution resulting from the discharge of sewage and waste.

The statutory pattern of exemptions that has grown up around cotton continues to spread. Some owners have objected to the fact that their cotton, when granted stop-over privileges under tariff schedules of the Interstate Commerce Commission, was not always granted immunity from local property taxation. In a letter to the Mecklenburg County attorney on May 6, 1955, the Attorney General made the following statement on the point:

"The mere fact that under applicable regulations the property in question is subject to certain 'in transit' rates in the course of interstate shipment does not have any relation to the question of whether such property is moving in interstate commerce in such a manner as to make local taxation thereof unconstitutional. The 'in transit' status merely relates to a preferred tariff schedule available with respect to certain products under certain circumstances which are unrelated to questions of constitutionality of taxation." Chapter 1069 (HB 1127) is designed to change this situation. It grants a flat exemption to "all cotton subject to transit privileges under Interstate Commerce Commission tariffs." It also makes it unnecessary for warehousemen, consignees, and brokers to report the presence on their floors of any such cotton. The language of this new exemption is not entirely clear. But even assuming there is no question as to applicability, it is clear that tax officials will find that their legitimate efforts to locate taxable cotton are severely handicapped, and warehousemen, consignees, and brokers may find themselves guaranteeing the payment of taxes if they fail to decide the question of exemption correctly.

The exemption of articles destined for shipment to foreign countries through North Carolina seaports has been a matter of legislative concern for many years. Chapter 1356 (HB 1321) declares that "all cotton, tobacco and other farm products, and all goods, wares and merchandise, held for shipment to any foreign country, or held or stored after being imported from a foreign country awaiting further shipment, in the seaport terminals at Morehead City or Wilmington, or within ten (10) miles of such ports or terminals, shall be exempt from taxation." A proviso states that this exemption "shall not apply to any products, goods, or merchandise which are stored for more than twelve months." Without going into the complex problems of definition presented by words used in this and earlier acts, it should be acknowledged that the stated intention of the 1955 act "to clarify" the problem has not been accomplished. Overlapping exemptions already on the statute books are not repealed, and it is going to be a difficult task for tax officials in the coastal and near-coastal counties to determine what is exempt where and for how long—omitting entirely any questions of constitutional validity.

Stored tobacco received the right of preferential tax treatment in 1947. This year Chapter 697 (SB 76) follows suit by granting certain tax preferences to peanuts for the year following the year in which grown, regardless of ownership. Under the terms of the new act the county commissioners, no later than September preceding the succeeding fiscal year, must determine the exact percentage (between 20% and 60%) of the regular tax rates of the various taxing units in the county for its succeeding fiscal year that will be applied to peanuts. In other words, stored peanuts are to be taxed not less than 20% nor more than 60% of the applicable tax rates—county, municipal, special district, etc.—and the decision as to the precise percentage must be made by the county commissioners a year in advance. Since the determination must be made in September before the next succeeding year, it would seem that this preference cannot be granted for taxes coming due in October, 1955, but can first be granted for 1956 taxes.

Chapter 1269 (HB 805) grants to injured or disabled veterans of World War II and the Korean conflict the same poll tax exemption eligibility afforded disabled veterans of the first World War. The act defines "veterans of the Korean conflict" as persons who served in the armed forces of the United States at any time between June 27, 1950, and July 27, 1953.

Fee for Collecting Tax Bill of Another Unit

In the limited situation in which one local taxing unit's collector is permitted (or required) to demand that the collector of another local unit exert efforts to collect the property tax claim of the first unit, the Machinery Act has heretofore instructed the collector performing this service to retain 10 per cent of the amount he collects for his personal use. Chapter 909 (HB 327), sponsored by the Tax Collectors Association, directs the acting collector to add this 10 per cent fee to whatever he collects—thus insuring that the taxing unit obtains all that is legally due while, at the same time, the collector is not deprived of the fee for his special services.

Levy and Garnishment

As part of a concerted effort by the Tax Collectors Association to make levy and garnishment more useful methods of collection, Chapter 1263 (HB 324) empowers county and municipal governing bodies to fix the fees for serving tax garnishment notices and allows county commissioners to set the fees justices of the peace may charge for entering judgment in garnishment proceedings. Chapter 1264 (HB 325) provides that, in place of the limited fees heretofore fixed in the Machinery Act, tax levy and sale fees shall be governed by the general laws regulating levy and sale under execution. Chapter 1264 (HB 325) also clarifies two other matters with respect to levy on personal property for taxes: with governing body approval, it specifically allows the county collector to call on the sheriff or a township constable to levy for him, and it grants the municipal collector power to call on a policeman to do the same thing. It also makes it clear that a properly appointed deputy collector may make a levy and conduct a sale.

Date of Lien Sale

The annual county tax lien sale is, by law, supposed to be held on the first Monday in May, June, July, August, or September; and the municipal sale date is to be the second Monday in one of those months. Chapter 993 (HB 1081) provides that when the Monday selected is a legal holiday the sale may be held on the Tuesday immediately following.

Attorney's Fees as Costs in Foreclosure

While the law has always permitted municipalities and counties to make any "reasonable agreement" as to compensation for attorneys bringing property tax foreclosure actions, the Machinery Act has been rigid with respect to the item for attorney's fees taxable as part of the costs in such actions: "one reasonable attorney's fee for the plaintiff, which shall not exceed five dollars," and if the taxing unit was merely a party defendant filing answer in such an action, "an attorney's fee for said defendant not exceeding three dollars." Chapter 908 (HB 327), sponsored by the Tax Collectors Association, provides that in both instances the attorney's fee chargeable as costs is to be "such amount as the court shall, in its discretion, determine and allow." This act also deletes the provision of the foreclosure statute which limits all officers or their units in such actions to half the fees allowed in other civil actions.

Summons in Foreclosure Actions

A civil procedure statute (G.S. 1-93) provides that in civil suits no summons shall run outside the county in which issued unless the amount involved in the litigation is more than

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Election Laws

By HENRY W. LEWIS, *Assistant Director, Institute of Government*

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

The 1955 election law changes are primarily designed to bring the statutes into conformity with recent constitutional amendments and to plug administrative loopholes revealed in the last two years' experience. There are no startling changes; efforts to repeal the absentee ballot law for civilian voting in general elections were unsuccessful.

Amendments Reflecting Constitutional Changes

At the 1954 general election the people approved an amendment to the North Carolina Constitution reducing the length of precinct residence required for registration from four months to 30 days. Chapter 871 (SB 316), following the constitutional change, amends a number of statutes (a) to reduce the precinct residence requirement of the registration laws from four months to 30 days next preceding the general election, (b) to provide that removal from one election precinct to another is not to deprive a person of the right to vote in the precinct from which he removes until 30 days after his removal, and (c) to provide that a challenged voter may prove himself by swearing to 30 days' (rather than four months') precinct residence.

Registration Mechanics

The new-registration law of 1949 provided for copying the names of registered voters into the new registration books and for indicating (where the old records disclosed the information) each voter's party preference. The law also made it clear that if in this copying process no party preference was entered on the new registration book, the individual concerned would "not be permitted to vote in any party primary held thereafter unless and until such person declares his party affiliation to the registrar on the day of a party primary or registration period. . . ." (See G.S. 163-46.) The same general registration statute made provision for adding to the books in future years but made no provision for supplying (on primary day) a party affiliation designation omitted upon registration at a period subsequent to the general transfer of registrations provided for in 1949. Chapter 871 (SB 316) provides for this contingency: If the registrant whose party affiliation is not shown on the books appears at the polls on primary day, states his party preference to the registrar, and takes an oath to support in the next general election the nominees of the party with which he says he is affiliated, the registrar will enter his party affiliation on the registration book and permit him to vote in that primary.

Multiple registrations—county, municipal, and special—cause great confusion in North Carolina. A few counties and municipalities have special legislative authority allowing them to combine registrations, but the number is small. Chapter 763 (HB 786) seems to offer some basis for more widespread action in this field. It authorizes any municipality in the state "in its discretion and upon such terms and conditions as may be mutually agreed upon by the governing body thereof and the board of commissioners of the county" in which the municipality is located, to use the county registration books "for the registration of voters or the acceptance of registration applications, and in such event the provisions of law which are applicable to the registration of voters in such county shall apply to such city, town or municipal corporation for the purpose of any primary, general, regular or special election." Upon careful examination the act is somewhat puzzling as to how the matter of precinct lines and precinct books would be worked out. It is also confusing as to whether the municipal authorities would be authorized to add registrations to the county books and, if so, whether persons so added would be considered properly registered for other than municipal elections. Furthermore, since the county board of elections rather than the board of county commissioners have charge of registration matters, it is questionable whether a board of county commissioners, even under this statute, would be able to commit the elections officials to this use of the county's registration records. Despite these problems, the act may contain the germ for full cooperation between counties and municipalities willing to work the problems out on a mutual basis.

Election Day Procedures

The statutory instructions about folding marked ballots before placing them in the ballot box are complicated and, in practice, seldom observed. The advent of a new kind of ballot box in which only unfolded ballots can be deposited, however, seems to have revived interest in the legal requirements about folding ballots. Chapter 767 (HB 862) provides that when a county board of elections adopts such a box (as approved by the State Board of Elections) the old folding requirements are not to apply.

In general elections the role and rights of an official "watcher" are matters from which heated political squabbles have arisen. The 1954 election brought the matter again to the public's attention. Chapter 871 (SB 316) is designed to settle some of the disputes. It provides that official watchers, from the time the polls are opened until the counting of the ballots is completed, have a right to remain within the voting enclosure so as to be in plain view of the precinct officials, the voting booths, the ballot boxes, and the voting procedures. The only limitation placed on this right of access is that the watchers must not impede the voting process, must not electioneer, and must not interfere with the election in any way.

Precinct election officials have long had power, in maintaining order at the polls, to commit an offender "to the common jail of the county for a period not exceeding thirty days." Chapter 871 (SB 316) grants to a person thus committed the right to post a $200 bond with the clerk of superior court and appeal to the superior court for a trial on the merits of his commitment.

Ordinarily the polls are opened for voting in primary and general elections in this state at 6:30 a.m. and are closed at 6:30 p.m. Under the terms of Chapter 1064 (HB 935) the appropriate county board of elections is empowered to permit the polls to remain open until 7:30 p.m. in any precinct using voting machines.

Strictly construed, the election laws of North Carolina have limited participation in ballot-counting to the regular precinct election officials. The same statutes have required the counting of one box at a time and one ballot at a time—all three precinct officials participating in each count. To follow the law precisely in heavily populated precincts has brought undue

delay in completion of the count; thus few such precincts confined themselves to the letter of law. Chapter 891 (HB 936) deals with this situation. First, the act authorizes the county board of elections to permit the use of precinct ballot counters to assist the regular precinct election officials, and the county board is to designate the number allowed each precinct. The county board may pick the counters or it may leave their selection to the precinct registrar. Upon selection as a ballot counter an individual must take an oath to be administered by the precinct registrar immediately at the close of the polls. Second, the act goes into considerable detail about the procedures to be followed in making the count. Before any primary or general election the chairman of the county board of elections is required to furnish each registrar with written instructions on how ballots are to be marked and counted, and before the counting begins the registrar is required to instruct all ballot counters, clerks, and judges. More than one box may be counted at a time, but the registrar and judges must supervise the counting of all boxes and be responsible for them. The counting of the ballots in each box must be made in the presence of the election officials, witnesses, and watchers present and desiring to watch the process. In a *general* election each ballot box may be emptied on a table and all ballots marked as a straight party vote may be put in one pile and counted as one vote for each candidate of the party marked in the ballot's party circle. All split ballots are to be called out and tallied according to markings for individual candidates. In a *primary* election one ballot must be taken from the box at a time and the name of each candidate voted for must be read aloud distinctly. In both general and primary elections all questions as to how a ballot is to be counted which arise during the counting or tabulation must be referred to the registrar and judges for determination before the completion of the counting of a box.

Split Tickets and Single Shots

A straight ticket in a general election is a ballot on which the voter has voted for every candidate of one political party (usually by marking once in the "party circle" at the top of the ballot). A split ticket is a ballot on which the voter has cast his vote for candidates of more than one party. Instructions printed on the ballots tell the voter how to indicate his choice; officials who count ballots are told by law how to determine and tally the voter's choice as shown on his marked ballot. The basic difficulty for both the voter and the ballot counter arises when the voter marks in a "party circle" and also marks in the "voting squares" in front of individual names—sometimes in more than one party column.

Chapter 812 (SB 328) deals with this situation as follows: In essence it can be said to facilitate voting a "straight ticket" and to complicate voting a "split ticket." It provides that if the voter marks the "party circle" and then also marks the "voting squares" opposite the names of individual candidates of any party, the ballot will be counted as a "straight ticket" for all the candidates of the party in whose "circle" the voter marked. In other words, it is not counted as a "split ticket." To vote a "split ticket" the new act directs the voter not to mark in any "party circle," but to mark the "voting squares" before the names of the individual candidates he desires to vote for.

It is also significant that the act repeals the requirement that the ballot carry a printed instruction to the effect that the voter may obtain another ballot if he tears, defaces, or wrongly marks his first one.

Another act dealing with voting practices deserves at least passing attention even though it applies to only 16 counties. It is designed to prohibit the practice generally known as "single shot" voting. Chapter 1104 (HB 1082) provides that where there are group candidates for the same office printed on the ballot in any county or municipal primary or election the voter must vote for as many candidates as there are offices to be filled in order for his ballot to be counted for any of the group candidates for that office. In other words, if there are three places on the city council or board of county commissioners to be filled, a voter must vote for no less than three candidates in order for his vote for any candidate for that set of offices to be counted. The counties to which this act applies are Bladen, Catawba, Columbus, Cumberland, Duplin, Halifax, Hoke, Lenoir, Macon, Onslow, Pender, Perquimans, Robeson, Scotland, Surry, and Wayne.

Official Certification of Election Results

Two recent events have served to illustrate the technical advantages or disadvantages that may accrue as a result of the precise time at which a candidate for office is certified by the appropriate elections board as a winner. The importance of seniority in the United States Senate brought one change in the law on certification. Chapter 871 (SB 316) authorizes the State Board of Elections, in canvassing the vote in an election to fill a vacancy in the United States Senate, to meet at the call of its chairman as soon as he receives returns from all the counties and prepares an abstract of the returns. Without this authorization the State Board would not meet to canvass the vote until the Tuesday following the third Monday after the election. This much delay might mean considerable loss of seniority for the person elected.

The second instance probably grows out of the case of *State v. Ponder*, 234 N.C. 294 (1951), in which the Supreme Court held that the adjudication of the county board of elections and the resultant certificate of election constitute conclusive evidence of the certificate holder's right to the office in every proceeding except a direct proceeding to try the title to the office under G.S. 1-514. If the certification by the board of elections is to be given such strong effect, Chapter 871 (SB 316) provides that a county board of elections is not to certify the results of a primary or general election for a particular office if an election contest pertaining to that office is pending before the county board or if such a contest is still on appeal to the State Board of Elections.

Other Procedural Matters

Chapter 871 (SB 316) provides that the State Board of Elections is to appoint members of county boards of elections on the Friday preceding the tenth Saturday before each primary rather than on the tenth Saturday itself.

The same act provides that candidates required to file with the State Board of Elections must file by noon on or before the Friday preceding the tenth Saturday before the primary (rather than on that Saturday). In a similar vein, Chapter 755 (HB 352) provides that candidates required to file with county boards of elections must file by noon (rather than by 6:00 p.m.) on or before the sixth Saturday before the primary.

Filling Vacancies in Nominations

Chapter 574 (SB 317) rewrites the existing statute dealing with two problems: how to fill vacancies occurring among candidates between the date of the primary and the date of the ensuing general election, and how to provide for nominations for offices which become vacant during a period

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Public Personnel

By

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Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

The most important personnel legislation passed by the 1955 General Assembly was the enabling legislation permitting state, county, and municipal employees belonging to public retirement systems (other than policemen and firemen) to integrate their retirement systems with federal Old Age and Survivor's Insurance.

Prior to 1950, public employees were excluded from coverage under Old Age and Survivor's Insurance. From 1950 to January 1, 1955, only public employees not belonging to a public retirement system were elgiible for OASI. However, under the provisions of the 1954 amendments to the federal Social Security Act, federal laws now permit state and local employees belonging to a public retirement system to be covered under OASI. The only groups prevented from being brought under OASI by federal law are policemen and firemen belonging to or eligible for membership in a public retirement system.

Retirement and Social Security

The three major retirement acts passed by the 1955 General Assembly [Chapter 1153 (HB 496), Chapter 1154 (HB 497), and Chapter 1155 (HB 498)] (1) establish a procedure for bringing public employees under Social Security, (2) propose a plan for integrating the Teachers' and State Employees' Retirement System with Social Security, and (3) propose a plan for integrating the Local Governmental Employees' Retirement System with Social Security.

Chapter 1154 has four major provisions. First, it declares that protection afforded public employees or persons receiving retirement benefit payments on the date of OASI coverage shall not be impaired as a result of coverage under OASI. This "guarantee" provision will prevent OASI from being substituted for any existing retirement system unless the OASI benefits are a "substantial substitute"[1] for the benefits of the existing retirement system.

Second, Chapter 1154 empowers the Governor to authorize a referendum among (1) employees belonging to the Teachers' and State Employees Retirement System, (2) employees of any political subdivision of the Local Governmental Employees' Retirement System, and (3) employees of other retirement systems established by the state or a political subdivision. The Federal Social Security Act provides that in each instance coverage will be dependent upon the results of a referendum conducted under the following conditions:

(a) A referendum by secret ballot must be held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement as provided by the Social Security Act.

(b) An opportunity to vote in such referendum must be given (and was limited) to eligible employees.

(c) Not less than ninety days' notice of such referendum must be given to all such employees.

(d) Such referendum must be conducted under the supervision of the Governor or an agency or individual designated by him.

(e) A majority of the eligible employees must vote in favor of including service in such positions under a Social Security agreement.

By an executive order issued June 8, 1955, the Governor authorized the executive secretary of the Teachers' and State Employees' Retirement System (who also serves as the Director of the North Carolina Social Security Agency) to conduct the necessary referenda. The Governor directed that on Wednesday, October 26, 1955, a referendum would be held among the employees of the state of North Carolina who were members of the Teachers' and State Employees' Retirement System on both June 8, 1955, and the date of the referendum, October 26.

With regard to local employees belonging to the Local Governmental Employees' Retirement System, the Governor ordered that whenever the governing authority of any of the political subdivisions of government shall make application to the Director of the North Carolina Social Security Agency to hold such referendum, then the Director shall proceed to hold a referendum among those employees of the political subdivision who were members of the Local Governmental Employees' Retirement System on both June 8, 1955, and the date of the referendum. The date of each such local referendum shall be determined by the Director of the North Carolina Social Security Agency, but no referendum may be held less than 90 days after the filing of a referendum application with the Director.

Third, Chapter 1154 provides that the notice of the referendum shall contain or be accompanied by a statement informing the employees of the rights which will accrue to them and their dependents and survivors, and of the liabilities to which they will be subject if they are covered under Social Security.

Fourth, all employees covered by a retirement system (both members and non-members who are eligible for membership) must be brought under OASI if a referendum is held and results in a favorable vote. However, political subdivisions may exclude employees ineligible for membership from coverage.

Amendments to Teachers' and State Employees' Retirement System

Chapter 1155 amends the Teachers' and State Employees' Retirement System, subject to a referendum to integrate and coordinate the benefits of the system with Social Security. It provides that if a majority of all employees belonging to the Teachers' and State Employees' Retirement System vote in favor of coming under OASI, the following modification shall become effective and all state employees shall be brought under OASI as of January 1, 1955:

(1) Employee contributions to the retirement system in the future will be reduced from five to three per cent of the first $4,200 of annual salary.

(2) State disability retirement benefits will not be reduced as a result of the modifications.

(3) Employees retiring before 65

but eligible to receive OASI benefits at 65 may select an option so that with OASI benefits their annual payments will be the same before 65 as after 65.

(4) Each member of the retirement system shall contribute on behalf of his total compensation.

(5) Membership in the Teachers' and State Employees' Retirement System will begin immediately upon election, appointment, or employment.

The Board of Trustees of the Teachers' and State Employees' Retirement System will soon issue a pamphlet explaining OASI and the proposed plan of integration, providing examples and listing most of the questions which will be asked, with answers. The vast majority of state employees will receive considerably higher service retirement benefits under the proposed plan in addition to greater protection for their survivors.

Amendments to Local Governmental Employees' Retirement System

Chapter 1153 amends the Local Governmental Employees' Retirement System to authorize the modification of that retirement system for those local employees who vote to be covered under OASI. Modeled after the Teachers' and State Employees' plan of integration with Social Security, the Local Governmental Employees' Retirement System is amended as follows:

(1) The act provides for class C local governmental employer and employee participation under which employees covered by Social Security shall have three per cent of the first $4,200 and five per cent of the remainder of their compensation deducted as a contribution to the retirement system.

(2) Disability retirement benefits will not be reduced as a result of the modifications.

(3) Employees retiring before 65 but eligible to receive OASI benefits at 65 may select an option so that with OASI benefits their annual benefits will be the same before 65 as after 65.

Governing bodies with employees now under the Local Governmental Employees' Retirement System who desire to bring their employees under OASI and the new three per cent modified plan should adopt a resolution requesting the Executive Secretary of the Teachers' and State Employees' Retirement System to call a referendum for that purpose. Ninety days must elapse between the filing of the referendum application and the election. If a majority of the employees of a local governmental unit belonging to the Local Governmental Employees' Retirement System vote in favor of OASI and the three per cent retirement plan, the employees will be brought under OASI retroactively to January 1, 1955.

Other State Retirement and Relief Acts

Seven other state-wide retirement acts were passed by the 1955 General Assembly. Chapter 1199 (HB 937) and Chapter 1206 (HB 1118) are practically identical bills authorizing the payment of the $50 a month minimum pension to teachers retired on account of disability after 30 years of service. Chapter 1199 appropriates $51,000 for each year of the biennium for this purpose and Chapter 1206 appropriates $35,000 a year for the same purpose.

Chapter 1314 (SB 37) increases the pension paid to Governors' widows requesting a pension from $1,200 to $3,000 a year. Chapter 90 (SB 90) authorizes members of the Supreme Court to serve as emergency justices on the Supreme Court while receiving a retirement allowance.

Chapter 498 (HB 656) permits colored fire departments to qualify for firemen's relief funds and Chapters 228 (HB 429) and 462 (HB 655) authorize the payment of firemen relief funds for 1953 which were withheld for certain technical reasons. Chapter 262 (SB 221) provides for the payment of pensions to the members and widows of members of the Wilmington-Cape Fear Pilots Association.

Local Retirement Acts

Thirteen local retirement acts were enacted by the General Assembly. Six of these acts strengthened actuarially unsound retirement funds. Chapter 826 (HB 502) restricts future retirement among members of the Fayetteville Retirement Fund to persons 65 years of age or older who are not gainfully employed and closes the fund to new city employees. Chapter 859 (HB 1029) amends the Charlotte Firemen's Retirement System to increase the contribution of firemen and the City of Charlotte from five to 6.48 per cent of salary. The Charlotte act also increases the service requirement for retirement from 25 to 30 years, prohibits service retirement before 55, and reduces pensions paid to persons retiring before 60.

Chapter 320 (SB 268) amends the Asheville Firemen's Pension and Disability Fund to increase employee contributions from two to five per cent of salary, to reduce disability pensions from 100 per cent to 70 per cent of final monthly salary less Workmen's Compensation payments, and to authorize the refund of the contributions of employees who resign. Chapter 322 (SB 267) makes the same changes in the Asheville Police Pension and Disability Fund and also provides that a $1.00 court cost ($.50 if costs are reduced in half) will be assessed in each case tried and disposed of in the Police Court of the City of Asheville.

Chapter 426 (SB 276) raises the contributions of Wilmington firemen to the Wilmington Firemen's Pension Fund from two to four per cent, and Chapter 941 (HB 1171) establishes a 55-year minimum age limit for policemen retiring under the Durham Peace Officers' Protective Association.

New local retirement enabling acts were passed for policemen in Gastonia and High Point, and firemen in Lumberton. Chapter 946 (SB 472) authorizes the Gastonia City Council to establish a Supplementary Pension Fund for the Police Department similar to the present Gastonia Firemen's Supplementary Pension Fund. The fund will be financed by a $1.00 court cost fee. Chapter 100 (SB 109) establishes the Supplementary Pension Fund for the Lumberton Fire Department. Modeled after the Gastonia Firemen's Fund, the Lumberton fund will pay retired firemen two per cent for each five years of service, not to exceed 14 per cent of the average monthly salary for the three years of highest salary. Chapter 496 (HB 625) establishes the High Point police pension fund to be financed by a two per cent employee contribution, a matching city contribution, and a $1.00 court cost to be levied against all persons found guilty by the High Point municipal court except violators of municipal ordinances.

Chapter 281 (HB 313) extends the coverage of the Peace Officers Relief Fund for Martin and Washington Counties to include Tyrrell County. Chapter 1172 (HB 1332) authorizes the Forsyth County and Winston-Salem Peace Officers' Relief Fund to insure peace officers under group or other insurance and to pay the premium for such insurance.

Chapter 101 (SB 119) and Chapter 1237 (HB 135) are identical acts which make minor changes in the Durham Firemen's Supplementary

Retirement Fund and provide that the books of the fund shall be audited by a certified public accountant every two years and whenever a new treasurer is elected.

Retirement Bills Not Passed

Among the retirement bills introduced but not passed are bills increasing the retirement allowances of district solicitors and members of the Utilities Commission, and a bill to permit law enforcement officers to make back payments with four per cent interest to the Law Enforcement Officers' Benefit and Retirement Fund in order to qualify for benefit payments. A local bill authorizing the employees of Buncombe County covered by the Local Governmental Employees Retirement System to vote on adding OASI on top of their present five per cent retirement system was not reported out of the House committee. It may be possible for a local governmental unit to add Social Security on top of their present retirement system without a vote of the membership of the retirement system, but this question has not yet been finally determined.

Compensation

Attempts to increase the salaries of nine state officers were relatively unsuccessful. Of the state-wide bills introduced to increase the compensation of state officials, only Chapter 1374 (SB 444) which increases the salary of the superintendent of public instruction to $13,500, effective in 1957, was approved by the General Assembly.

Unsuccessful were the bills to increase the salaries of the attorney general, the commissioner of agriculture, the secretary of state, and the state treasurer, and to pay a $1.00 a day expense allowance to game protectors and highway patrolmen.

County Salary Legislation

The 1955 General Assembly passed fewer county salary acts than any General Assembly in regular session in at least the past 38 years. A study of local legislation prior to 1917 might reveal that the General Assembly's restraint broke even a longer record.

The 1955 General Assembly passed only 54 county salary acts or 34 less than the 88 passed in 1953, and 81 less than the 135 passed by the 1951 General Assembly. The reduction undoubtedly reflects both the leveling of the cost of living since 1953 and the recent progress in placing the responsibility for county salaries on the various boards of county commissioners.

For a number of years the General Assembly has passed a variety of acts delegating some salary determining authority to various boards of county commissioners. These acts have varied, in that they directed the board of county commissioners to set the salaries of various officials or employees either (1) above an established minimum or below an established maximum, (2) within a fixed limit or within a percentage range of existing salaries, or (3) with little or no legislative restrictions.

Thirty-four of the 54 acts passed this year set the salary of one or more officials or employees without granting any discretion to the board of county commissioners. Twelve acts authorized the board of county commissioners to set the salary of an official or employee within a fixed limit or within a percentage range. Three acts increased the authority of boards of county commissioners. Five acts dealt with miscellaneous salary problems.

Prior to the 1955 General Assembly, 26 boards of county commissioners had authority to set the salaries of both elective and appointive officials and employees, and the boards of county commissioners of 12 other counties had the authority to set the salaries of all appointive officials and employees. Thus, the boards of county commissioners of 38 counties had the authority to set the salaries of all appointive officials and employees.

As a result of 1955 legislation, 28 boards of county commissioners have the authority to set the salaries of elective and appointive officials and employees, and the boards of county commissioners of 12 other counties have the authority to set the salaries of all appointive officials and employees. Thus, the boards of county commissioners of 40 counties now have the authority to set the salaries of all appointive officials and employees.

Chapter 1032 (HB 1014) authorizes the county commissioners of Sampson County to set the salaries of all other elective and appointive officials and employees. Chapter 786 (HB 997) authorizes the board of county commissioners of Lee County to set the salary of the register of deeds as of December 1, 1956; the clerk of superior court as of December 1, 1958; and all other elective and appointive officials immediately. Prior to the 1955 General Assembly, the county commissioners of Lee County could set the salaries of all elective and appointive officials except the register of deeds and the clerk of court. Chapter 337 (HB 481) authorizes the board of county commissioners of Brunswick County to set the compensation of all non-elected officials; however, the board can not increase or decrease the salary of any non-elected official more than 15 per cent in any 12 months.

A study of the number of county salary bills in those counties where some salary setting authority has been delegated to the board of county commissioners appears significant. Only three county salary setting acts were passed for the 26 counties in which the board of county commissioners had salary setting authority over all elected and appointive officials except themselves. One of the three acts, Chapter 837, appears superfluous. The other acts increase the compensation of members of the Nash County Board of Health and the County Commissioners of Yadkin County. A comparison would indicate that 26 per cent of the counties (where commissioners set salaries) were responsible for less than 8 per cent of the county salary setting acts passed by the 1955 General Assembly.

Municipal Salary Legislation

In contrast with the reduction in the number of county salary setting acts, the 24 municipal salary setting acts is an increase over the number passed in recent years. The increase seems to be the result of a widely scattered concern for the lowly paid governing officials. Four towns (Fayetteville, Maiden, Star, and Waynesville) increased the mayor's compensation. Nine towns (Beaufort, Dallas, Edenton, Gibsonville, Greensboro, High Point, Lincolnton, New Bern, and Spring Lake) increased the salaries paid both the mayor and the board of aldermen. Four towns (Albemarle, Spencer, Waynesville, and Winston-Salem) increased the compensation of their commissioners or aldermen. Asheville, Canton, Reidsville, and Wendell increased the pay of their judge of recorder's court. Chapter 1107 (HB 1139) puts salaries of all Waynesville officials other than the mayor and aldermen in the discretion of the Board of Aldermen.

Moving Expenses

Chapter 1185 (HB 190) extends the practice adopted by the 1951 General Assembly of paying the moving expenses of highway patrolmen transferred within the state for the convenience of the state to include agents of the State Bureau of Investigation.

Garnishment

Chapter 1285 (HB 1290) provides that the salaries of public employ-

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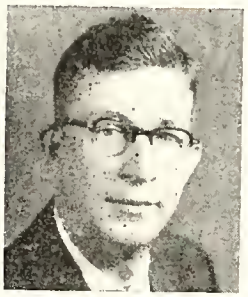
Public Schools

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.



By

JOSEPH P. HENNESSEE

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North Carolina's public school law has been completely revised, generally along the lines laid down by the Commission on the Revision of the Public School Laws created by the 1953 General Assembly. With one eye on the segregation decision and with one ear attuned to Washington for the implementation decree, then pending, the 1955 General Assmebly revised G.S. Chapter 115 with acts which reflect the segregation question and make, among others, the following major changes: (1) elimination from the law of any reference to race; (2) transfer of authority over enrollment and assignment of pupils from the State Board of Education to the boards of education of county and city administrative units; (3) transfer of ownership, operation, and control of the state's 7,200 school buses to county and city administrative units; and (4) substitution of yearly contracts for teachers and principals in lieu of continuing contracts.

Segregation

Provisions of the old law requiring separation of the races in the schools, and that text books be segregated according to race, were not carried forward into the revised school law [Chapter 1372 (HB 177)]. A provision is included, however, that as nearly as practicable, books are to be assigned to the same school year after year.

Pupil Enrollment

The General Assembly, acting on the advice of the Governor, adopted and implemented the conclusions of the Pearsall Committee that the power over enrollment of pupils in the public schools is a local matter. Chapter 366 (SB 9) returns this authority to county and city boards of education. It directs county and city boards to administer the enrollment of pupils in the public schools and to adopt rules and regulations so as to provide for "orderly and efficient administration" of the schools, "effective instruction," and "health, safety, and general welfare" of pupils. Enrollment procedures require a parent or guardian to apply to the "appropriate public school official," apparently the principal, for the enrollment of his child. Where enrollment is denied, such parent or guardian may (pursuant to rules and regulations adopted by the county or city board of education) apply to the board, where he is to be given a prompt and fair hearing. If after the hearing the board finds that the child is entitled to be enrolled in the school applied for, or that the enrollment of the child in the school will be for the best interest of the child, will not interfere with the proper administration of the school or with the proper instruction of the other pupils, and will not endanger the health and safety of the children enrolled there, it is to direct that the child be enrolled. Any party aggrieved by a final order of the board may appeal to the superior court, where the issues will be tried by a jury. Either party may appeal from a decision of the superior court in the same manner as other appeals are taken to the Supreme Court in civil actions.

These enrollment provisions must be construed with new provisions contained in Chapter 1372 which specify that "all pupils residing in a school district or attendance area, and who have not been removed from school for cause, shall be entitled to the privileges and advantages of the public schools of such district or area in such school buildings to which they are assigned by county or city boards of education," and "unless otherwise assigned by county or city board of education" described pupils are entitled to attend the schools in the district or attendance area in which they reside. Another new provision authorizes county and city administrative units to divide their districts into "attendance areas" without regard to district lines. Interestingly enough, nowhere in the Statutes can a definition of "attendance area" be found. The revision provides further that pupils residing in one administrative unit may be assigned, with or without the payment of tuition, to a school located in another administrative unit "upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such board." Where pupils from a non-tax unit are assigned to a school in a special tax district the assignment is to be for one year only unless satisfactory agreements are reached by all units.

The age requirement for enrollment in the public schools has been changed to require that a child must have passed his sixth birthday prior to, rather than on or before, the first day of October in the year in which he wishes to attend. The provision authorizing the State Board of Education to change this date has been retained. A new provision has been added to permit a child who was properly enrolled in the public schools of another state prior to his removal to North Carolina to enroll irrespective of whether such child has passed his sixth birthday on the date specified.

Transportation of Pupils

Supplementing the enrollment provisions of Chapter 366, Chapter 1372 divorces the state from any responsibility for operating and maintaining a school bus system. County and city boards of education are authorized, but not required, to acquire, own, and operate buses for the transportation of pupils to and from the public schools. The State Board of Education is directed to allocate and deliver title to all its school busses and school bus maintenance vehicles to county and city boards on a formula based on the number of buses in present use in each unit. The state retains, however, the authority to regulate the safety equipment and construction of buses, maximum load limits, and qualifications of drivers. State funds have been provided to operate the buses during the coming biennium. These funds and any such funds provided by the General Assembly in the future are to be allocated to local administrative units on the basis of number of pupils transported and bus miles traveled. State funds presently available, or that may be made available in the future, for the purchase of new buses are to be allocated to local units on a basis of need as determined by the State Board. Additional and replacement buses are to be purchased through the Division of Purchase and Contract, and local tax levying authorities are authorized to make provision for their purchase

in their capital outlay budgets. Where a local unit elects to contract for the transportation of its pupils, funds made available for the operation of a school bus system may be used for this purpose.

Pupils are to be assigned to particular buses by the principal so as to provide for the "orderly, safe, and efficient" transportation of pupils, and so as to promote the "orderly and efficient administration" of the schools and the "health, safety, and general welfare" of the pupils transported. Appeals from assignment to buses may be taken in essentially the same manner as provided in enrollment.

Under the provisions of the new law, school bus drivers are employees of the local administrative unit rather than of the State Board of Education. They are to be elected by county or city boards of education and assigned to particular schools within the administrative unit. School bus routes are to be established by the principal, subject to approval by the superintendent. When requested by the superintendent, and not otherwise, the State Board may advise the superintendent as to the establishment of such bus routes.

In order to bring tort claims into line with the change in school bus ownership and operation, Chapter 1283 (HB 1276) authorizes the Industrial Commission to hear and determine claims against county and city boards of education growing out of accidents involving school buses. Awards are to be paid by the State Board, however, upon requisition by the local board. The state is not liable directly to the claimant for the payment for such claims or for the payment of any award made. Nor is the local board liable for any amount of an award in excess of the amount paid by the State Board. The same payment procedures are provided in Chapter 1292 (HB 1346) for the payment of claims against county and city boards of education awarded under the Workmen's Compensation Act in favor of school bus drivers for injuries arising out of and during the course of their employment.

Chapter 1256 (SB 566) authorizes county and city boards of education to waive their governmental immunity from liability for damages caused by the negligence or tort of any agent or employee when acting within the scope of his authority or within the course of his employment, to the extent that liability insurance is secured and the board is indemnified by such insurance. This act, however, does not apply to claims for damages caused by negligent act or torts of public school bus drivers.

Another change in the law, contained in Chapter 1282 (HB 1275), exempts school bus drivers from the provisions of the Financial Responsibility Act with respect to accidents in which they are involved while operating school buses in the course of their employment. Under this change local boards of education are no longer required to post financial responsibility bonds for such drivers.

Teacher Contracts

Under provisions of Chapter 664 (HB 869) contracts of all teachers and principals were terminated as of the end of the 1954-1955 school term. The new law places all teachers and principals on an annual contract basis in lieu of the old continuing contracts. A further provision of this act provides that where a teacher is selected and enters into a written contract to teach and the position is subsequently abolished, the contract is terminated.

The procedure for electing a principal has been changed. Principals will now be elected by the district committee, upon the recommendation of the superintendent and subject to the approval of the board of education, rather than by the committee subject to the approval of both the superintendent and the board of education.

Private Schools

Looking forward, possibly, to the time when pupils may desert the public for private schools, and to insure that the instructional standards for all pupils shall remain uniformly high, the General Assembly has placed private schools under the regulation of the State Board of Education. These regulations are not severe. Teachers are required to meet the minimum certification standards for public school teachers, and curriculum and length of term must substantially equal the curriculum and term for the public schools. In addition, private schools are required to make attendance reports to the superintendent of the administrative unit in which the school is located, and such additional reports as the State Board may require. Religious instruction in the private schools is not subject to state control.

The section on licensing of commercial schools has been rewritten to include a definition of "trade school" and to require that trade schools as well as commercial schools be licensed by the State Board of Education. A license is not required, however, for any trade school for which there is presently existing a legally constituted license board.

School Sites

County and city administrative units are now permitted to acquire sites for schoolhouses or other school facilities, either within or without the administrative unit. They are not permitted, however, to operate schools outside their borders, except that administrative units may operate schools in adjacent units upon written agreement between the respective boards and with the approval of the county commissioners and the State Board of Education. They are also permitted to operate and maintain such other school facilities as school bus garages, repair shops, and parking areas, outside the borders of the unit.

Where suitable sites cannot be acquired through gift or purchase and condemnation procedures must be resorted to, the new law provides that procedures set forth in Article 2, G.S. Chapter 40, are to apply. The new law retains the present 30-acre maximum for new school sites but reduces from 30 to 20 the maximum acreage for existing school sites where enlargement is sought through condemnation of adjoining property.

Sale of School Property

All authority for a board of education to sell real property at private sale has been deleted from the law. The section on sale of real property, as rewritten, requires that in the sale of realty by such boards, advertisement and sale are to be conducted in the same manner as required in a judicial sale of real property rather than as statutorily prescribed for the sale of realty under a deed of trust.

When personal property is determined to be no longer needed for school purposes it may be sold either at public sale or through the Division of Purchase and Contract. When sold at public sale, advertisement and sale are to be conducted in the same manner as provided in the statutes for the sale of personal property under a power of sale contained in a chattel mortgage. After public sale, and a determination that the bid price is inadequate, the board may either readvertise and resell at public sale or sell the property at a private sale for a price in excess of the highest price bid at the public sale.

Public School Finance

Major finance provisions of the old law have been carried over into the revision. Some significant changes, however, have been made. One permits boards of education as well as tax levying authorities, on appeal to

(Continued on page 57)

Public Health

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

[For other items of interest in the public health area, see articles on "Domestic Relations," "Legislation of Interest to County Officials," and "Public Personnel."]

By

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Mental Health

A bill sponsored by the Commission on Reorganization of State Government [Chapter 155 (HB 189)] designates the State Board of Health as the state's mental health authority for the purpose of administering federal-aid mental health funds and as the state agency charged with establishing and administering mental clinic standards. It further pronounces the policy of state-local partnership in financing and operating community mental health clinics and authorizes local governmental units to appropriate funds to such clinics, declaring such support to be a necessary expense. This grant of authority to the State Board of Health does not prevent the operation of outpatient mental clinics by the North Carolina Hospitals Board of Control at any of the institutions under its control (as well as such outpatient facilities as are essential for its in-service training program in psychiatric care and treatment), nor does it prevent the operation of an outpatient mental clinic at the North Carolina Memorial Hospital, Chapel Hill.

Chapter 887 (HB 158) makes numerous changes in Chapter 122 of the General Statutes, which relates to the operation and administration of the state hospitals for the mentally disordered. These changes include: (1) designates hospital for mentally disordered at Butner as "State Hospital at Butner," and adds it to the list of institutions authorized to acquire and hold property; (2) requires superintendent of a mental hospital, when the person notified to come for a patient to be released fails to call for the patient, to notify the clerk of the superior court of the county of the patient's residence, and the clerk is to order the sheriff to reconvey the patient to the county in which he resides; (3) provides that a mentally disordered person, where the affidavit of mental disorder shows that the person may endanger himself or others, may be detained by the clerk of the superior court in his own home or in a private or general hospital, but he may not be detained in jail except in cases of extreme emergency on order of the clerk with notice to the local health officer; (4) authorizes the clerk to serve notice and hold hearings informally and without undue delay to determine if one is mentally disordered; (5) requires clerk to keep records of all examinations (with summary of proceedings and findings) of allegedly disordered persons; (6) permits patient to sign voluntary application for admission and permits superintendent to keep such patient for a full 30-day period; (7) provides that no superintendent, physician, psychiatrist, or other agent or officer of hospital under control of N. C. Hospital Board of Control may be required to disclose information acquired in the examination or treatment of a patient, except where such examination was made of a defendent in a criminal action on order of the court; and (8) authorizes Hospitals Board of Control to enter into agreements with other states for fixing conditions whereby mental patients in other states may be released and come into this state while on conditional release or probation. A separate bill (HB 634), which would have required that allegedly dangerous insane persons be incarcerated in jail until a determination of sanity is made, was defeated.

Chapter 1274 (HB 931) authorizes the transfer of patients from the psychiatric training and research center at Chapel Hill to a state hospital or institution under the control of the North Carolina Hospitals Board of Control.

Chapter 486 (HB 464) makes the following changes in the membership of the Mental Health Council: (1) adds representatives from N. C. Psychological Association, N. C. Dental Society, N. C. Conference for Social Service, State Conference of Parents and Teachers, Eugenics Board, director of division of vocational rehabilitation of State Department of Public Instruction, and chief of mental health section of State Board of Health; (2) deletes director of division of psychiatric services of State Board of Public Welfare, general business manager of institutions, and psychiatric advisor on advisory panel of medical specialists for physical restoration program of division of vocational rehabilitation of State Department of Public Instruction; and (3) authorizes council to invite additional organizations to name representatives to council.

Four bills were introduced relating to the protection of children from sexual psychopaths. Three of these failed to pass but a fourth passed. The one passed [Chapter 764 (HB 812)] makes it a crime (first offense is a misdemeanor, with the second or subsequent offenses being felonies, punishable in the discretion of the court) for any person over 16 years of age, with intent to commit an unnatural sex act, to take or attempt to take improper liberties with a child under 16 of either sex. The ones failing to pass (HB 48, HB 306, and HB 307) would have made it a crime punishable by 1-10 years imprisonment to commit or attempt to commit certain indecent acts on a child under 16, and would have established a procedure for determining if a person were a sexual psychopath, and for commitment of such person to a state hospital for treatment upon a determination being made that he was a sexual psychopath.

Tuberculosis

Four bills passed concerning tuberculous persons and institutions. Chapter 968 (HB 26) specifies that the prison division of the State Highway and Public Works Commission for tuberculous prisoners at McCain is to have the same duties for nursing, as well as guarding and disciplining, tuberculous prisoners as it now has of other prisoners under its control. Chapter 89 (SB 27) authorizes suspension of judgments based upon convictions for failure to take precautions to prevent the spread of tuberculosis pending admission to a hospital, if the convicted person is hospitalized in a state (as well as a county) sanatorium, and provides that the county of legal residence of any person committed to the prison division is to pay the regular welfare or indigent person fee for the period of his hospitalization. Chapter 287 (SB 190) changes the required period of residence in

this state for admission to a state sanatorium from three years to one year, and provides for the admission on a cost basis of persons contracting tuberculosis while living on military bases and reservations. Chapter 1216 (HB 1293) appropriates $300,000 to provide supplemental funds for the maintenance of indigent patients in tuberculosis hospitals operated by Wake, Guilford, Forsyth, and Mecklenburg counties (these hospitals are to be paid $4 per patient day for each medically indigent person receiving care in said hospitals). Said counties are authorized to transfer their tuberculosis sanatoriums to the Board of Directors of the North Carolina Tuberculosis Hospitals System, and the Board is authorized to receive and operate them.

Vital Statistics

Chapter 951 (HB 344) makes numerous changes in the laws governing vital statistics (G.S. 130-69 to 130-107). Some of the changes merely clarify existing provisions, some are designed to make North Carolina procedures conform to those used nationally and internationally, and some may be regarded as more substantive in nature.

Included among those which could be considered as merely clarifying existing law are the following: (1) The law formerly required that a new birth certificate be prepared for an adopted child, with a further requirement that the certificate set out "race" without specifying whether the race of the child or of the adopting parents was intended; Chapter 951 specifies that it is to be the race of the adopting parents. (2) The new birth certificate for an adopted child was formerly required to list the city and county of residence of the adoptive parents as the place of birth (unless the adoptive parents resided out of state, in which case the place of birth on the new certificate stayed the same as it was on the original certificate); Chapter 951 clarifies these provisions by stating that it is the city and county of residence of the adoptive parents "at the time the petition is filed" that is to be listed as the place of birth on the new certificate. (3) Prior to the amendments, authority to appoint local registrars of vital statistics was vested in the chairman of the board of county commissioners, mayor, and the State Board of Health (which may appoint the local health officer), without any statement as to which had primary authority. The amendments make it clear that primary authority is vested in the State Board of Health, and that county commissioners can only exercise their power of appointment when the State Board of Health fails to appoint the local health officer as local registrar. (4) Clerks of the superior court have been required to notify the State Registrar of Vital Statistics when they entered judgment determining the paternity of an illegitimate child, but the law has been silent as to what the State Registrar is to do with the information. This is clarified by requiring that he record the information upon the birth certificate of the illegitimate child, but the act provides that the surname of the child is to remain the same as that of its mother unless it is legitimated under the provisions of G.S. 49-10 or G.S. 49-12.

Included among the changes designed to bring North Carolina procedures more nearly in line with those followed nationally and internationally are the following: (1) The name of the state office in Raleigh is changed from "Bureau of Vital Statistics" to "Office of Vital Statistics." (2) The name of the permit which is required to bury, remove, or otherwise dispose of a dead body is changed from "burial" or "removal" to "burial-transit." (3) Stillbirths are to be registered as fetal deaths, rather than as a birth and a death. (4) The requirement that birth and death records be indexed in a specific manner is changed to allow indexing in a "systematic manner" by the State Registrar. (5) Any federal agency or bureau is authorized to receive certified copies of birth and death records, at no expense to the state, rather than the "United States Census Bureau" only.

What might be considered substantive changes include: (1) The surname of a child legitimated under the provisions of G.S. 49-10 or G.S. 49-12 is to be changed on its birth certificate to that of its father. (2) The definition of registration district is changed so as to exclude cities with a population of less than 2,500, and to include counties, areas served by a district health department, and combinations of the above. (3) Appointment of local registrars of vital statistics for cities (when the State Board of Health fails to appoint the local health officer) is to be made by the chairman of the board of county commissioners, rather than by the mayor of the city. (4) If the whereabouts of the mother of an illegitimate child are unknown for a period of three years, or if there has been an adjudication by a court of competent jurisdiction that a mother has abandoned her illegitimate child, the name of the child may be changed to that of the person or persons caring for it. (5) The State Registrar is authorized to promulgate rules and regulations governing the type and amount of proof to be required in order to make a correction on any vital statistic record. (6) Vital statistic records of any veteran (rather than any veteran of the first or second World War) are to be made available free of charge to American Legion Posts or veterans' organizations.

Chapter 673 (SB 223) makes the burying of a dead body without a burial or removal permit a felony rather than a misdemeanor, punishable by a fine or imprisonment for not more than 10 years, or both; and changes the punishment for other violations of vital statistics law from a fine of $5 to $50 for the first offense and a fine of $10 to $50 plus imprisonment for 30 days for subsequent offenses, to a fine or imprisonment in the discretion of the court.

Another vital statistics bill (HB 841), which failed to pass, was designed to prevent curiosity seekers from having access to birth and death records. It would have made copies of birth and death records in the office of the register of deeds confidential, except to: (1) anyone on a court order or with authorization of State Registrar; (2) the registrant, if of legal age; (3) the parents, guardians, or legal representatives of the registrant; (4) attorneys; (5) members of the medical profession; (6) welfare workers; and (7) agents or employees of any city, county, state, or federal governmental agency, for official purposes only.

Miscellaneous

Chapter 278 (HB 205) permits physicians and veterinarians to prescribe narcotics orally and pharmacists to fill such oral prescriptions when they conform to regulations promulgated by the U.S. Commissioner of Narcotics under federal statutes. Chapter 1358 (HB 1331) prohibits the sale of Salk vaccine by anyone except wholesale drug distributors, licensed medical doctors, registered pharmacists, or the State Board of Health. Penalties for violation of the act are set out.

Chapter 369 (SB 142) requires (nursing) convalescent homes to be licensed by the Medical Care Commission. Chapter 1266 (HB 486) provides that applicants for a license as a practical nurse, who have not completed a course of training for practical nursing approved by the North

Public Welfare

By Roddey M. Ligon, *Assistant Director, Institute of Government*

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

[Many public welfare matters are of interest to county officials generally and have been included in the article on "Legislation of Interest to County Officials." Likewise, the articles on "Domestic Relations," "Public Health," and "Public Personnel" will be of interest to readers of this section.]

Much of the public welfare legislation concerned child welfare and the public assistance program of aid to dependent children. The 1953 legislature created a Commission on Juvenile Courts and Correctional Institutions to make a study of juvenile courts and juvenile correctional institutions. In its report the Commission recommended, among other things, that a permanent Youth Service Board (with a Director of Youth Service) be created to study and make recommendations concerning the prevention and control of juvenile delinquency and the treatment and rehabilitation of juvenile delinquents. A bill [Chapter 904 (SB 335)] to carry out this recommendation was introduced, amended to create a Commission to serve only until June 30, 1957, and passed. The duties of this Commission include: (1) advise the Governor on all matters pertaining to the prevention, correction, and control of juvenile delinquency and the treatment of juvenile delinquents; (2) establish recommended standards for juvenile courts (see article on "Domestic Relations" as to authorization of appointment of qualified persons as judges of the juvenile courts); (3) encourage establishment of facilities for treatment of juvenile delinquents; and (4) cooperate with agencies with programs designed to curb juvenile delinquency.

In line with another recommendation of the Commission, G.S. 108-77 and 108-79 were amended to allow the State Board of Public Welfare to make payments from the State Boarding Home Fund for the purpose of keeping delinquent (as well as needy and dependent) children in suitable boarding homes [Chapter 1044 (SB 344)].

G.S. 108-3 (17) was added [Chapter 269 (HB 377)] to make it perfectly clear that the State Board of Public Welfare is authorized to administer federal funds for child welfare purposes, and that the provisions of federal acts relating to grants-in-aid to the states for child welfare purposes are accepted and adopted by this state.

Two bills which would have affected the public assistance program of aid to dependent children were not reported out of committee. One of these (HB 97) would have denied such assistance in cases in which there are two or more illegitimate children of the same mother, two or more illegitimate children whose mothers are sisters living in the same house, or an illegitimate child born to a widow where there is evidence of prostitution by the mother. As this would have caused the state definition of "dependent children" to differ from that prescribed by the Federal Social Security Act (Section 406), it could have caused this state to lose all federal funds (which constitute about 75 per cent of the total) made as grants-in-aid for our aid to dependent children program. The other bill (HB 98) would have provided that a child who has no adequate means of support includes a dependent child whose parent is able-bodied and capable of gainful employment, and further that assistance for any monthly period is not to be affected by gainful employment obtained by a parent after the need status of the child has been determined; but periodic reconsideration of the child's status under G.S. 108-63 (regulations of State Board of Public Welfare require reconsideration of all aid to dependent children grants at least every six months) would not otherwise have been affected.

Another bill which failed to pass was one spelling out the duty of the State Board of Public Welfare to license persons and organizations operating day care facilities which provide supplemental parental care for children (except nursery schools and kindergartens subject to regulation by the State Board of Education). The Attorney General has ruled,[1] that the State Board of Public Welfare has authority to license such persons and organizations under existing laws.

1. Opinion of Attorney General to Dr. Ellen Winston, dated December 12, 1952.

Carolina Board of Nurse Registration and Nursing Education, Enlarged, must apply for a license before July 1, 1956, and may not apply thereafter.

Chapter 1030 (HB 843) makes clarifying amendments to the laws relating to the promotion of sanitation of hotels, cafes, restaurants, and other establishments providing food and/or lodging to the public for pay. It requires that a copy of the sanitation grade card be posted in a conspicuous place designated by the inspection sanitarian, and provides that the act shall not apply to private homes furnishing food and/or lodging to permanent (for period of week or longer) house guests and visitors of such guests, nor is it to apply to food and drink stands operated by church, civic, or charitable organizations for a period of one week or less.

Chapter 1233 (SB 486) provides for the inspection of poultry and poultry products on a voluntary basis. The inspection program is to be administered by the State Board of Agriculture under rules and regulations promulgated by that Board. Prior to the passage of this bill, a bill was passed [Chapter 976 (HB 890)] authorizing the State Board of Health to prepare and enforce rules and regulations establishing a voluntary poultry inspection program. This Act was made applicable to Wilkes County only but provided that the board of county commissioners of any county could elect to bring their county within the provisions of the act. This raises an interesting legal question: Did the passage of the second of these two bills repeal the first?

Three health bills which did not pass were: (1) HB 1063, which called for the submission of a proposed constitutional amendment to the voters at the next general election on the question of establishing a medical research center (not connected with any other state institution) specializing in research as to the causes and treatment of such diseases as cancer, heart trouble, and treatment of per-

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Domestic Relations

By RODDEY M. LIGON, *Assistant Director, Institute of Government*

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

[Readers interested in this section should also check the articles on "Public Welfare," "Public Health," and "Legislation of Interest to County Officials."]

As usual, the field of domestic relations occupied a considerable portion of the legislators' time. More than fifty bills were introduced which affect this area directly, many more indirectly, and more than half of those introduced were enacted into law.

Abandonment and Non-Support

Although parents are required to support children until they reach their majority[1] (and in some instances after they reach majority[2]), children have never been legally liable for the support of their parents in this state. Chapter 1099 (SB 289) changes this by providing: "If any person being of full age, and having sufficient income after reasonably providing for his or her own immediate family shall, without reasonable cause, neglect to maintain and support his or her parent or parents, if such parent or parents be sick or not able to work and have not sufficient means or ability to maintain or support themselves, such person shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined or imprisoned in the diseretion of the court." If more than one person is liable for the support of the same parent or parents, they are to share equitably in the discharge of this duty.

Two bills (HB 614 and HB 1323) which would have made it a misdemeanor for a father to wilfully refuse or neglect to support his minor children (without regard to whether he had abandoned them, and without regard to whether he was living with his wife at the time[3]) were reported unfavorably in the House. The father still has a civil duty to support his children in this state.[4]

Another defeated bill (HB 721) would have given precedence to the trial of criminal non-support actions.

Adoption

Legislation clarifying the law with respect to the inheritance rights of adopted children was passed this session. Chapter 813 (HB 176) makes it clear that an adopted child may not inherit personal or real property from his natural parents, and the natural parents (or their heirs or next of kin) may not inherit realty by, through, or from an adopted child; but, that the adoptive parents (or their next of kin) may inherit real and personal property by, through, and from adoptive children. This chapter further specifies that an adopted child is to have the same legal status as a legitimate child of the adoptive parents. Chapter 541 (HB 174) provides that a will is not to be revoked by the adoption of a child by the testator, but such after-adopted child is to receive an intestate share of the testator's estate unless some provision (whether adequate or not) is made in the will for the child or it is apparent from the will that the testator intentionally failed to make provisions for the child. This puts after-adopted children in the same position as after-born children. Both of the above mentioned bills become effective July 1, 1955.

By another bill [Chapter 469, (SB 25)], children adopted by veterans during or prior to military service in which the veteran became disabled or died are authorized to receive scholarship benefits on the same basis as veterans' natural children.

A bill (SB 242) which would have permitted attorneys of record in an adoption proceeding to examine all records and documents relating to the proceeding was defeated in the Senate.

(For amendments to the statutes concerning the birth records of adopted children, see section on Vital Statistics in the article on "Public Health.")

Custody of Children

The clerk of the superior court has been required, when a divorce action is instituted by a parent with a minor child or children, to refer the case to the domestic relations court for investigation, so that recommendations may be made as to the proper disposition of the child or children.[5] Chapter 756 (HB 378) changes this to make the referral mandatory only when the pleadings show that the custody of said child or children is controverted, and to make it discretionary with the judge of the superior court having jurisdiction to try the action in all other cases.

The complaint in an action for absolute divorce or divorce from bed and board must set forth whether or not there are any minor children of the marriage, and if so, their names and ages. Thereupon, the judge may make such orders respecting the care, custody, tuition and maintenance of the minor children as may be proper.[6] Chapter 1189 (HB 612) requires that the complaint in an alimony without divorce action set forth the same information regarding minor children, and allows the court to enter orders respecting the support and maintenance of the children in the same manner as such orders are entered in divorce actions, irrespective of the rights of the wife and the husband as between themselves in such proceeding.

The proper procedure to follow in bringing an action to determine custody of a child will vary according to the relationship between the parties. A bill (HB 645) designed to allow a determination to be made by way of a habeas corpus proceeding (under G.S. 17-39) in any situation was defeated.

Divorce and Alimony

G.S. 50-8 commands that all complaints in divorce actions be verified in accordance with G.S. 1-145 and G.S. 1-148.[7] This statutory affidavit required by G.S. 50-8 is a jurisdictional requirement[8] and if the verification is not in the prescribed form, the action will be dismissed.[9] Chapter 103 (HB 44) "cures" defective verifications of complaints in actions instituted and tried on and subsequent to April 5, 1951 (and prior to February 25, 1955) and also "cures" judgments and decrees issued and entered as a result of the adjudication of the actions begun by said complaints. This act is made inapplicable to pending litigation.

On several occasions, our court has held that an action for alimony without divorce, under G.S. 50-16, must be brought as an independent action.[10] Yet our court has allowed an action for alimony without divorce and an action for divorce to be consolidated for trial.[11] Chapter 814 (HB 365) permits a cross-action for alimony without divorce in any suit for divorce, either absolute or bed and board, and permits a cross-action for divorce, either absolute or bed and board, in any suit for alimony without divorce. This brings alimony

without divorce suits in line with the present law which allows cross-actions for divorce, either absolute or bed and board, in any suit for divorce, either absolute or bed and board.

Prior to 1953 G.S. 50-11 provided that an award of alimony[12] would not survive a subsequent absolute divorce unless the absolute divorce was obtained on the grounds of two years' separation. In 1953 this was changed to provide that the prior award of alimony would survive a subsequent absolute divorce in all cases except those in which the divorce decree is obtained by the husband on the grounds of adultery by the wife, and even then the prior award will survive if the wife has not been personally served with process, either within or without the state. Chapter 872 (SB 339) adds another instance in which the prior award will not survive a subsequent absolute divorce, namely, when the wife obtains the subsequent absolute divorce in an action initiated by her on the grounds of two years' separation. This change becomes effective January 1, 1956, and does not affect the right of the wife to receive alimony under any judgment rendered prior to that date.

Chapter 181 (SB 181) permits uncontested divorce cases in which no answer has been filed to be tried at any time after the time for filing an answer has expired, regardless of when the term of court began.

Several attempts to change the laws relating to divorce and alimony were unsuccessful. These included: (1) a bill to grant absolute divorces upon the grounds of separation for one (rather than two) year (SB 78); (2) a bill to delete the requirement that the judge find the wife's application to be true before granting temporary alimony in a divorce action (HB 575); (3) a bill authorizing superior court judges to enforce orders awarding temporary alimony under G.S. 50-15 or G.S. 50-16 by contempt proceedings pending an appeal to the Supreme Court and an entry of final judgment (HB 576); (4) a bill permitting collateral attacks upon certain divorce decrees (SB 449); and (5) a bill providing that no lien is created against real property by reason of the entering and docketing of a judgment against a husband or father when the judgment requires payment of future installments of alimony, subsistence, and maintenance money, unless the judgment by its terms specifically fixes a lump sum to be paid by the husband or father and requires him to pay that sum immediately.

Domestic Relations Courts

G.S. 7-101 allows any county or any city with a population of 5,000 or more to establish a domestic relations court. It also permits the establishment of a joint city and county domestic relations court; or, in a county having two or more cities with the required population, a joint court may be established among such cities in the county. Chapter 1018 (SB 433) adds to this by allowing the boards of county commissioners of any of a group of counties (not exceeding five) with abutting boundaries, or the governing body of any incorporated city within the boundaries of the cooperating counties, to establish a joint domestic relations court in the same manner as city-county domestic relations courts are now formed. The governing bodies of the cooperating counties and cities, acting jointly, are to elect a judge for such court, fix his salary, and provide for the payment of same (with the governing bodies determining the proportionate share of the salary of the judge and the other expenses of the court each cooperating governmental unit is to pay.)

Guardian and Ward

Chapter 970 (SB 473) amends G.S. 33-9 (which makes it the duty of the clerk of the superior court to remove guardians and appoint successors when the guardian wastes or converts money of the estate, mismanages the estate, neglects to properly educate or maintain his ward, becomes disqualified, or is likely to become insolvent) by making such statute applicable not only to guardians but to all fiduciaries. This provision becomes effective July 1, 1955.

Chapter 290 (HB 289) authorizes the clerk of the superior court to allow guardians or trustees of estates of incompetent or inebriate persons to pay debts incurred prior to the date of adjudication of incompetency for necessary living expenses, taxes, and specific liens on property in which the ward has an equity. This chapter also validates all disbursements made prior to effective date of act (March 23, 1955) by a guardian or trustee of an estate of an incompetent or inebriate person with the approval of the clerk of the superior court.

Chapter 1272 (HB 898) makes several changes in the Veterans' Guardianship Act.[13] It allows guardians appointed under the Act to have the same powers as to the ward's property as guardians appointed under Chapters 33 and 35 of the General Statutes, and makes said chapters applicable to guardians appointed under the Veterans' Guardianship Act to the extent that their actions are not covered by said Act. Actions heretofore taken by guardians appointed under the Act, which actions were not covered by the Act but were in conformity with Chapters 33 and 35, are validated. It authorizes a guardian or trustee of a mentally disordered or incompetent Veterans Administration beneficiary to pay to the spouse, children, mother, or father of the ward such amounts for support as are approved by the clerk of the superior court (deleting the former requirement that the judge approve) without regard to whether or not such relatives received any part of their maintenance from the ward prior to the appointment of the guardian or trustee. It further authorizes such guardian or trustee to pay to other relatives of the ward who were receiving some part of their maintenance from the ward prior to the appointment of the guardian such amounts as are approved by the clerk of the superior court and by a superior court judge. Payments heretofore made in accordance with the provisions of this chapter are validated. Veterans Administration certificates setting forth that a ward of adult age is rated competent by that agency are made *prima facie* evidence of competency, so that the clerk of the court may declare such ward competent and discharge the guardian or trustee upon the rendering of a satisfactory accounting.

In a recent case [14] our court held that an unborn infant could not be made a defendant in an action and be represented by a guardian *ad litem* in the absence of a statute. It further held that G.S. 41-11.1 (allowing appointment of a guardian *ad litem* to represent unborn children) relates to representation of infants in proceedings involving the sale, lease, or mortgage of property but not to actions adjudicating the interest taken by persons *in posse* under a trust instrument. Chapter 1366 (HB 1380) fills the gap. It provides for the appointment of a guardian *ad litem* to defend on behalf of unborn persons (if such unborn person would be a necessary or proper party if then living) in all actions and special proceedings *in rem* or *quasi in rem* and in all actions and special proceedings which involve the construction of wills, trusts, contracts, or other written instruments, or which involve the ownership of property or the distribution of property. All proceedings by and against such guardian *ad litem* after appointment are to be governed by all provisions of the law applicable to guardians *ad*

litem for living persons. Similar provisions are made for the appointment of a guardian *ad litem* to defend on behalf of corporations, trusts, or other entities not in existence. Remedies provided by this chapter are in addition to other remedies permitted by law, and it does not repeal or limit the doctrine of virtual representation or other laws by which unborn persons or non-existent entities may be represented in or bound by any judgment or order entered in any action or special proceeding. It applies to all pending actions and special proceedings to which it may be constitutionally applicable. Prior appointments are validated to the extent that validation is within constitutional limitations.

Three Senate bills affect the appointment of process agents for guardians. Chapter 481 (SB 261) deletes the requirement that non-resident guardians appoint a resident agent to accept service of process; Chapter 521 (SB 259) deletes the requirement that a resident guardian, upon removal from the state, appoint a process agent; and Chapter 470 (SB 260) takes from the clerk of the superior court power to remove non-resident guardians who fail to obey process served on such guardian's process agent.

Three bills affecting the appointment of guardians failed to pass. They were: (1) HB 687 providing for the appointment of a guardian to administer the ward's income only, after notice and hearing but without a jury, for incompetent persons whose annual income did not exceed $1,500; (2) SB 320 providing for appointment of a guardian *ad litem* to defend infants and mental incompetents when the general or testamentary guardian had an adverse interest; and (3) HB 290 providing that the clerk of the superior court could appoint guardians or trustees for missing persons.

Insane Persons

Chapter 691 (SB 329) amends the laws relating to the restoration of a person to sanity or sobriety[15] by providing that the petition for restoration may be filed before the clerk of the superior court of the county of residence only (formerly it could be brought before either the clerk of the superior court of the county in which the petitioner resides, or the clerk of the superior court wherein the petitioner was confined or held.)

(See also the article on Health.)

Juvenile Courts

Chapter 1043 (SB 333) rewrites the law concerning who is to serve as judge of the county juvenile courts.[16] Prior to the passage of this chapter it was the clerk of the superior court, unless the county had a joint county-city juvenile court.[17] This chapter provides that the board of county commissioners of each county in the state is to appoint the clerk of the superior court of such county or some other competent or qualified individual to act as judge of the juvenile court for that county. Twenty-six counties[18] are excepted from the provisions of this chapter.

Extending the juvenile court's jurisdiction so as to include 16-year olds (present jurisdiction is over persons under 16) has received considerable discussion. One of the principal arguments aganst such extension seems to have been that the training schools are overcrowded at the present time and could not handle increased numbers. HB 396 was introduced to effect this extension but failed to pass. It would have given the juvenile courts jurisdiction over all 16-year olds charged with the commission of a crime, except those charged with: (1) commission of a felony; (2) violation of the motor vehicle laws; (3) any other crime when such minor has previously been convicted of a crime, or has previously been before a juvenile court in this state because of being delinquent, truant, unruly, wayward, misdirected, disobedient to parents or beyond their control, or in danger of becoming so.

Legitimacy

Chapter 540 (HB 173) makes it clear that children legitimated under the provisions of G.S. 49-10 (legitimation by special proceeding before clerk of court upon petition of putative father) or G.S. 49-12 (legitimation as a result of the subsequent marriage of the mother and putative father) are to inherit by, through, and from their parents the same as if they had been born in lawful wedlock; and their real and personal property, upon their death intestate, is to pass to their heirs and next of kin the same as if they had been born in lawful wedlock. This act also makes it clear that legitimation under G.S. 49-10 imposes upon the father and mother all obligations which natural parents owe their children. It is assumed that the same rule applies to children legitimated under G.S. 49-12.

Chapter 542 (HB 175) provides that the personal property of an illegitimate child, upon his death intestate, is to be distributed as follows: (1) to his spouse and/or children; (2) if none, to his mother; (3) if none, to legitimate and illegitimate children of his mother, or their issue; and (4) if none, it is to escheat. His real property, upon his death intestate, is to descend as follows: (1) to lineal descendants; (2) if none, to his mother; (3) if none, to his spouse; (4) if none, to the legitimate and illegitimate children of his mother, or their issue; and (5) if none, the property is to escheat, except that property acquired from his mother is to descend to the heirs of his mother. The existing rules as to curtesy, dower, and other marriage inheritance rights are to remain unchanged. This bill, as well as the one discussed above, becomes effective July 1, 1955.

A bill (HB 749) failed to pass which would have provided that in criminal prosecutions under G.S. 49-2 (refusal of parent to support illegitimate child), the issue of paternity or maternity was to be determined irrespective of whether the defendant was adjudged guilty or not guilty, and this determination was to be binding in subsequent prosecutions for wilful neglect or failure to support the illegitimate child.

(For amendment affecting the birth records of legitimated children, see section on Vital Statistics in article on "Public Health.")

Marriage

Before a marriage license may be obtained in this state, the applicant must procure a health certificate.[19] The health certificate has been required to indicate, among other things, that the applicant is not subject to epileptic attacks. Chapter 484 (HB 299) changes this to require that the certificate show that the applicant is not subject to "uncontrolled" epileptic attacks. This will allow persons with controllable attacks to get married.

HB 960, which would have prohibited a register of deeds from issuing a marriage license unless both parties were present, received an unfavorable report in the House.

Married Women

Article X, Section 6 of the North Carolina Constitution provides that a married woman may convey her separate estate provided she has the written assent of her husband. No mention is made of the form which the husband's written assent must take. Chapter 1245 (SB 468) calls for the submission to the qualified voters of the state at the next general election a proposed amendment to the above cited section of the Constitution which would make it clear that the married woman could execute

powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her, by her and her husband, or by her husband. All powers of attorney heretofore executed by a husband to his wife and the execution of all documents thereunder are validated.

In 1945 the General Assembly passed a statute[20] which provided, in part: "From and after the ratification of this section all laws and clauses of laws contained in any section of the General Statutes requiring the privy or private examination of a married woman are hereby repealed." Chapter 1082 (HB 1212) marks an exception to that broad statement by providing that no contract between a husband and wife made during coverture is to affect her realty or income therefrom for a period of more than three years, or the corpus of her personal estate or accruing income therefrom for a period of more than three years, unless such contract is in writing and acknowledged before a certifying officer who is to make a private examination of the wife. Chapter 380 (SB 319) validates contracts entered into prior to January 1, 1955, where the acknowledgement was taken before a notary public (since 1953, only Justices of the Supreme Court, judges of the superior courts, clerks of courts and their assistants and deputies, or justices of the peace could validly take such acknowledgments in this state).

Chapter 376 (SB 262) makes it clear that married women under 21 years of age are authorized to make binding agreements with respect to any transaction involving an estate held or purchased by entirety, the same as if they were over 21 years of age.

Uniform Reciprocal Enforcement of Support Act

The Uniform Reciprocal Enforcement of Support Act,[21] passed in 1951 and unchanged by the 1953 General Assembly, underwent extensive changes this session. This Act is designed to enable a needy person (obligee) in one state to secure money for support from a person (obligor) residing in another state who is legally liable for the support of the needy person.

Prior to the 1955 amendments, the N. C. superior court had jurisdiction over all cases initiated in this state as well as those received by this state from some other state with similar reciprocal legislation. Chapter 1035 (HB 1158) grants concurrent jurisdiction over cases initiated in this state to domestic relations courts, and Chapter 699 (HB 187) grants jurisdiction, when North Carolina is the responding state, to any court of record in this state having jurisdiction to determine liability of persons for the support of dependants by criminal proceedings. Likewise, the duty placed upon the superior court solicitor to appear on behalf of the plaintiff, when North Carolina is the responding state, is transferred to the official who prosecutes criminal actions for the state in the court acquiring jurisdiction.

The question has been raised as to whether an obligor could secure relief from extradition by voluntarily submitting to a court in the responding state, when no civil proceedings have been instituted in the initiating state pursuant to the provisions of the Act. The general opinion seems to be that he may not,[22] on the theory that: (1) if he submits to the court, it must be to defend or attack; and he has no grounds on which he might attack, and there is no complaint to defend against; and (2) the court would have considerable difficulty making an order of support since it could only hear the defendant's evidence, as the plaintiff is not before the court. All doubt as to North Carolina's position with regard to this question is removed, as the amendments provide: "an obligor may not upon his *ex parte* petition avail himself of the provisions of this Act."

Under G.S. 52A-8, the obligee could elect to enforce the obligor's duty of support under the laws of any state where the obligor was present during the period for which support is sought or under the laws of the state where the obligee was present when the failure to support commenced. The new amendments eliminate the second alternative, and provide for a rebuttable presumption that the obligor has been present in the responding state during the period for which support is sought.

Some feel that the effectiveness of the Act has been hampered to some extent by the difficulty of locating the "runaway pappy" in the responding state. To minimize this difficulty, the plaintiff is permitted to attach to the complaint information which may help to identify or locate the defendent, such as a photograph, a description of distinguishing marks on his person, fingerprints, other names and aliases by which he has been or is known, and the name of his employer.

A new section is added which excepts minor obligees, in some cases, from the usual rule which requires that actions on behalf of minors be brought by a next friend. If the complaint on behalf of the minor obligee is brought by a person having legal custody of such minor, the appointment of a next friend is not required.

Under the new amendments, when North Carolina is the responding state, the judge may direct that all costs incurred in this state be paid by the county, except when an order of support is entered against a defendent, in which case he is to be taxed with the costs. If North Carolina is the initiating state, the clerk of the court may waive all fees and costs incurred in filing the petition, if the county superintendent of public welfare certifies that the plaintiff is indigent.

Other amendments include: (1) making the verified complaint admissible into evidence as *prima facie* evidence of the facts therein stated (provided the defendent has been served with notice and summons); (2) allowing the judge to enter a reasonable order of support when a defendant who has been served fails to appear (subject to modification for good cause shown); and (3) making it clear that it is the clerk of the court, rather than the judge, who is to make a finding that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that the defendant is not to be found in this state but may be found in the responding state, before forwarding the complaint to the responding state.

Footnotes

1. G.S. 14-325.
2. *Wells v. Wells*, 227 N.C. 614 (1947).
3. G.S. 14-322 requires abandonment and G.S. 14-325 requires that the husband be living with his wife.
4. *Green v. Green*, 210 N.C. 147 (1936).
5. G.S. 7-105(i)
6. G.S. 50-13.
7. G.S. 1-145 requires as to form: "The verification must be in substance that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and as to those matters he believes it to be true; and must be by affidavit of the party . . ."
8. *Young v. Young*, 225 N.C. 340 (1945).
9. *Hodges v. Hodges*, 226 N.C. 570 (1946).
10. *Shore v. Shore*, 220 N.C. 802 (1941).
11. *Hobbs v. Hobbs*, 218 N.C. 468 (1940).
12. Such award may be obtained in an action for alimony without divorce under G.S. 50-16, or in an action for divorce from bed and board under G.S. 50-7. See *Stanley v. Stanley*, 226 N.C. 129 (1946).
13. G.S. 34-1 to 34-18.
14. *McPherson v. Bank*, 240 N.C. 1 (1954).
15. G.S. 35-4.
16. G.S. 110-22.
17. G.S. 110-44.
18. Brunswick, Buncombe, Burke, Caswell, Catawba, Davie, Forsyth, Franklin, Graham, Guilford, Halifax, Haywood, Jones, Lenoir, Macon, Madison, McDowell, Nash, Onslow, Person, Pitt, Randolph, Transylvania, Vance, Warren, and Watauga.
19. G.S. 51-9.
20. G.S. 47-116.
21. G.S. 52A-1 to 52A-19. As of June, 1954, all states except Nevada had passed this Act or similar legislation. (It had also been

passed by Puerto Rico, Alaska, Hawaii, and the Virgin Islands.)
22. Opinion of the Attorney General of California, No. 53/157, Jan. 14, 1954; Opinion of the Attorney General of Ohio, No. 3009, August 31, 1953.

Municipal Officials

(Continued from page 17)

ized special auto license plates for volunteer firemen, and SB 133, which would have required the State Board of Education to equip each school bus with a fire extinguisher and first aid kit, both died in committee.

Local Acts

A special act applying to Wake County [Chapter 169 (SB 160)] makes a number of changes in the standard rural fire protection districts law. It (a) authorizes establishment or abolition of such a district without an election, where the petition submitted to the county commissioners is signed by a majority of the qualified voters of the area; (b) authorizes creation of a district composed of several non-contiguous areas; (c) raises the maximum amount of the tax which can be levied from ten cents to 50 cents per $100 valuation; (d) authorizes levy of the tax for the fiscal year following an election held prior to July 1; (e) exempts certain properties from inclusion in such a district; and (f) provides for automatic exclusion from the district of property annexed to a municipality. Other rural fire protection laws were passed for Robeson, Granville, Guilford, and Stanly Counties, while proposed bills for Swain and Richmond Counties failed in the House.

The Treasurer of the State Firemen's Association was authorized to pay Warrenton its share of the 1953 Firemen's Relief Fund, despite technical non-compliance with the requirements of the law.

As usual, firemen's pensions came in for a great deal of legislative attention, with a new fund being established for Lumberton firemen and amendments being made to the laws establishing the Durham, High Point, Charlotte, Asheville, and Wilmington funds. Sampson County's Commissioners were authorized to exempt active volunteer firemen from payment of the county poll tax, and Raleigh's auxiliary police and firemen were excluded from Workmen's Compensation coverage.

The fire chiefs of Rockingham, Hamlet, and Ellerbe are empowered by Chapter 1117 (HB 1249) to seize and impound any evidence of arson which they discover while carrying out the duties of their offices, either inside or outside the corporate limits of their towns. Another act authorizes the Forest City town board to designate members of the town fire department who have power to issue arrest and search warrants; such members must be full-time employees of the fire department who have been assigned additional duties as police radio station operators.

Other Public Facilities and Services

Chapter 77 (HB 119) allows cities over 15,000 (instead of 20,000) to hold more than 50 acres for cemetery purposes. Chapter 727 (HB 204) provides that the State Ports Authority act shall not be construed to prevent others, including municipalities, from owning, constructing, etc., warehouses, piers, or wharves abutting navigable waters. SB 381, which would have authorized cities to operate livestock markets, was not reported by a Senate committee.

Local Acts

Despite the failure of SB 381 to pass, Edgecombe, Halifax, and Nash counties and municipalities therein were authorized to support livestock markets, either separately or jointly. Guilford County, Greensboro, and High Point were granted authority to operate a joint animal shelter, and Guilford County and High Point were again authorized to construct a joint governmental building. Charlotte was empowered to appropriate non-tax funds to the Charlotte Memorial Hospital Authority for the preparation of architectural plans for enlargement of the hospital. Other acts enlarged and clarified the powers of the Raleigh-Durham and Randolph County airport authorities.

Regulatory Powers

In addition to the regulatory powers discussed under the headings "Planning and Zoning" and "Streets, Traffic, and Parking," municipal regulatory powers were affected by two other statewide acts. Chapter 520 (SB 219) and Chapter 487 (HB 471), providing for regulation of storage facilities for liquid fertilizer and liquefied petroleum gas, both forbid municipalities to adopt regulations at variance with those promulgated by the State Board of Agriculture.

A proposal by the Commission on Reorganization of State Government, endorsed by the League of Municipalities, to reconstitute the State Building Code Council and clarify the tangled situation in the state's building laws (HB 310) received an unfavorable House committee report. HB 146, which would have provided for municipal licensing of the amusements listed in G.S. 105-66, was not reported by a House committee.

Local Acts

Seven acts extended the authority of municipal policemen for varying distances beyond their city limits. Cities affected were Edenton, Ellerbe, Raeford, Roseboro, Beaufort, Weldon, and Vass. In addition, the Sparta police chief was authorized to serve civil and criminal process anywhere in the county. Elizabeth City and Parkton were made bird sanctuaries.

There were a number of acts pertaining to alcoholic beverage control. Aurora, Bath, Belhaven, Washington, and Southern Pines were authorized shares of A.B.C. profits, and the distribution of Carteret County profits was altered slightly. A.B.C. elections were authorized for High Point and Hendersonville. Bills which would have transferred five per cent of the Louisburg and Franklin A.B.C. profits to Franklin County for law enforcement purposes were postponed indefinitely in the House. Leaksville was granted authority to regulate the places where beer and wine may be sold. A.B.C. stores and beer and wine outlets in Wake Forest were forbidden, despite the impending move of the college to Winston-Salem.

Public Health

(Continued from page 29)

sons injured in automobile wrecks; said medical center was to have been financed by 2/10 of 1 per cent of the proceeds from the state gasoline tax; (2) HB 1248, which would have amended the statutes regulating the manufacture of bedding so as to exclude from their provisions studio couches, davenports, and similar living room furniture; and (3) SB 54, which would have appropriated $300,000 to the N. C. Board of Nurse Registration and Nursing Education to subsidize ten hospitals not now operating a nursing school, so that they might establish such a school.

There were a few local bills dealing with the composition and pay of local health boards and other health matters. The constitutionality of these bills is questionable.[1]

1. Art. II, Sec. 29 of N. C. Constitution. See also *Sams v. Commissioners of Madison*, 217 N.C. 284 (1939), and *Armstrong v. Commissioners of Gaston County*, 186 N.C. 405 (1923).

Penal - Correctional Administration

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

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Significant changes were made by the 1955 General Assembly in statutes controlling the organization and administration of North Carolina's penal-correctional system. Some were the culmination of efforts over many years by a few members of the General Assembly and other persons especially interested in bringing this state abreast the leaders in correctional administration. Some were short of goals established by these advocates of correctional progress. However, action was taken that may result in additional changes being made in this area by the 1957 General Assembly.

Prisons

Organization

Aware that a segment of public opinion favors immediate separation of the prison system from the Highway Commission, the Commission on Reorganization of State Government tried to discover or devise a separation plan they could recommend to the 1955 General Assembly. They were unable to find or to formulate a feasible plan. Nevertheless, they did not express opposition in principle to separation nor did they conclude that no workable plan for this change could ever be formed. They merely expressed their conviction that separation should not take place until adequate cost studies have been made and a plan developed that will make it feasible.

In his message to the 1955 General Assembly, Governor Luther H. Hodges expressed his opinion that the prison system should be separated from the Highway Commission if and when this change is shown to be feasible. The General Assembly, taking cognizance of the Governor's views and those of the Reorganization Commission, passed a joint resolution [Resolution 23 (H.R. 166)] directing the Chairman of the State Highway and Public Works Commission, the Chairman of the Prison Advisory Council, and the Director of Prisons to take measures to determine the feasibility of separating the prison system from the Highway Commission and to submit a report thereon to the Governor for transmission to the 1957 General Assembly.

While the prison system was not separated completely from the Highway Commission, legislation was enacted that gives the Prison Department a much greater degree of independence within the framework of the existing organizational structure. This legislation [Chapter 238 (HB 167)] carries out recommendations of the Commission on Reorganization of State Government. It changes statutory provisions respecting the appointment and removal of the Director of Prisons, transfers to him from the Highway Commission administrative powers and duties respecting prisons, gives the Prison Advisory Council a veto power over prison regulations, and prohibits prison supervisory personnel from using their positions to influence elections or the political action of any person.

From 1933 until the enactment of this new legislation, the power to employ a Director of Prisons was possessed wholly by the Highway Commission. No term was set. The Commission could discharge a Director at any time without specifying its reasons, providing the action was taken with the consent and approval of the Governor. Replacements were made twelve times in twenty years.

Now the Director of Prisons is appointed by the Highway Commission with the Governor's approval for a set term of years, expiring one year after a new Governor takes office. Colonel William F. Bailey, first appointed Director of Prisons by the Highway Commission in August, 1953, was reappointed under the new law for a term expiring January 1, 1958. Thereafter, all appointments will be for a four-year term. The Director can be removed by the Commission with the Governor's approval, but only for cause after notice and hearing. In case of the death, resignation, or removal for cause of a Director of Prisons, his successor will be appointed to fill out the unexpired term.

These changes in the method of appointing and removing the Director of Prisons were made to promote continuity in administration. As expressed in the report of the Commission on Reorganization of State Government, the chief purpose is to provide a fixed term long enough to permit a Director to plan and to place into operation a program of improvements. The final year overlaps the term of a new Governor so that he and any new highway commissioners that he might appoint will have an opportunity to become intimately acquainted with the work and qualities of a Director before either reappointing or replacing him.

Administrative powers and duties transferred from the Highway Commission to the Director of Prisons include almost all that relate to the custody and treatment of prisoners, except the power to contract for their hire. This and all other functions of a financial nature respecting prisons remain the rseponsibility of the Highway Commission. However, the Commission loses and the Director gains the power to hire and fire personnel subordinate to him. The Director also gains the power to formulate prison rules and regulations, subject to the approval of the Prison Advisory Council, the Highway Commission, and the Governor.

There is an evident awkwardness and danger of stalemate in the system now provided for adopting prison regulations. But here again the report of the Reorganization Commission throws light upon the reasoning behind the change.

Previously the power to make prison regulations was vested in the Highway Commission, with those relating to the Governer's elemency powers subject to his approval. Neither the Director nor the Prison Advisory Council had any actual power respecting formulation of regulations. Nevertheless, in actual practice, the Director and the Council would present recommended regulations to the Commission, and these were usually adopted with relatively few modifications.

As another means of emphasizing the fact that the Director of Prisons is the official immediately responsible for proper administration of the prison system, the Reorganization Commission recommended that he be given the function of formulating initially all prison rules and regulations. Giving the Prison Advisory Council the

power to disapprove of regulations not to its liking was recommended to increase the importance of an agency created for the purpose of promoting in the prison system modern concepts and experience directed toward the rehabilitation of prisoners. Permitting the Highway Commission to retain a veto power over prison regulations was suggested as a way to provide that measure of control needed to prevent adoption of measures adverse to its interests. Since the Governor's approval was previously required for certain regulations, requiring his approval of all was considered a way to simplify the adoption process and assure compliance with basic state policy.

Escapes

Long before the state took over county roads and convict camps, the Supreme Court had made it clear that misdemeanant prisoners who merely flee from custody may not be fired upon by prison guards. [See *Holloway v. Moser*, 193 N.C. 185, 189, 136 S.E. 375, 377 (1927); *State v. Stancill*, 128 N.C. 606, 610, 38 S.E. 926, 928 (1901).] Yet for many years the mere presence of the gun guard was sufficient to prevent most misdemeanant prisoners from running away. Perhaps the prisoners did not know the law, or if they did, they may have been afraid the guard did not. For some time, however, there has been a steady increase in the number of misdemeanants who run or walk away from their work on the roads, apparently confident that the guard will not fire his gun in their direction.

In trying to deal with the problems of the fleeing misdemeanants, prison officials have been severly handicapped by lack of facilities for working them within prison confines or even keeping them locked up without work. This problem had been aggravated and others created by the fact that the offense of escape was only a misdemeanor, punishable by imprisonment at the discretion of the court and forfeiture of all gained time earned by previous good conduct. As a consequence, the amount of punishment imposed for escape had varied considerably from case to case, not only because of a lack of uniformity in court-imposed prison sentences, but also because the offender lost all gained time however much had been accumulated and without consideration of circumstances that might tend to extenuate or aggravate the offense.

Thus, two prisoners might escape at the same time, one with relatively little gained time because of a bad prison record, the other with several years of gained time accumulated by good conduct. Recapturing the one with the bad prison record might require much time and cost the state a considerable sum. The prisoner with years of accumulated good time might return voluntarily a few hours after the escape. Loss of all gained time would, however, hurt the second prisoner a great deal, while the first prisoner would have little to lose.

An attempt to solve or at least reduce the problems outlined above is made by Chapter 279 (HB 258), which rewrites G.S. 148-45 to make escape or attempt to escape from the state prison system a felony if committed by any felon or by a misdemeanant who has previously been convicted of this offense; the first escape or attempt by a misdemeanant continues to be classified as a misdemeanor. However, a misdemeanant who escapes once must, upon conviction, receive an additional sentence of from six months to one year. A felon who escapes once must, upon conviction, receive an additional sentence of from six months to two years. Any prisoner who is convicted of a second or subsequent escape must receive an additional sentence of from six months to three years. Terms of imprisonment imposed are to run consecutively with all sentences under which the prisoner was being held at the time of the escape offense, but prisoners convicted of escape offenses classified as felonies are to be treated as felons from the time of conviction, even though they have time remaining to be served on a sentence imposed for a misdemeanor. Provisions requiring forfeiture of all gained time are deleted from G.S. 148-41 and 148-45, thus leaving determination of how much will be lost to the prison officials.

While this measure will permit holding in prison units classified for felons all prisoners convicted of more than one escape or attempt to escape from the state prison system, it should be noted that the power of prison officers to stop fleeing felons ". . . must be enlarged or modified by the character of the *felony* . . . Extreme measures, therefore, which might be resorted to in capital felonies, would shock us if resorted to in inferior felonies." [See *State v. Bryant*, 65 N.C. 327, 328 (1871).] Courts may consider a second or subsequent escape by a prisoner originally committed to prison for a misdemeanor as no more than an inferior felony. Accordingly, prison officers would be well advised to refrain from firing upon a fleeing felon whose classification as such is merely a consequence of a conviction for a second or subsequent offense of escape. Probably the only completely satisfactory solution of the problem of the fleeing prisoner is for the state to provide facilities wherein prisoners who cannot be trusted outside prison confines can be kept safely and provided with constructive employment.

Concurrent Sentences

As noted above, the new law on escapes from the state prison system provides that terms of imprisonment imposed for such offenses must run consecutively with all sentences under which the prisoner was being held at the time of the escape offense. In the absence of such a statutory provision, unless it appears otherwise in the sentence itself, it is generally presumed that sentences imposed in the same jurisdiction to be served at the same place of confinement are intended to run concurrently, even if imposed at different times and by different courts and upon a person already serving a sentence. [*In re Parker*, 225 N.C. 369, 35 S.E. 2d 169 (1945).] The fact that sentences were to different places of confinement has been held to be sufficient indicia of a contrary intent to overcome this presumption. [*In re Bentley*, 240 N.C. 112, 81 S.E. 2d 206 (1954); *In re Smith*, 235 N.C. 169, 69 S.E. 2d 174 (1952).]

However, Chapter 57 (HB 165) of the 1955 Session Laws provides that a prisoner shall not be required to serve additional time in prison solely because sentences that would otherwise run concurrently are for different grades of offenses or are required to be served in different places of confinement. In effect, this act cuts by two the possible indicia that would serve to overcome the presumption that sentences imposed by North Carolina courts are intended to run concurrently unless the sentence itself or a statute specifically makes them consecutive.

Tubercular Prisoners

Chapter 968 (SB 26) amends G.S 131-88 so as to make nursing as well as guarding and disciplining tubercular prisoners a responsibility of the Prison Department, and amends G.S. 131-89 so as to require the North Carolina Sanatorium for the Treatment of Tuberculosis to provide food for the prison staff assigned there on the same basis as for its own employees.

Children Born of Female Prisoners

Prior to the 1955 session of the General Assembly, an act passed in 1933 and codified as G.S. 148-47 pro-

vided that any child born of a female convict while she was in custody must, upon arrival at a suitable age, be surrendered to the clerk of the Superior Court of Wake County for disposition as the law provides in the case of children whose parents are dead or unable to provide for them. But there has been a question about the jurisdiction of the Wake County Domestic Relations Court over such cases since that court was created in 1941. To resolve the difficulties that had developed respecting this matter, a bill (HB 639) was introduced in the 1955 General Assembly providing that such children should be surrendered to the superintendent of public welfare of Wake County upon order either of the Domestic Relations Court or the Juvenile Court. This bill was later amended to provide that the surrendering should be to the superintendent of public welfare of the county in which the child is born. Thus amended, it was enacted and appears as Chapter 1027 of the 1955 Session Laws. This law does not affect the right of the mother to consent to adoption or to place her child with the father or other suitable relative.

Prisoner Leave

A bill (HB 755) providing that prison rules and regulations may authorize and govern the granting of periodic leaves of absence to prisoners who have served six months or more was introduced but failed to receive a favorable committee report. Nevertheless, this bill is interesting as a possible precursor of legislation that would work a revolution in penal-correctional administration. Measures tending to decrease the need for or change the nature of prisons are being given serious thought by leaders in the field and are actually being tried in some jurisdictions. These include leaves of absence, conjugal visits, and jail sentences under which the offender continues to work at his regular employment but returns to a prescribed place of confinement when not at work.

Parole

Evolution

From colonial beginnings to the present day, the Governor of North Carolina has exercised the power of pardon. In 1908, the Supreme Court declared that: "The power of the Governor to grant conditional pardons . . . is undoubted," [*In re Williams*, 149 N.C. 436, 438, 63 S.E. 108, 109 (1908)] and in 1922, the Court construed the word "parole" as importing a conditional pardon. [*State v. Yates*, 183 N.C. 753, 111 S.E. 337 (1922).] At first the Governor relied upon his own investigations and the recommendations of interested persons in exercising his pardon and parole powers. In 1913, Governor William W. Kitchen recommended that the General Assembly pass legislation establishing a parole system patterned upon those existing in other states. But legislation dealing with parole was not enacted in North Carolina until 1917.

The 1917 legislation [P.L. 1917, C. 286, § 18] directed the Board of Directors of the State's Prison to establish rules and regulations for a parole system. An Advisory Board of Parole was established, consisting of the Attorney General as chairman, with the chairman of the Board of Directors of the State's Prison and the chairman of the Board of State Charities as the other members. It was the function of this Board to advise the Governor respecting the parole or unconditional pardon of prisoners held in the state's prison or in county chain gangs. [P.L. 1917, C.278.] But the members of the Board had little time for this extra work; by 1921 it had ceased to function and the statutory provision for it was repealed in 1925. [P.L. 1925, C. 163.]

Legislation passed in 1925 [P.L. 1925, C. 29] authorized the Governor to appoint a full-time Commissioner of Pardons. This office was abolished in 1929, and the office of Executive Council was created to assist the Governor not only in matters of clemency, but also in his other duties. [P.L. 1929, C. 147.] The office of Executive Council was abolished in 1933; in lieu thereof, the Governor was authorized to appoint a full-time Commissioner of Parole to assist him in clemency matters and in establishing a parole system making use of case histories and supervisors. [P.L. 1933, C. 111.] In 1935 legislation [P.L. 1935, C. 414] was passed authorizing the Governor to provide the Commissioner of Parole with one or more assistants, clerical help, and a staff of parole investigators and supervisors; an Advisory Board of Paroles was created to perform such duties in connection with the state prison program as the Governor might assign to it.

In September, 1952, the Advisory Board of Paroles adopted a report of its lay members recommending replacement of the Commissioner of Paroles by a three-member paroles board and adoption of a constitutional amendment transferring authority over paroles from the Governor to the paroles board. These recommendations were drafted into bills passed by the 1953 General Assembly. One created a three-member Board of Paroles appointed by the Governor to serve at his pleasure [S.L. 1953, C. 17]; the other submitted to the voters at the next general election an amendment to Article III, § 6, providing that the terms "reprieves, commutations and pardons" shall not include paroles, and authorizing the General Assembly to vest all power over paroles in a board of paroles. [S.L. 1953, C. 621.]

Tho proposed amendment was adopted by the voters, and in accordance therewith, the 1955 General Assembly passed legislation [Chapter 867] creating a Board of Paroles appointed by the Governor for staggered four-year terms and removable by him for cause. This Board received the parole powers from the Governor on July 1, 1955. While the Board will assist the Governor on matters relating to reprieves, commutations, and pardons, the executive clemency functions will be clearly distinguished from paroles, over which the Board will have independent authority. This authority will cover persons paroled prior to July 1, 1955. However, powers of the Board of Correction and Training over paroles for inmates of the institutions for juveniles under its control are not disturbed.

Board Members

Dr. C. H. Patrick, Chairman of the Sociology Department at Wake Forest College, was chairman of the subcommittee of the Advisory Board of Paroles that submitted the report containing the recommendations upon which the recent paroles legislation is based. When the Board of Paroles was created in 1953 to assist the Governor in the exercise of his paroles and clemency powers, Dr. Patrick was appointed as its chairman by Governor Umstead. Judge W. A. Brame, who had been the Recorders Court Judge at Wendell for 20 years, and Johnson Matthews, who had been an investigator for the Parole Commissioner, were the other members appointed by Governor Umstead. Governor Luther H. Hodges reappointed all three as members of the new independent Board of Paroles. Dr. Patrick will continue to serve as chairman for a two-year term, expiring July 1, 1957. Judge Brame was appointed for a three-year term, expiring July 1, 1958, and Mr. Matthews for a four-year term expiring July 1, 1959.

Election Laws

(Continued from page 21)

opening 10 days before the end of filing time and ending 30 days prior to the general election.

The provisions of the new act governing the filling of vacancies among nominees can be summarized as follows:

For a state office (including United States Senator), the vacancy is to be filled by the state executive committee of the political party in which the vacancy occurred.

For a district office (including United States representative, superior court judge, solicitor, state senator in a district composed of more than one county), the vacancy is to be filled by the appropriate executive committee of the appropriate party for the district in which the vacancy occurred.

For a county office, for the North Carolina House of Representatives, and for the State Senate in a district composed of only one county (including the county entitled to furnish the senator under a rotation agreement), the vacancy is to be filled by the county executive committee of the party in which the vacancy occurred.

In these situations, if the general election ballots have already been printed before the vacancy occurs, the existing provisions of the law concerning the re-printing of the ballots remain unchanged.

The provisions of Chapter 574 (SB 317) governing nominations of candidates for offices that become vacant at the times described can be summarized as follows:

If the vacancy in the office occurs more than 10 days prior to the time at which the right to file as a candidate for that office in the coming primary closes, nominations for that office are to be made in the primary, candidates filing notice in the ordinary way.

If the vacancy in the office occurs within 10 days prior to the time at which the right to file for that office in the coming primary closes, nominations for that office are made as follows:

For a state office, by the state executive committees of the political parties.

For a district office, by the appropriate executive committees of the political parties for the district in which the vacancy occurred.

For the office of clerk of superior court, by the county executive committees of the political parties.

For other county offices, no provision is made.

Similarly, if the vacancy in the office occurs after the close of filing time and 30 days prior to the next general election, the same provisions are applicable.

A separate provision states that if there is a vacancy in the office of clerk of superior court within 30 days prior to a general election, nominations are to be made by the county executive committees of the political parties.

Adoption of Voting Machines

The 1949 General Assembly granted counties and municipalities broad powers to use their discretion in acquiring and using voting machines. In 1953 certain sections were inserted in the election laws which purported to apply only to those counties and municipalities which had not yet adopted voting machines under the 1949 act, but which contained language which raised a legal question as to whether the 1949 enabling power was not thereby limited so that no county or city might adopt voting machines without a referendum. Chapter 1066 (HB 1040) is designed to allay this doubt. It provides that the 1949 authority is not limited by the 1953 statutes authorizing the holding of a referendum on the question of adopting voting machines.

Continuous Registration System

In 1949 the General Assembly authorized county elections boards, with State Board of Elections approval, to set up loose-leaf registration systems rather than adhere to the usual book method of registration. In 1953 the General Assembly enacted a series of provisions which, for a county which had adopted the loose-leaf system and which had within its borders two municipalities, each with a population in excess of 35,000, had the effect of authorizing continuous and permanent registration. Guilford County was the only one which met the applicability test at that time. The 1955 General Assembly, in enacting Chapter 800 (SB 405) and Chapter 1142 (SB 541), expanded the applicability provisions of these statutes to cover any county "having one or more municipalities with a population in excess of 10,000." Twenty-nine counties seem to meet this test on the basis of 1950 Census figures: Alamance, Buncombe, Cabarrus, Catawba, Cleveland, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Gaston, Guilford, Iredell, Lee, Lenoir, Mecklenburg, Nash, New Hanover, Pasquotank, Pitt, Rockingham, Rowan, Stanly, Union, Vance, Wake, Wayne, and Wilson. Both Nash and Edgecombe have been included in this list on the grounds that each contains a portion of the city of Rocky Mount's population in excess of 10,000.

County

(Continued from page 12)

limited the authority to the purchase of motor vehicles, "to the extent deemed possible and practical by the Director." Even this more limited purchasing authority was not acceptable to the Senate, and the bills were killed by a Senate committee.

HB 251 would have authorized county commissioners to appoint county building inspectors. Building permits would have been required for all new construction and each inspector would have been required, through periodic inspections, to enforce all state and local building construction laws. Although a number of counties have authority by special act to appoint building inspectors, the General Assembly was unwilling to pass the bill on a state-wide basis. Special acts were passed requiring building permits in Catawba and Scotland Counties. Rowan, Stokes, and Surry were added to the list of counties authorized by Chapter 984, Session Laws of 1953, to appoint plumbing inspectors.

Two bills were introduced to limit the operation of the Old Age Assistance Lien Law. SB 24 would have repealed the lien law outright, and HB 449 would have prevented the lien from attaching to land worth less than the homestead exemption ($1,000). Both bills died in committee.

Taxes

(Continued from page 19)

$200 in matters arising out of contract and more than $50 in matters arising in tort. In the minds of some attorneys this provision cast a doubt on whether summons in a foreclosure action for a smaller amount could run outside the county in which issued. Chapter 39 (HB 49) makes the general limitation inapplicable to actions brought for the collection or foreclosure of property taxes.

Courts, Judges, Related Officials

By PHILIP P. GREEN, *Assistant Director, Institute of Government*

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

[Officials interested in this article will also be interested in portions of the articles on "Public Health," "Domestic Relations," "Legislation of Interest to County Officials," "Motor Vehicles and Highway Safety," "Law Enforcement," and "Penal-Correctional Administration."]

Probably the most important legislation pertaining to the court system passed by the 1955 General Assembly was the group of bills proposed by the Judicial Council which established a new set of superior court districts. Proposals to grant the Supreme Court rule-making authority and to eliminate some of the alleged abuses of the justice of the peace courts met with failure, as did certain proposals designed to speed up trials, but much useful legislation was enacted.

Redistricting

As a result of increasingly congested superior court dockets in some of the larger counties in recent years, there has been a continuing effort either to add additional judges or to redistrict the state. In 1953 a Judicial Council recommendation that Buncombe, Durham, Guilford, and Mecklenburg Counties be made two-judge districts and redistricting efforts by others failed to secure approval, but Governor Umstead was given authority to appoint a total of 12 (rather than eight) special judges.

This year the Judicial Council brought forth a carefully worked out redistricting plan which eliminated some of the complaints directed at former plans. It made no change in solicitorial districts, and it was set up in such a way that no current resident judge would lose his seat because the residences of two such judges had been placed in the same district.

The plan increased the number of judicial districts from 21 to 30, four of which were one-county districts (Buncombe, Durham, Forsyth, and Wake) and two of which were one-county, two-judge districts (Guilford and Mecklenburg).

Because it was feared that any amendments would open the door for thoroughgoing changes, when a bill incorporating the Judicial Council proposals was introduced the General Assembly pushed it through without change [Chapter 129 (SB 107)]. Later in the session, however, another bill was passed which transferred Caswell County from the new 15th to the new 17th judicial district [Chapter 708 (HB 595)].

Further acts prepared by the Judicial Council were then introduced, dividing the state into four (rather than two) judicial divisions, so as to reduce the travel time required of judges [Chapter 343 (HB 542)]; fixing new court schedules for the new districts [Chapter 1373 (HB 859)]; providing for the rotation of superior court judges in the new districts and divisions [Chapter 1193 (HB 747)]; limiting the number of special judges to be appointed by the Governor to four [Chapter 1016 (SB 356)]; and authorizing superior court judges to exchange court terms with the consent of the Chief Justice, rather than the Governor [Chapter 1208 (HB 1167)].

Justices of the Peace

A series of proposals to revamp the state's justice of the peace system went down to defeat. The most important bill (SB 202) would have (1) cut down on the number of justices elected in each township; (2) required JPs to provide themselves with suitable office facilities (including a set of the General Statutes); (3) specified pre-trial procedures to protect the accused; (4) required that justices make known the hours at which they will be available and authorized the clerk of the superior court to assign justices to duty at particular times; (5) limited the appointive powers of the Governor and the General Assembly to filling vacancies in elective JP offices and other needs certified by the resident judge or clerk of superior court; (6) provided for revocation of JP commissions by the Governor only after certification (following a hearing) by the resident judge of superior court that the JP is guilty of misfeasance, malfeasance, or nonfeasance; (7) provided for removal of JPs by the resident judge of superior court for particular misdeeds; (8) provided that a JP may not also be a professional bail bondsman or collector of delinquent accounts, police officer, register of deeds or assistant register, sheriff or deputy; (9) authorized a JP to try cases out of the township for which he was elected or appointed; (10) limited costs in criminal cases tried before a JP to $4.50 to be paid into the county general fund and $4.00 as officers' fees for arrest, service of summons, etc.; and (11) provided for payment of $3.50 to the JP for each criminal case tried, regardless of the verdict.

After a number of amendments, which removed a total of 80 counties from operation of the bill, it finally received an unfavorable committee report in the House.

Other bills which failed were SB 129, which would have required use of prenumbered warrants and receipt books by JPs; SB 203 and SB 205, which would have added certain motor vehicle offenses (operating without a license, speeding, and reckless driving) to the jurisdiction of JPs, and SB 256, which would have required a JP to post in his office a statement of the expiration date of his commission.

One measure did pass. Chapter 869 (SB 204) requires JPs to make monthly reports of cases tried and their disposition to the clerk of superior court, instead of reports before each term of superior court in the county.

In passing, it might be noted that Article 14A of Chapter 7 of the General Statutes, enacted in 1949, provides for appointment and removal of justices of the peace; fixed salaries for JPs, with fees collected going into the general fund of the county; daily deposits of sums collected and monthly financial reports by JPs to the county commissioners; provision of space by the county for the transaction of business by each JP; and the furnishing of bonds for faithful performance by JPs. Apparently none of the 27 counties to which this act applies has placed it into effect.

Other Matters Relating to Court Organization

Although retired Supreme Court justices and superior court judges who meet certain qualifications have for many years been designated as emergency judges, eligible to sit as superior court judges when regular judges were unavailable or disabled, there has been no such provision for filling temporary vacancies on the Supreme Court. Effectuating provisions of a 1954 amendment to the

State Constitution, Chapter 90 (SB 90) fills this gap. It provides that retired Supreme Court justices who meet the existing statutory requirements for designation as emergency judges shall in the future also be emergency justices. When a member of the Supreme Court becomes temporarily disabled, the Chief Justice may recall any emergency justice to sit in his stead. The act also provides for retirement (although without status as an emergency justice) of justices who have served eight or more years on the Supreme Court and who become permanently and totally disabled while still in active service thereon.

A proposal (SB 356) which would have made emergency judges eligible to serve in cases other than those "when the judge assigned thereto, by reason of sickness, disability, or other cause, is unable to attend and hold said court, and when no other judge is available to hold the same," [G.S. 7-50] received an unfavorable committee report.

A measure to make the Chief Justice more effective in his role as chief administrative officer of the state's judicial system, by giving him better information concerning operation of the superior courts, failed in one form but passed in another. SB 521 would have required clerks of superior court to furnish, after each term of court, information as to the number of days of court actually held, the number of hours used to try cases, cases on the docket at the end of the term, and cases continued. It was reported unfavorably. However, in the closing days of the session Chapter 1257 (SB 572) was introduced and passed, achieving much the same ends. This act requires that clerks are to furnish civil statistics to the Chief Justice rather than the division of criminal and civil statistics of the Department of Justice (whose name is changed to the division of criminal statistics).

Several acts modified the authority of local governing bodies to establish special types of courts. Chapter 1081 (HB 1211) authorizes the county commissioners of any county having a city with a population of 15,000 or more (rather than 20,000) to establish a general county court. Chapter 700 (SB 292) authorizes the establishment in any county over 100,000 of a county civil court with jurisdiction in civil matters concurrent with that of justices of the peace and also concurrent with the superior court in (a) actions founded in contract where the amount sought does not exceed $3,000 exclusive of interest and costs, (b) actions not founded in contract where the amount sought does not exceed $3,000, (c) actions to try title to land, to prevent trespass, and to restrain waste thereof where the value of the land does not exceed $3,000, and (d) actions for divorce or alimony, together with necessary orders for custody and maintenance of the children. HB 198, which would have authorized the establishment of a recorder's court in any town over 1,000 population, received an unfavorable committee report.

In the field of domestic relations, Chapter 1043 (SB 333) requires the county commissioners to appoint the clerk of superior court or some other qualified person as judge of the county juvenile court; Chapter 1018 (SB 433) authorizes the establishment of joint domestic relations courts by as many as five abutting counties and the cities therein; HB 396 would have expanded the jurisdiction of juvenile courts to include 16-year olds, with certain exceptions. All of these bills are discussed at greater length in the article on "Domestic Relations."

Three acts were passed pertaining to the appointment, termination of appointment, and compensation of court reporters and reporters pro tem for superior courts. The first [Chapter 742 (SB 184)] merely deleted the limitation on the amount of compensation which the resident judge was authorized by G.S. 7-92 to fix for reporters in the sixth judicial district. [The application of this act was confusing, in that its sponsorship was evidently from the old sixth district, but the redistricting act (which created a different sixth district) had been ratified almost two months prior to the ratification of this act.] Chapter 1034 (HB 1111) was then enacted to provide comprehensive procedures for appointment and compensation of reporters in the new eleventh judicial district, followed by Chapter 1317 (SB 542), which provides almost identical procedures on a statewide basis. The latter act does not apply to Brunswick, Duplin, Jones, New Hanover, Onslow, Rockingham, Sampson, and Wilson Counties. Apparently it repeals Chapter 742 with respect to Lenoir County of the old sixth district and with respect to all counties in the new sixth district.

Jurors received attention in three bills. Chapter 1360 (HB 1334), the only one that passed, authorizes the county commissioners to fix the pay of jurors passing upon the competency of any person under G.S. Chapter 35, Article 2, at not less than $1 nor more than $6 per day. HB 91, which would have authorized exemption of persons 70 years of age and upwards from jury duty, and HB 616, which would have exempted dispensing opticians, both met defeat in the House.

Other bills pertaining to court organization and operation were Chapter 707 (HB 540), prescribing the distribution of fines and forfeitures collected by municipal recorders' courts in municipalities lying in two or more counties (but not applicable to Alamance, Cabarrus, Catawba, Edgecombe, Guilford, or Nash Counties); SB 273, which would have authorized appointment of a deputy clerk for municipal recorders' courts; and HB 631, which would have authorized county commissioners to fix office hours and workdays of clerks of superior court. Both of the latter two bills received unfavorable committee reports.

SB 271, which would have given recorders' courts and mayors' courts jurisdiction over speeding cases otherwise outside their jurisdiction, was reported unfavorably.

Chapter 1329 (HB 101) authorizes the Governor and Council of State to furnish copies of G.S. volumes 1A, 1B, and 1C to Supreme Court justices, judges and solicitors of superior courts, the Supreme Court library, and other state officials and agencies. Chapter 990 (HB 1059) deletes sheriffs, registers of deeds, and county commissioner chairmen from the list of those receiving copies of the Session Laws, House and Senate Journals, and Supreme Court reports. SB 92, which would have required the Secretary of State to publish and distribute copies of Supreme Court advance sheets to regular, special, and emergency superior court judges, was tabled in the House.

Procedure

The most important bill introduced relating to procedure met with defeat. This was the Judicial Council's proposal that the Supreme Court be given power to regulate the pleadings, practice, and procedure, and the forms thereof, in all courts of the state except JP courts. Identical bills (SB 301 and HB 626) to effectuate this proposal were introduced in the two houses; both were amended to provide that the new rules should not take effect until after they had been referred to the General Assembly; and both died in a House committee.

A considerable number of acts affecting criminal procedure and divorce actions were passed. These are discussed in the articles, "Law Enforcement" and "Domestic Relations." Most of the acts discussed below apply primarily to civil procedure, but a

number apply to criminal procedure or both civil and criminal.

Parties

For many years, one of the troublesome aspects of the law in this and other states was the inability of unincorporated associations (clubs, labor unions, etc.) to sue or be sued in their common name. This rule was modified only slightly in North Carolina by G.S. 1-70 (pertaining to certain associations), 39-24 (pertaining to real estate held in common by such associations), and 55-13 (pertaining to acts performed by certain religious, educational, or charitable associations formed prior to 1894). The passage in 1943 of an amendment to G.S. 1-97 authorizing service of process on such associations was held by our Supreme Court to permit associations to be sued, but not to sue, under their common names. A Judicial Council proposal, Chapter 545 (HB 362), has now been enacted, making it clear that all unincorporated associations (not including partnerships) may sue and be sued under their common names "to the same extent as any other legal entity established by law," with judgment and execution binding the association's real and personal property "in like manner as if it were incorporated."

Another difficulty as to parties was cured by Chapter 1366 (HB 1380), which authorizes the appointment of guardians ad litem for unborn persons in any action in rem, quasi in rem, involving construction of written instruments, or involving determination of ownership of property, where the unborn person would be a necessary party if living. In addition, it authorizes the appointment of such guardians for entities not yet in existence, in any action involving construction of a will, trust, or contract, in which benefits are provided for such entities.

Commencement of Actions

Chapter 39 (HB 49) allows a summons issued (a) in tax collection and foreclosure suits and (b) in other actions and proceedings in which a superior court has exclusive original jurisdiction, to run outside the county, even though the amount at issue is less than the minimum specified in G.S. 1-93.

Chapter 241 (HB 275), another Judicial Council proposal, eliminates the necessity for personal service on a minor under 14 years of age, provided service is had upon his general guardian.

The old alias and pluries summons, used prior to 1953 as a method of keeping an action alive when service could not be had upon the defendant within the statutory period, was revived as an alternative method to the simplified procedure (which was initiated two years ago) of endorsement on the original summons [Chapter 45 (HB 116)].

Two acts were enacted to make easier the task of suing motorists involved in accidents. G.S. 1-105, which provides for constructive service of process on non-resident motorists through service on the Commissioner of Motor Vehicles, was extended to apply to non-residents operating motor vehicles at any place in the state, instead of merely "on the public highways" [Chapter 1022 (SB 500)]. Chapter 232 (SB 134) makes the same provisions applicable to any resident of the state who, subsequent to an accident or collision, establishes residence outside the state or remains out of state continuously for a period of 60 days or more.

Another problem partially met was that of securing service on out-of-state corporations and insurance companies. Chapter 1143 (SB 545) makes foreign corporations subject to suit in the state under certain conditions, even though they may not be "doing business" in the state within the meaning of the usual corporation laws. Such suits may be brought by residents of the state or persons having a usual place of business in the state on causes of action arising (a) out of a contract made or to be performed in this state, (b) out of business solicited in the state by mail or otherwise if the corporation has repeatedly so solicited business, (c) out of production, manufacture, or distribution of goods by the corporation with the reasonable expectation that those goods are to be used or consumed in the state, when they are so used or consumed, or (d) out of tortious conduct in this state. Parent corporations are also made subject to suit where they are liable for obligations of a subsidiary corporation subject to suit in the state. Chapter 1040 (SB 113) provides for suits (through constructive service, on the Commissioner of Insurance) against foreign insurance firms not authorized to do business in the state.

Chapter 10 (HB 58) exempts the state or its agencies from posting a prosecution bond in a civil action or special proceeding. Chapter 527 (SB 330) extends from 10 to 20 days the period within which a sheriff must serve a complaint, in cases where the complaint is not filed with the summons. HB 197, a revenue measure which would have increased the process tax and made it applicable to courts inferior to superior courts, was not reported by a House committee. HB 567, which would have required plaintiff's bond in claim and delivery proceedings to be payable to other persons who might have custody of the property as well as the defendant, and HB 568, which would have authorized sheriff to take possession of property from such other person in accordance with designated procedures, both received unfavorable reports.

Trial

A number of bills were introduced pertaining to the admissibility of particular types of evidence. Chapter 451 (HB 529), which authorizes municipalities to make photographic reproductions of records, also authorizes the introduction of such records as evidence in court proceedings on the same basis as the originals. Chapter 480 (SB 208) makes certified copies of records of the Department of Motor Vehicles admissible "without further certification." Chapter 870 (SB 304) rewrites the mortuary tables admissible as evidence so as to make them accord with up-to-date experience as to longer life expectancies. Chapter 887 (HB 158) makes the sworn signed statement of the superintendent or a staff member of the hospital in which an insane spouse is a patient admissible as evidence in an action for divorce on grounds of incurable insanity. SB 58, which would have rendered inadmissible in evidence ex parte affidavits or written statements of a witness (other than a deposition "after due notice") for the purpose of contradicting him in an action to recover for personal injury or wrongful death, received an unfavorable committee report.

Two Judicial Council bills pertaining to matter available to jurors during their deliberations received unfavorable reports. SB 299 would have permitted jurors to take exhibit evidence with them to the jury room. SB 306 would have made it discretionary with the judge (rather than mandatory on request of a party) whether he will commit his instructions to writing and permit the jury to take them to the jury room.

The same fate was met by SB 56, which would have permitted a motion for nonsuit at any time after the verdict and before judgment (rather than at the conclusion of plaintiff's evidence and at the conclusion of all evidence).

Chapter 200 (HB 178) forbids comments by the judge on the verdict in the presence of the jurors and makes such comments grounds for

continuance for the term of all cases remaining to be tried during that week: comments made during the hearing of motions for a new trial to set the jury verdict aside, or to arrest judgment, however, are not affected by this act.

Judgment and Execution

A proposal which has been submitted for several sessions of the General Assembly again met defeat in this session. HB 1034 would have provided that contributory negligence shall not operate as a bar to recovery in negligence actions, but merely to diminish the recovery permitted (in proportion to the amount of negligence on each side). This doctrine has been introduced into the law of a number of other states.

Another proposal in effect elsewhere, designed to expedite trial, was embodied in HB 577. This would have provided for motions for summary judgment as to all or part of an action at any time. Where pleadings, depositions, and affidavits showed there was no issue, judgment would have been granted immediately.

Chapter 74 (HB 61) authorizes the judge or clerk of superior court to use his discretion as to whether a judicial sale of real or personal property shall be public or private. Chapter 399 (HB 360) makes the provisions of G.S. Chapter 1, Article 29A relating to judicial sales applicable to all receiver sales. HB 956 would have amended G.S. 1-313 relating to property sales under execution to provide that when title to property is in dispute, the plaintiff would be required to post bond for double the value of the property if he wanted the sheriff to levy on the property; the bond would be payable to the person adjudged to be the owner of the property, to protect him from any loss resultant upon the execution. This bill was reported unfavorably.

HB 566 would have made changes in the duties of an officer executing a judgment for summary ejectment. It would have (a) required the officer to give advance notice to the defendant of the time set for removal; (b) authorized the officer to refuse to execute the judgment in the absence of advance payment to him by the plaintiff of the costs of removal of any goods to a warehouse (such costs and storage costs becoming part of the costs of the action); (c) exempted the officer from liability for goods stored in any warehouse in the county after refusal by the defendant to receive the goods; and (d) given the warehouse operator a lien against the stored goods for the costs of storage. It too was reported unfavorably.

A Judicial Council proposal authorizing arrest without a warrant of a defendant at liberty under a suspended sentence, where the solicitor gives the arresting officer a statement that the defendant has (in his opinion) violated the conditions of suspension, received an unfavorable report in the House (HB 363).

Another post-conviction problem was dealt with by Chapter 120 (HB 208), which authorizes the court signing an order of arrest for a defendant on probation (or in its failure to do so, the probation officer having him in charge) to fix bond for him pending a hearing.

Chapter 560 (HB 380) modifies the provisions of G.S. 18-6, which specify the disposition of vehicles confiscated for illegal transportation of liquor, to require advertisement for persons claiming the vehicle before it is turned over to public officials for use in the performance of their duty.

Appeal

In the past, when an appellant failed to appear at the trial in superior court of a case which he had appealed from the decision of a justice of the peace, the other party could move at the next term of superior court to dismiss the appeal. Chapter 256 (SB 143) modifies this to permit immediate motion for dismissal, affirming the judgment below. A somewhat similar bill applying to criminal actions failed; HB 364 would have authorized the superior court to remand any criminal case appealed from a lower court to that court for execution of judgment if the defendant failed without good cause to appear and prosecute his appeal. SB 217 would have eliminated the requirement that the clerk of superior court (where cases are appealed to that court) prepare a statement of the case, submit it for objections of the parties, and transmit it and the objections to the superior court judge; under the new procedure he would merely have to transfer or docket the case if it were not already on the civil issue docket. This bill also failed.

Two bills were introduced relating to appeals to the Supreme Court. Chapter 882 (SB 471) provides that the clerk of superior court is to notify the Attorney General of the extension time in all cases in which the time for appeal is extended. In the event that a defendant wishes withdraw his appeal, he must appear before the clerk and make a written request for withdrawal; the clerk will thereupon issue a commitment to the sheriff, who will execute the sentence. HB 748, which received an unfavorable committee report, would have provided that appeals may not be taken from interlocutory orders not affecting a substantial right nor from determinations in the discretion of the superior court judge (but provided for appeal by certiorari within 30 days of ruling, where party believed he had been deprived of a substantial right).

Chapter 798 (SB 305) requires the clerk of the Supreme Court to transmit certificates of decision on the second Monday after the filing of a decision (rather than on the first Monday of each month). This is a Judicial Council proposal designed to speed up the transmission of decisions.

Costs

Two bills pertaining to costs passed and one failed. Chapter 922 (HB 944) requires that premiums on the prosecution bond required by G.S. 1-109 or the cost bond required by G.S. 1-111 be taxed as part of the costs of a civil action if the bond furnished has a corporate surety. Chapter 1364 (HB 1359) amends G.S. 6-21 by adding actions requiring the construction of a will or trust agreement (or fixing the rights and duties of the parties thereunder) to the list of actions in which the court may apportion costs among the parties in its discretion. HB 421, which failed, would have clarified G.S. 6-18 by specifying that the actions in which the plaintiff is allowed costs "as of course" may be either in tort or contract.

Limitations

Chapter 544 (HB 361) prevents non-residents from making use of our courts to recover for causes of action for which the statute of limitations has run in the situs. Under interpretations of G.S. 1-21 it would have been possible for non-residents to recover in such actions, provided our statutory period had not run since their entry into North Carolina. This law provides that an out-of-state cause of action barred in the jurisdiction where it arose may not be enforced in the North Carolina courts except where the cause originally accrued in favor of a North Carolina resident.

Two bills extending statutory periods for bringing particular types of action received unfavorable committee reports. SB 120 would have extended the time for filing workmen's compensation claims from one to two years after the accident or two years

after the employee's discovery of the injury, where such knowledge could not have been discovered earlier. HB 752 would have removed completely the 90-day limitation on the period within which quo warranto actions could be brought to try title to an office after the defendant's induction into office.

Special Proceedings

There were several bills pertaining to condemnation proceedings. Chapter 29 (HB 8) provides that the original or a certified copy of the judgment in a condemnation proceeding must be recorded in the county where the land is situated (under seal of court if the judgment is rendered in another county). The original judgment, certified copy, or a certified copy of the registered instrument may thereupon be received in evidence in the same manner as deeds for land. Chapter 1335 (HB 757) makes the provisions of G.S. 40-10 (which prohibits condemnation of dwelling houses and burial grounds) inapplicable to acquisition of school sites by condemnation. HB 949 and HB 950 both received unfavorable committee reports. The first would have forbidden the State Highway and Public Works Commission to take over occupied homes or business places until condemnation proceedings have been begun and the sum appraised by condemnation commissioners has been deposited in the court. The latter would have provided that when condemnors pay the appraised sum into court, the property-owner whose land is taken may receive 75 per cent either of the amount last offered or of the amount paid into court (whichever is less) to be applied on the amount finally received, with provision for repayment if this sum proves to be less than the amount finally awarded.

Chapter 373 (SB 236) authorizes the clerk of superior court, in his discretion, to order surveys of real property in civil actions and special proceedings involving the sale of land, with the costs of the survey being taxed as part of the costs of the proceeding. Any dissatisfied party may have a de novo hearing before the judge of superior court before such survey is made.

(See also the article on "Public Health" regarding tuberculosis prevention commitment procedures, mental health commitment and release procedures.)

Special Dockets

Several proposals were made for creation of special dockets to help speed up procedures. Chapter 1337 (HB 613) requires clerks of superior court, in counties whose commissioners accept the act, to establish a "small claims docket" for actions involving $1,000 or less in which neither party demands a jury trial in his initial pleadings. No prosecution bond will be required in such actions, and the advance deposit for costs shall be fixed by the county commissioners at not more than the ordinary deposit.

A Judicial Council proposal to clear out dead wood on court dockets by transferring to an inactive docket all actions and proceedings pending over four years and then abating such actions if nothing further was done within the ensuing year received an unfavorable report (HB 644). A more elaborate proposal along the same lines (but without the four-year waiting period) passed the House but failed in the Senate (HB 855).

Miscellany

Chapter 873 (SB 382) protects the bondsman where it is impossible to produce a defendant at the time he is bonded to appear in court because he is in legal custody elsewhere. In such event, this act provides for continuance of the scire facias hearing on the bond forfeiture for not less than 90 days, to give the surety an opportunity to produce the defendant.

Chapter 879 (SB 440) fixes a fee schedule for services rendered by the clerk of superior court "for any court or person of any country other than his own."

Administration of Estates and Related Matters

(For rather extensive coverage of changes pertaining to descent and distribution in special cases and pertaining to guardians and wards, marriage, etc., see the article on "Domestic Relations.")

A troublesome feature of the law of wills for many years has been the fact that an otherwise valid holographic will (handwritten, without witnesses) might be invalidated by the fact that on the face of the will there appeared other printed or written words—even though they might not affect the meaning of the will. Chapter 73 (HB 60) corrects this defect and also provides that a beneficiary under a holographic will may testify to facts establishing it without losing his rights thereunder.

Chapter 625 (SB 341) provides an alternative method of advertising for claims against estates in counties where no newspaper is published; it authorizes advertisement in a newspaper having general circulation in the county, provided notice is also posted at the courthouse door. A General Statutes Commission proposal, which would have reduced from six weeks to four weeks the required period for advertisement and from one year to six months the period for settlement of claims against a decedent, received an unfavorable committee report (HB 63). A somewhat more detailed proposal to effectuate the same ends also failed (HB 220).

Provisions of the General Statutes dealing with administration of estates of less than $500 by the clerk of superior court were modified slightly by Chapter 1246 (SB 475), which authorizes the clerk to reimburse from the estate persons paying funeral expenses of the deceased and then to pay the balance of the estate (if it does not exceed $50) over to the surviving spouse or heirs. The act further relieves the clerk of the necessity for advertising for creditors of the intestate.

Chapter 302 (SB 158) is designed to speed up administration somewhat in the cases where the decedent's personalty is clearly insufficient to pay his debts. In this event, it will no longer be necessary to exhaust the personalty before application is made to the superior court for permission to sell his realty to cover the balance due.

In the payment of debts of an estate, funeral expenses have been given a high priority, superior to all classes of debts other than debts having a legal lien on specific property in an amount not exceeding the value of that property. Chapter 641 (HB 273) stems from a Judicial Council suggestion that this funeral expense priority should not be unlimited. It fixes the amount having priority at $600 (not including payment for the cemetery lot or gravestone).

Chapter 388 (HB 413) opens up a means of getting around some of the normal requirements associated with execution of a will. It permits devises and bequests to trusts created in writing prior to the execution of the will, even though the trust may be (or actually is) modified subsequently without complying with the procedural requirements for executing or changing a will.

Chapter 720 (HB 899) deals with the special situation where one or both of the spouses making a joint federal income tax return die before it is determined that a refund is due. If the refund does not amount to more than $500, it is to be paid to the surviving spouse or to the estate of the spouse who died last.

(Continued on page 58)

Law Enforcement

By

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Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

One of the difficult aspects of law enforcement is the ever present necessity of attempting to achieve enforcement objectives in certain areas of the law without the proper legal tools. Sometimes the problem is that the law in the books is impractical; sometimes the procedural tools needed for effective enforcement are lacking; and sometimes the punishments provided for certain offenses are not sufficient to make fear of apprehension and conviction a deterrent to prospective violators, who merely regard the fines assessed as part of the overhead of their illegal "business." In all of these situations, peace officers look to the General Assembly for relief.

Each session of the legislature corrects some of the loopholes of the past, but new law enforcement headaches are also frequently created in attempting to meet the problems of criminal conduct which became pressing since the previous biennial session. This article classifies and discusses some of the major pieces of legislation affecting law enforcement in North Carolina considered by the 1955 General Assembly. Although major emphasis will be on general legislation which passed, the profession will also be interested in some general bills which failed and in some local legislation. With a few exceptions, this article will not deal with motor vehicle and game laws.

Criminal Law

One of the interesting bills which did not pass (SB 147) would have made it a misdemeanor for any person to knowingly make a false statement to a peace officer constituting a charge of commission of a crime. Sponsors of this legislation were of the opinion that law enforcement has enough to do without going on wild goose chases. Enactment of this bill was designed to make such occasions less frequent. In some jurisdictions, this activity constitutes a common law misdemeanor. The Supreme Court of North Carolina has never ruled on this point, and the fact that this bill did not pass would not preclude application of the common law doctrine if our court found that it was a part of the common law as recognized in this state. Only a prosecution in North Carolina under the common law doctrine would give the answer.

Crimes Against Property

Two bills were introduced at this session which would have changed the law in certain cases of breaking and entering. An attempt in SB 303 failed to make these acts lesser offenses of the two degrees of burglary when committed under circumstances which could constitute burglary except that no intent to commit a felony could be shown. The second bill [Chapter 1015 (SB 302)] succeeded in amending G.S. 14-54 to make breaking and entering during the daytime but without the intent to commit a felony a misdemeanor. This is apparently a form of forcible trespass very similar to the offense set out in G.S. 14-126.

Representatives of Mecklenburg County submitted a bill which would have made it mandatory to impose a sentence of at least 90 days for the second offense of larceny of not more than $100. Although this bill passed the House, it was given an unfavorable report by a Senate committee.

Perhaps as an outgrowth of the tremendous forest fires which raged in Eastern North Carolina while the legislature was in session, Chapter 1076 (HB 1187) was passed regulating the burning of wood waste products at mills within one-fourth mile of any forest area. Violation is made punishable in the discretion of the court.

Vice Regulation

An expected attempt to legalize dog racing throughout the state, which was the only gambling statute anticipated prior to the session, did not materialize. Backers evidently believed that public opinion was so strongly against them that the attempt would have been futile. Traffic in liquor, drugs and sex, however, did receive considerable attention.

To the already imposing list of statutes regulating use of liquor was added a local law [Chapter 1097 (SB 60)] making it a misdemeanor for any person to drink or have in his possession intoxicating beverages in or upon any church, cemetery or school property. After passage by the Senate, this act was made applicable only to Mecklenburg County by House amendment. Another bill, [Chapter 999 (HB 1162)] amends G.S. 18-58, regulating transportation of liquor purchased legally in another state into this state, to forbid transportation with seal or cap open or broken. This has been the law on intra-state transportation.

After unfavorable consideration of several bills making sexual advances to children specific crimes and providing for certification and commitment of sexual psychopaths, the General Assembly passed Chapter 764 (HB 812) making it an offense for any person over 16 to take or attempt to take improper liberties with any child under 16 with the intent to commit an unnatural sex act. The first offense is made a misdemeanor and the second a felony, both punishable in the discretion of the court.

In the field of drug control, an enabling act [Chapter 278 (HB 205)] was passed which would make it legal for physicians, dentists and veterinarians to give oral prescriptions for certain narcotic drugs under regulations promulgated by the United States Commissioner of Narcotics. The only catch is that no regulations have yet been promulgated so that the prevalent practice of utilizing oral prescriptions for narcotics is still illegal. Offsetting this (which may complicate law enforcement), however, is passage of a bill laying down detailed regulations for the distribution of barbiturate drugs. This measure, together with the procedural advances noted below, was a long step in improving drug control in North Carolina [Chapter 1330 (HB 132)]. Drug regulation of a new and different kind is provided by Chapter 1358 (HB 1331), which makes the bootlegging of Salk polio vaccine and the selling of other substances fraudulently asserted to be Salk vaccine felonies punishable by fines and imprisonment up to 10 years or both.

Police Regulations

Society has long since found itself in a position where regulation of conduct short of activity traditionally considered criminal is necessary. Because the police departments cover the entire area on a 24-hour basis in most

localities, enforcement of these regulations has been lodged with the law enforcement agencies. One regulation of this type passed by this General Assembly [Chapter 1204 (HB 1085)] puts law enforcement agencies in the censorship business. This act makes it a misdemeanor, punishable in the discretion of the court, to possess or sell crime comics portraying mayhem, sex acts, or the use of narcotics. This is an act which will test the judgment and wisdom of law enforcement officials. Another such act [Chapter 305 (HB 270)], which will probably be easier to enforce, adds G.S. 130-225.1, making it a misdemeanor to leave a refrigerator or storage box not in use sitting around where it is accessible to children, unless the doors and hinges have been removed. This arises out of the many tragic deaths of children trapped in such airtight boxes during play in recent years. It pertains only to boxes with storage capacity of 1½ cubic feet or more.

A long awaited piece of legislation [Chapter 295 (HB 384)] legalized the use of "yield" signs at intersections for control of vehicular movement. The act authorizes erection of the signs by the State Highway and Public Works Commission and municipalities in their respective jurisdictions and also makes failure to yield in compliance with a sign a misdemeanor. Another vehicular regulation [Chapter 1019 (SB 464)] makes it a misdemeanor punishable by fine of up to $10 for a person to park in a private parking space in a municipality without the express consent of the owner or lessee of the space. The law provides that the space must be clearly marked with the name of the owner or lessee. Another type of parking made illegal is parking on a party telephone line when someone seeking the line states that his call is an emergency [Chapter 958 (HB 1113)]. Classified as emergency calls are those to police and fire departments and for ambulance or medical aid. Obtaining the use of a line by a false claim of emergency is also made a misdemeanor.

A new domestic problem becomes the concern of law enforcement under Chapter 1099 (SB 289). This act makes it a misdemeanor, punishable in the discretion of the court, for a child over 21 to fail to support an aged or infirm needy parent when he can do so after providing for the support of his own family. When more than one child is available for the support, each is required to bear a pro rata share.

No longer will it be necessary for real cops in some counties to crack down on games of cops and robbers in which the noisy and realistic cap pistols are used. Chapter 674 (SB 296) exempts from the regulation of G.S. 14-414 explosive caps designed to be fired in toy cap pistols in which the explosive mixture does not exceed twenty-five hundredths of a grain per cap. (Does not apply to Alamance, Alleghany, Buncombe, Burke, Caswell, Chatham, Cleveland, Durham, Edgecombe, Gaston, Guilford, Haywood, Hoke, Iredell, Mecklenburg, Moore, Nash, Pender, Person, Randolph, Stokes, and Union Counties.)

Criminal Procedure

This session of the legislature probably created more law of importance to law enforcement agencies in the field of criminal procedure than in any other area of interest to the profession. Several pressing problems had arisen in recent years which were dealt with at this session, resulting in valuable new legal tools being made available to peace officers in their job of enforcing the substantive criminal law.

Law of Arrest

Perhaps of wider interest to peace officers with general jurisdiction than any other single piece of legislation is Chapter 58 (SB 40), which rewrites the law governing arrest without a warrant. This act does three things. Its primary purpose is to allow peace officers to arrest for misdemeanors committed in their presence whether or not the misdemeanor involves a breach of the peace. This solves the troublesome public drunk problem. But the new law also allows arrests without warrant for misdemeanors which an officer reasonably believes are being committed in his presence. With this another knotty problem of long standing, what to do about the bulge which indicated carrying of a concealed weapon, is taken care of. The third provision of the new law clarifies a provision dealing with felony arrests. Officers have always been authorized to arrest without a warrant in felony cases when they had reason to believe that the felony had been committed, reason to believe that the subject committed it, and reason to believe that the subject would "escape" if not immediately apprehended. But it was never clear just what "escape" meant. The new law uses the words "evade arrest" to express this requirement, which appear to have a clear and simple meaning. This authority is given to all peace officers. A companion bill (SB 41), dealing with procedures following arrest without a warrant, did not pass.

A bill which failed to pass and which should be considered in connection with SB 40 is HB 867, which would have given wild life protectors and commercial fisheries enforcement officers the power to arrest without a warrant for misdemeanors which they have reason to believe are being committed in their presence. Despite failure of its passage, the purpose of this bill, as far as wild life protectors are concerned, was probably accomplished by SB 40, due to the fact that G.S. 113-91(d) contains a general provision allowing wild life protectors "to exercise such other powers of peace officers in the enforcement of [the game laws] . . . as are not herein specifically conferred." But this is not the case with enforcement officers deriving their authority as deputies of the Commissioner of Commercial Fisheries. Their grant of authority is in G.S. 113-141, which does not contain the general provision cited above from G.S. 113-91(d).

Later in the session, a bill was passed [Chapter 889 (HB 733)] adding a proviso to G.S. 15-47 stating that in no event shall a prisoner be kept in custody without a warrant for more than twelve hours. This bill may present some difficulties. It has long been a popular but unfounded belief that a law enforcement officer could legally detain a suspect a given number of hours, frequently set at twelve, without an arrest being made. This has never been the law. The general rule is that a citizen can never be detained against his will without being arrested and charged with a specific crime. And if the arrest is without a warrant, a warrant must be obtained "as soon as may be." Our courts have interpreted this to mean that a man arrested without warrant at night when a magistrate was not available could be held without warrant until the next morning when the magistrate was in his office, or, on a weekend, until the magistrate was available on Monday morning. This new act does not authorize holding the arrested person for 12 hours without obtaining a warrant when the magistrate is available. It is no grant of authority at all, but an express limitation. It says that under no circumstances shall an individual be held for more than 12 hours without a warrant being obtained. This would seem to make the holding of a subject for more than 12 hours on a weekend until the magistrate was in his office on Monday morning an illegal procedure.

Another bill of great interest [Chapter 332 (HB 419)] created a procedure for use of a summons rather than an arrest warrant in appropriate misdemeanor cases. By amendment to G.S. 15-20, authorization is given to any officer who may issue warrants to issue a summons instead of an arrest warrant in cases in which he believes the summons will be honored. Anyone ignoring such a summons may be fined up to $25, and is subject to arrest by warrant. In cases involving a summons, hearing and trial shall be upon the summons as it is upon the warrant in other cases. This act does not legalize or affect in any way the use of the ticket or citation. In such cases, a warrant for arrest may be issued and served, and hearing and trial are upon that warrant. A citation is issued by a law enforcement officer, while the summons must be issued by a judicial officer just as is a warrant. The advantage of the summons is that it eliminates the necessity of bringing the subject before a magistrate for a preliminary hearing "as soon as may be" after service. The subject is not required to appear until the time of trial.

An entirely new group of officers was given the power of arrest by Chapter 642 (HB 531). By amendment to G.S. 69-2, those deputies of the Commissioner of Insurance engaged in enforcement work are given the power of arrest in cases of arson, other willful burnings, and fraud growing out of false insurance claims in burning cases. These officers already had the power of subpoena to aid them in their investigations. The same bill giving them a limited power of arrest added G.S. 69-3.1 making it a misdemeanor to ignore a subpoena issued in such an investigation.

An effort to extend to municipal enforcement officers the right to pursue and arrest felons anywhere in the state, whether in sight or not, given to sheriffs and their bonded deputies by G.S. 15-42, failed when HB 417 was postponed indefinitely in the House. This is a right which city officers have long sought. Although some have jurisdiction outside the limits of their municipality by special legislative act, the right of "hot pursuit," as such, does not exist in North Carolina. In addition to the lack of authority, officers should be aware that their coverage by workmen's compensation now stops at the limit of their jurisdiction.

Also failing of passage was a measure (HB 420) which would have rewritten G.S. 15-1 dealing with the statute of limitations for misdemeanors. The principal change would have been to stop the running of the statute by issuance of a warrant rather than by the finding of an indictment by a grand jury.

Law of Search and Seizure

Two very important additions to the law of search and seizure were made by Chapter 7 (SB 33), which added narcotics to the list of items for which a search warrant may be obtained under G.S. 15-25, and by Chapter 815 (HB 885), which adds a new section, G.S. 15-25.1, authorizing the issuance of search warrants for barbiturates, drugs which are not classified as narcotics. These two measures, together with the act regulating in detail the distribution of barbiturates, now provide law enforcement officers in North Carolina with the legal tools which they need to cope with the illegal drug traffic.

An attempt (HB 569) to amend G.S. 18-6 to authorize search of an automobile without warrant when an officer has reason to believe that it is being used in the illegal transportation of liquor met with unfavorable treatment in the House. This right is known as the federal rule and is now enjoyed by federal liquor law enforcement officers. The bill which failed would have established safeguards in North Carolina not attached to the federal rule by requiring the officer, on search of a vehicle without a warrant, to give the person in possession at the time of the search a certificate setting out the time and place of search, the objects seized, and the reason for their seizure. The officer also would have been required to keep a copy of this certificate for two years following the search.

Another bill [Chapter 1078 (HB 1193)] amended G.S. 113-140 to change the procedures to be followed in sale of nets and other fishing equipment seized because of use in the illegal taking of fish.

A local act [Chapter 1117 (HB 1249)] which raises a serious question for consideration by all law enforcement officers authorizes the fire chiefs of the towns of Ellerbe, Hamlet, and Rockingham in Richmond County to seize and impound all evidence of "arson" wherever it comes to their attention, whether within the limits of their respective municipalities or out in the county. This act was probably intended to cover all other types of unlawful burning in addition to the one capital crime of "arson" but is not so drafted. The act was passed because there is serious doubt as to whether authority exists for any law enforcement officer to seize and impound evidence of crime other than the fruit of the crime and the instruments by which the crime was committed. A bloody shirt belonging to the defendant in a murder case, for example, might legally be withheld from the prosecuting authorities of the state, under present law, even after investigating officers come upon it during their investigation. Law enforcement associations might well consider this problem in their legislative committees prior to the 1957 session of the General Assembly.

Trial Procedures and Post Conviction Remedies

A move to speed up the proceedings in criminal trials in some cases by allowing waiver of jury trial in all non-capital cases in which the defendant is represented by counsel (SB 28) failed on second reading in the Senate. Jury trials take considerably longer than proceedings before a judge alone. The defendant must be protected from untutored action on the part of lay jurors by long and tedious instructions and other procedures which are not needed when trial is by the legal experts who sit in our superior courts. It is now possible to waive jury trial in cases of petty misdemeanors. This bill, which would have presented an enabling constitutional amendment to the people, was attacked as an invasion of basic rights of the citizen. This provision has been adopted and serves well in other jurisdictions.

Another bill designed to help clear the criminal dockets (SB 272) passed the Senate but was given an unfavorable report in the House. This bill would have authorized waiver of appearance and entry of a plea of guilty without counsel for violations of G.S. 20-141, the statute setting out the general speed laws for the state.

Law enforcement officers have long known that the substantive criminal law is tempered by the opinions of the community in which it is sought to be enforced. Juries have taught them that some actions specifically forbidden by the state criminal statutes just aren't crimes in some localities. The juries acquit with regularity in such cases, no matter what the evidence. Law enforcement officers must simply accept these situations, but some superior court judges have lectured citizen jurors on the evils of thus taking the law into their own hands and violating their oaths as jurors. These lectures were the subject of two bills before the legislature, HB 172 which failed and Chapter 200 (HB 178) which passed. The

bill which failed would have made such comment by the judge "unlawful" while the enacted bill merely makes it grounds for continuance on motion of all other cases on the calendar that week for the remainder of the term.

Five successive bills were introduced in the House in a serious attempt to eliminate the death penalty from the criminal law of North Carolina (HB 924, HB 925, HB 926, HB 927, and HB 928). These bills would have made the punishment for rape, dueling, murder, and burglary life imprisonment unless the jury recommended death. With arson, the maximum punishment would have been life imprisonment. All of these bills were killed except that dealing with dueling [Chapter 1198 (HB 926)], which was amended to provide the same punishment (death unless the jury recommends life imprisonment) as is now in effect for the other capital offenses. It also provides that a plea of guilty with a maximum penalty of life imprisonment may be accepted in dueling as in the other capital cases.

Defeat also was the lot of SB 300 which sought to rewrite G.S. 17-10, a somewhat ambiguous statute dealing with the refusal of habeas corpus. The present law provides that a judge who refuses a writ "legally applied for" shall forfeit $2500 to the aggrieved party. The amendment would have required the judge to state his refusal in a written opinion filed with the clerk of court in the county of imprisonment and provided for certiorari to the Supreme Court for review.

Miscellaneous

Within the license that this heading provides, there might be mentioned a rebirth of the old controversy over whether the words "police department," when used in a statute in North Carolina, mean a municipal police department exclusively. The question arose at this legislature in connection with G.S. 20-125(b) which authorizes "police department" vehicles to be equipped with and use sirens. SB 459 would have amended that section to make it clear that the state highway patrol and sheriffs' departments were so authorized. The bill was never reported by the Senate. Chapter 1024 (SB 520), which amended the section to give specific authorization to the Edgecombe sheriff's department, and Chapter 1224 (HB 1339), which gave specific authorization to the state highway patrol, were then introduced and passed.

There was much talk and little action about revision of the state justice of the peace system at this session of the General Assembly. Bills providing for detailed regulation (SB 129 and SB 202) were given unfavorable treatment. The one regulation passed [Chapter 869 (SB 204)], requires the JPs to make monthly reports to the clerk of superior court except in those months in which they hold no hearings or trials. A local bill repealed a regulation requiring Madison County JP's to use prenumbered receipts in triplicate, [Chapter 1240 (SB 175)].

Rules of Evidence in Criminal Cases

Problems of proof in liquor cases, resulting in a low rate of conviction, led to several bills affecting the law of evidence in respect to such cases. Bills introduced in both houses (SB 555 and HB 1316) attempted to lower the quantity of liquor, possession of more than which raises a presumption that the possession is for purpose of sale, from one gallon to one quart. This would have effectively lowered the limit from five fifths to one fifth. Neither of these bills received a favorable report out of committee. Earlier, a similar bill (HB 1119), which would have made the same change for Gaston County only, met a similar fate.

Apparent disagreement as to the construction to be given the provisions of G.S. 18-49 (which allows transportation of not in excess of one gallon of liquor from a wet county to or through a dry county, providing that the seal or cap is unbroken or unopened and that the transportation is not for purpose of sale) led to three nearly-identical local bills providing that nothing in G.S. 18-49 prevents prosecution for unlawful possession for purpose of sale, unlawful transportation, unlawful sale, or any other unlawful act with reference to whiskey. The bill applying to Haywood County [Chapter 827 (HB 756)] passed, but HB 1151 applying to Northampton and HB 1207 applying to Hoke County failed. Each bill also provided that, in any prosecution for unlawful possession for purpose of sale, unlawful sale, or unlawful transportation, evidence of the defendant's reputation for dealing in and handling illegal whiskey could be shown by the state. The showing could be made after the defendant has been shown to have possessed whiskey, even if tax paid and in legal amount, or the defendant has been shown to have the paraphernalia for selling whiskey, either with or without the odor of whiskey on it.

These provisions make two important changes in the law of evidence pertaining to such cases. First, it allows the showing of reputation for a specific character trait—illegal traffic in liquor. This is not possible under the general North Carolina rule. Under that rule, a witness may be questioned only about the general reputation of the defendant in his community and not about specific character traits. A witness may volunteer such information but may not be asked for it. This is contrary to the law in most jurisdictions, which is that only the reputation for the specific character trait relevant to the trial in progress may be elicited. Second, it allows the state to introduce this evidence of bad reputation for illegal liquor traffic whether or not the defendant has put his character in issue in any manner. Ordinarily, the defendant must either take the stand or submit evidence of good character before the state may attack his reputation and character. This provision should be a potent weapon for the prosecution in Haywood County.

Another local bill of interest [Chapter 311 (HB 440)], adds Mecklenburg to Forsyth to make two counties in which the provisions of G.S. 18-6.1, requiring North Carolina law enforcement officers to try liquor transportation cases in a state court, do not apply. The amended statute was passed originally because lien holders (frequently involved in the illegal activity) were allowed a preference under state law when an automobile used in the illegal transportation of liquor was confiscated and were not under the federal law. For this reason, prosecution in the federal court hurt the bootleggers more. But it also deprived the state of considerable revenue from confiscated autos. This loophole in the state law was tightened in 1953, reducing the incentive for state officers to prosecute their cases in the federal courts. Appearance of this local act, however, indicates that there are still difficulties.

For the second straight session of the General Assembly, legislation (SB 194) which would have established presumptions in drunken driving cases as to state of intoxication based upon blood test for alcohol failed to pass. Another bill, the famous "whammy" bill (HB 183), dealing with evidence in motor vehicle (speeding) cases, also failed to pass. A local bill [Chapter 566 (HB 730)] put Madison County under the coverage of G.S. 20-162.1, the prima facie parking law.

Madison County was the only county not covered by that law in the 1953 General Assembly. Last among the bills relating to evidence in motor vehicle cases is one [Chapter 480 (SB 208)] which amends G.S. 20-42(b) to allow certified copies of the records of the Department of Motor Vehicles to be admitted in court without further authentication.

A bill (SB 299) which would have allowed a jury to have exhibits submitted during trial for its inspection during its deliberations did not pass. The opponents of the bill claimed that it would allow the exhibits to "speak twice" while non-physical evidence can only speak once. Also of possible general interest is the act [Chapter 451 (HB 529)] which gives cities and towns the same power as is possessed by the counties to keep required files and records by photograph. This may have important application in some of North Carolina's larger law enforcement agencies.

Medical Examiner Bill

Of great interest to law enforcement officers is the new medical examiner system authorized for adoption by counties by Chapter 972 (HB 147). The bill sets up a medical examiner system under the State Board of Health. A seven-member Committee on Postmortem Examination is created within the Board to administer the system, on which law enforcement is represented by the Attorney General and the Director of the State Bureau of Investigation. By the establishment of central facilities for toxicological studies and a regional system of autopsy service by trained pathologists, the backers of the legislation hope to improve determination of unexplained deaths in those counties which elect to come under the system. A formal resolution by the county board of commissioners is necessary to make the act apply to any given county. Upon the passage of such a resolution, a medical examiner (who must be a licensed practicing physician) will be appointed for the county, to check on all suspicious deaths and call for autopsy and toxicological service from the experts as he deems it necessary. The functions of the coroner system remain intact except as to determination of medical cause of death. A detailed discussion of this important legislation will appear in *Popular Government* before the effective date of the act (January 1, 1956).

Personnel

(Continued from page 24)

ees—federal, state, and local—are subject to garnishment for state taxes. G.S. 105-385 (e) had previously authorized only the tax collectors of political subdivisions of the state to garnish the compensation of state and local employees.

Personnel and Civil Service

Two Civil Service acts were passed by the 1955 General Assembly. Chapter 299 (HB 493) amends the High Point Civil Service Act by increasing the membership of the High Point commission from five to seven and providing that the new members shall serve 6-year overlapping terms. The High Point act further provides that at least two members from each of two political parties shall serve on the commission. The compensation of commissioners is increased from $2.00 to $5.00 per meeting and members are prohibited from being reappointed until two years after the expiration of their term of office.

Chapter 242 (HB 301) establishes the Cumberland County Civil Service Commission. The five-member commission was appointed for overlapping terms by the resident judge of superior court, the board of welfare, the board of education, the board of health, and the Cumberland County Ministerial Association. The commission has authority over the examining, certifying, appointing, promoting, demoting, suspending, and dismissing of all Cumberland County employees except elected officials, merit system employees, attorneys, and laborers. Present employees were certified to their present positions without examination. The commission is required to certify only one eligible to an appointing authority for each future vacancy. The Civil Service Act prohibits discrimination because of political, religious, or labor affiliations. County employees under the jurisdiction of the Cumberland County Civil Service Commission may not be solicited for any political purpose and may be discharged if they participate in any election in any manner other than exercising their own right to vote.

As has been noted in the discussion of the legislation proposed by the Commission on State Reorganization in the article on "State Government," HB 418, which would have abolished the Merit System Council and established a Merit System Office as a division of the State Personnel Department under the supervision of a new five-member Personnel Council appointed by the Governor, failed to pass the General Assembly.

Leave and Hours of Employment

HB 631, which provided that the offices of the clerks of superior courts in the respective counties may observe such workdays, office hours, and holidays as authorized and prescribed by the boards of county commissioners, was reported unfavorably in the House. However, Chapter 1168 (HB 1297) and Chapter 1259 (SB 576) containing similar provisions and applicable only to Brunswick, Halifax, and Wake Counties were adopted by the General Assembly.

Chapter 825 authorizes the county commissioners of Jackson County to determine the number of employees working for the elected county officials and to set their hours of employment, sick leave and vacation. Chapter 561 authorizes the board of county commissioners of Cumberland County to grant each employee one week of annual leave and 14 days of sick leave in each calendar year. Sick leave may be cumulative to a total of 28 days. Chapter 514 authorizes the commissioners of Columbus County to fix the sick leave and vacation of the judge of recorder's court of Columbus County.

Group Life Insurance

Chapter 1280 (HB 1174) amends G.S. 58-210 (1) (a) to add any county, municipality, or unincorporated municipality to the definition of "employer" under the group life insurance laws. This apparently permits them to pay part or all of the premiums on such insurance policies, but the effect of the act is somewhat unclear.

Chapter 878 authorizes the City of Greensboro to execute group life insurance contracts for its employees providing employee death benefits up to $10,000, death benefits for dependents of employees, and death benefits for retired employees. This local act provides that the full cost of group life insurance coverage of dependents and retired employees shall be paid by the employee, and that the city's participation in the employee's group insurance benefits is limited to one-half of the premium cost of any coverage in excess of $2,000.

1. *Hansen v. Public Employees Retirement System Board of Administration*, 246 P.2d 591 (1952).

Motor Vehicles and Highway Safety

Chapter numbers given refer to the 1955 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

By

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As usual, the Motor Vehicle Laws received considerable attention from the General Assembly. Taking into consideration modifications, insertions, and deletions, no fewer than 125 sections and subsections of Chapter 20 of the General Statutes are affected by new legislation. There was the usual large number of traffic law proposals that did not meet with the approval of the General Assembly.

This year, proposals sponsored by the Department of Motor Vehicles were grouped into five major bills according to five major areas of the motor vehicle laws—driver licensing, title and registration, size and equipment, rules of the road, and financial responsibility. All of these omnibus bills reached ratification, though some not without considerable amendment in the process of passage.

Uniform Driver's License Act

Chapter 1187 (HB 374, introduced by Mr. O'Herron) was the major bill in the area of driver licensing. Unless otherwise indicated, the changes discussed were made by this chapter.

Chauffeurs

G.S. 20-6 is amended by a change in the definition of "chauffeur." Prior to the amendment, two classes of drivers were required to be licensed as chauffeurs: (1) those employed for the principal purpose of operating passenger motor vehicles; and (2) those driving motor vehicles while in use as public or common carriers of persons or property (e.g., taxis and franchise buses and trucks). Under the new definition, four classes of drivers are required to be licensed as chauffeurs: (1) those employed for the principal purpose of operating a motor vehicle, whether passenger-based or property-carrying; (2) those who drive motor vehicles while transporting persons or property for compensation (for hire); (3) those who drive property-carrying motor vehicles licensed for more than 15,000 pounds, except owners of private carriers; and (4) those who drive passenger-carrying motor vehicles of more than 9-passenger capacity, except drivers of church and school buses if they are licensed as operators.

At a glance, it is obvious that the new definition is much more inclusive than the old. In effect, chauffeurs' licenses are required for most drivers of large or heavy vehicles, or drivers employed for the principal purpose of driving, and for drivers of all for-hire vehicles.

Restricted Licenses

An amendment to G.S. 20-7(e) makes it clear that driving in violation of a restriction or limitation noted on the face of a driver's license is equivalent to operating a motor vehicle without a license. For example, a person might have a license restricting him to operation only while wearing corrective glasses. Prior to the amendment, there was some disagreement as to the offense committed by such a person when driving without his glasses. The amendment would seem to provide the necessary clarification.

One type of restricted license is the learner's permit. With such a permit, a person who, except for instruction in the operation of a motor vehicle, is qualified to receive an operator's license may operate a motor vehicle (1) when accompanied by a validly licensed operator or chauffeur, (2) who is actually occupying a seat beside the learner, and (3) when the learner has his learner's permit in his immediate possession. Prior to 1953, it was also clear that such operation for the purpose of learning was permissible only during daylight hours. Chapter 356 of the Session Laws of 1953 deleted the words "during daylight hours" from G.S. 20-12, a section stating conditions under which instruction might be given to a learner. However, the 1953 amendment did not affect G.S. 20-7(1), the subsection defining a "learner's permit." The General Assembly of 1955 has now corrected this oversight, and it is now clear that operation under a learner's permit is permissible at night as well as during daylight hours.

In addition to the standard learners' permits, the insertion of a new subsection, G.S. 20-7 (l-1), permits the Department of Motor Vehicles, in its discretion, to issue restricted instruction permits to applicants enrolled in driver training programs approved by the Department. These restricted instruction permits may be issued to youngsters who are below the legal driving age. They are valid for a school year or lesser period. The Department may restrict such special permits to operation on designated areas and highways, to operation only when accompanied by an approved instructor, and in such other ways as it deems advisable.

Under G.S. 20-11, an operator's license may not be issued to a minor between the ages of 16 and 18 unless the minor's application bears the signature of one of the persons specified in the section. The addition of a new sentence to this section makes it a misdemeanor for a person to sign the application of a minor if the person knows that the application misstates the minor's age.

Servicemen's Licenses

Chapter 1284 of the Session Laws of 1953 amended G.S. 20-7(f) to extend the validity of licenses of servicemen stationed outside North Carolina when their licenses expired. Under the provisions of that chapter, the period of extended validity ended 30 days after discharge from the service. Under the 1955 amendment to this provision, servicemen must (like other licensees) renew their licenses upon expiration. However, they may do so by mail, and the Department of Motor Vehicles is authorized to waive the usual examination, requiring instead a statement of the physical condition and driving ability of the serviceman. By virtue of the same amendment, servicemen's licenses continued in force by Chapter 1284 of the Session Laws of 1953 are declared to expire on July 1, 1955.

Non-issuance of Licenses

G.S. 20-9(f) is rewritten to prohibit the issuance of a license to any person who has a driver's license which is in a state of suspension or revocation in any other jurisdiction, if the grounds for such suspension or revocation would have been grounds for suspension or revocation of a North Carolina license. Prior to the amendment, the subsection prohibited the issuance of a license to a person who had a license under suspension or revocation in a state of which such person was a resident at the time the suspension or revocation

was imposed, without regard to whether the grounds for suspension or revocation would have been grounds for such action in North Carolina.

Driving without a License

Chapters 839 and 1311 of the Session Laws of 1953 were overlapping and somewhat conflicting amendments to G.S. 20-7(n), the subsection setting out penalties for driving without a license. The 1955 amendment removes the conflicts and ambiguities introduced by the two 1953 amendments. For a first or second offense, the penalty is a fine of not less than $25 or imprisonment for not less than 30 days, or both such fine and imprisonment in the discretion of the court. For a third or subsequent offense, the penalty is a fine of not less than $50 or imprisonment for not less than 30 days, or both such fine and imprisonment in the discretion of the court. A person charged with the offense will avoid conviction if (1) he produces in court at the time of his trial upon the charge both an expired license and a new license issued within 30 days of the expiration of the expired license, and (2) the new license is such that it would have been a defense to the charge had it been issued prior to the alleged offense. A person convicted of a first offense is entitled to punishment in the discretion of the court, rather than the application of the minimum penalties, if (1) he has an operator's or chauffeur's license expired less than one year, and (2) the expired license would have been a defense to the charge had it not expired.

Grounds for Suspension

An amendment to G.S. 20-16(a)(6) authorizes the suspension of the driver's license of a person who makes an unlawful or fraudulent use of such license. The provision formerly authorized the suspension only of the driver's license of a person who permitted fraudulent or unlawful use of the license.

As introduced, Chapter 1287 (HB 374) would have added two new grounds for the suspension of licenses: G.S. 20-16(a)(11), authorizing the suspension of the license of a driver convicted of failing to stop at the scene of an accident resulting in property damage; and G.S. 20-16(a)(12), authorizing the suspension of the license of a driver convicted of a traffic offense and placed under suspended sentence on condition that he not operate a motor vehicle for a stated period of time. By amendment to HB 374, the Senate on May 20 struck the former provision, but left in the latter. However, apparently through an inadvertence, in the preparation of the ratified copy of the bill, the former provision was left in, and the latter was deleted. A question, therefore, exists as to the effect of either or both of these two provisions. It is apparently a question that can be answered only by the courts.

Preliminary Hearings

Amendments to G.S. 20-16(a) and (c) make it clear that the Department of Motor Vehicles may either suspend a license and then hold a hearing, or hear first and then, in its discretion, suspend. The amendment to subsection (c) of G.S. 20-16 also allows the Department to require a re-examination of any licensee for whom a hearing is held.

Periods of Suspension

Amendments to subsections (a) and (b) of G.S. 20-19 removed the minimum periods of suspension from those two subsections. Subsection (a) formerly provided a minimum period of 60 days for two convictions of speeding more than 55 miles per hour (but not exceeding 75 miles per hour) within a period of twelve months, or one such conviction of speeding and one conviction of reckless driving within twelve months. Subsection (b) formerly provided a minimum suspension of six months for conviction of speeding more than 75 miles per hour.

New subsection (g) of G.S. 20-19 provides that when a driver's license is suspended under paragraph 12 of G.S. 20-16 (a) (conviction of a traffic offense followed by imposition of a suspended sentence on condition that the defendant not operate a motor vehicle), the period of suspension shall not exceed the period of nonoperation imposed by the court as a condition of the suspended sentence. As noted above, the status of paragraph 12 of G.S. 20-16(a) is in doubt, and therefore this provision also is of only doubtful effect.

Operating Privilege

A new section, G.S. 20-23.1, clarifies the power of the Department of Motor Vehicles to suspend or revoke the operating privileges of unlicensed persons. It also provides that provisions governing suspensions, revocations, license issuance, driving while a license is suspended or revoked, and filing proof of financial responsibility, apply in the discretion of the Department in the same manner as if a license had been suspended or revoked.

Court Report

An amendment to G.S. 20-24(b) adds a sentence requiring a court, when it suspends sentence on the condition that the defendant not operate a motor vehicle, to report such conviction and such period of nonoperation to the Department of Motor Vehicles. The new sentence is obviously a reference to paragraph 12 of G.S. 20-16(a), the provision which was omitted from the ratified copy of HB 374. However, regardless of the validity of that paragraph, the court reports required by the new sentence would be useful because they would permit the Department of Motor Vehicles to maintain a central record of such suspended sentences, which are now matters of record only in the court which imposed them.

Violations of Suspension or Revocation

G.S. 20-28(a), setting out the penalties for driving while a license is suspended or revoked, was amended by three different acts: (1) Chapter 1020 (SB 479), (2) Chapter 1152 (HB 342), and (3) Chapter 1187 (HB 374). Since the second of these amendments merely duplicates provisions of the third, it is not discussed. The first and third amendments are in irreconcilable conflict. The first, introduced by Senator Owens, was ratified May 17, 1955. The third amendment, introduced by Mr. O'Herron, was ratified May 23, 1955. The affect of the Owens bill was to make the penalty for driving while a license was suspended or revoked discretionary instead of mandatory, and to require a hearing under the provision of G.S. 20-16(c) in such cases. The Owens bill did not change the period of additional suspension or revocation (double the period in effect at the time of the offense) formerly provided. It was expressly applicable to all persons "whose licenses were or are additionally suspended or revoked on or after January 1, 1954." The Owens bill also provided that it was to "remain effective notwithstanding the provision of House Bill No. 374 [the O'Herron bill]."

The O'Herron bill rewrote subsection (a) of G.S. 20-28 so that the Department's action remained mandatory, but provided new periods of additional suspension or revocation for the offense. Under the O'Herron bill, the first offense of driving while a license is suspended or revoked requires one year of additional suspension or revocation; the second offense, three years of additional suspension or revocation; and the third or subsequent offense, a permanent suspension or revocation with the right to make application for a new license after a minimum of five years. The bill also makes the penalties provided in G.S. 20-28(a) applicable to all cases of driving while under

suspension or revocation persuant to any provision of Chapter 20 of the General Statutes. Formerly, the subsection applied only to offenses of driving while under suspension or revocation imposed under the Uniform Driver's License Act, and did not apply to the violation of suspension or revocation imposed under the Safety-Responsibility Act. However, under the O'Herron bill, the restoree of a suspended or revoked license who drives without maintaining proof of financial responsibility is punishable as for driving without a license.

Since the Owens bill and the O'Herron bill are apparently in irreconcilable conflict, it would seem, under normal rules of statutory construction, that the O'Herron bill, as the later ratified, takes precedence over the Owens bill. A problem is raised by the clause in the Owens bill which states it shall remain effective notwithstanding the provisions of the O'Herron bill. Nevertheless, if the later bill repealed the earlier, it also repealed a clause in the earlier designed to prevent repeal. The opposite view would allow a bill to pull itself up by its own bootstraps and by its own provision to place itself beyond repeal. Therefore, it appears that the O'Herron bill supersedes the provisions of the Owens bill and is now the law, at least with regard to offenses committed, and suspensions and revocations imposed, after July 1, 1955, the effective date of the O'Herron bill.

Other Changes

An amendment to G.S. 20-16.1 (mandatory suspension for speeding more than 70 miles per hour in automobile, 60 miles per hour in a truck, and 50 miles per hour in a school bus) makes it clear that the exemption from a requirement of financial responsibility following suspension under that section applies to chauffeurs as well as operators.

G.S. 20-17.1 formerly required the revocation of the driver's license and registration of a person who had been legally adjudged insane, an idiot, an imbecile, an epileptic, or feeble minded, or who had been committed to or had entered an institution as an inebriate or an habitual user of narcotic drugs. An amendment now requires the revocation of the driver's license only in such cases.

G.S. 20-18, which formerly excluded the offense of failing to dim headlights when meeting another vehicle as a cause for suspension or revocation, has been broadened by Chapter 913 (HB 524) to exclude also the new offense of failing to dim headlights while following another vehicle within a distance of 200 feet.

Bills That Failed

One proposal strongly urged by the Department of Motor Vehicles was the point system for the suspension of drivers' licenses. Under the point system, a designated number of points is assigned to each violation, and a license is suspended upon the accumulation within a certain period of time of a predetermined total number of points. The point system was embodied in HB 385 which failed second reading in the House.

A hard fought proposal that almost passed was SB 87, introduced by Senator Cooke of Gaston. His bill would have required the Department of Motor Vehicles to grant a hearing in all cases before suspending a driver's license. The General Assembly adjourned before House and Senate Conferees could reconcile their differences.

Among other driver license proposals that failed of approval were HB 434, authorizing the issuance of colored licenses to drivers whose licenses had been suspended or revoked or who had committed traffic offenses; SB 209, in effect making a plea of nolo contendere grounds for the discretionary suspension of a driver's license; and HB 26, providing for mandatory 30-day suspension for practically all speeding offenses.

Registration and Title

Chapter 554 (SB 178) was an omnibus bill which made several changes in the registration and title laws. Unless otherwise indicated, the changes discussed below were made by Chapter 554.

Titles

G.S. 20-58 (B) has been amended to provide that a lien which remains of record with the Department of Motor Vehicles for more than five years shall not affect the issuance or transfer of title by the Department. Prior to the amendment, the only liens which would not affect issuance or transfer of title were those held by persons or firms which had gone out of business and which had remained of record for more than three years.

Amendments to G.S. 20-72 make it a misdeameanor to deliver or accept a certificate of title endorsed in blank (one which does not show the name and address of the transferee or assignee). In addition, the Department of Motor Vehicles is given the power to seize and hold certificates of title endorsed in blank until the name and address of the assignee or transferee is filled in by the assignor, or until the Department has satisfactory evidence to show the name and address of the transferee or assignee.

Registration Plates

G.S. 20-63 (a) has been amended to provide for the issuance of only one registration plate for each motor vehicle, beginning with 1956 plates [Chapter 119 (HB 69)]. Under amendments to G.S. 20-65 and 20-66, operation with the previous year's registration plates is now permitted until February 15, instead of January 31. An implication that the Department is required to issue new registration plates as early as December 1 has been eliminated, apparently with the result that the Department need not issue new registration plates until January 1. If so, the changeover period will be reduced from an eight-week running from December 1 to January 31 to a six-week period running from January 1 to February 15.

Special Registration Plates

Chapter 490 (HB 545) authorizes an increase in the number of special license plates for national guard officers from 900 to 1400, as the result of transference of the entire 30th Division to North Carolina, Chapter 291 (HB 295) authorizes the issuance of special call-letter license plates renewable annually, to amateur radio operators. The fee is one dollar in addition to the regular licensing and registration fee. The special plate may be placed over and cover the regular registration plate. Chapter 1339 (HB 751) provides for the issuance of special "Horseless Carriage" license plates. Vehicles so licensed must be at least thirty-five years old. The registration fee is $5, and registration must be renewed annually.

Permanent Plates

Permanent license plates were authorized by Chapter 382 (HB 75) for use on vehicles owned by incorporated emergency rescue squads. This change is an amendment to the first paragraph of G.S. 20-84. The same section was also amended by Chapter 368 (SB 103) to authorize the issuance of permanent plates for mobile X-ray units owned and operated by the North Carolina Tuberculosis Association, Incorporated, and its local chapters, and associations.

Fees and Penalties

An amendment to G.S. 20-67 (b) requires a person whose name is changed by marriage or otherwise to make application to the Department of Motor Vehicles for a corrected certificate of title; and an amendment to G.S. 20-85 sets the fee for a corrected certificate of title at 50 cents.

Chapter 1313 (HB 10) reduced the gross receipt tax on common carriers of passengers from 6 per cent to 3 per cent. Amendments to G.S. 20-90 and 20-91 make the gross receipt tax on common carriers of passengers and common carriers of property payable on or before the 30th (was 20th) of the month following the month in which it accrues and similarly extends the time for monthly reports of revenue earned and mileage operated.

An amendment to G.S. 20-96 provides that vehicles seized for overloading may be held until overload penalties are paid. There was no authorization previously to hold such vehicles after the excess weight was removed. An amendment to G.S. 20-99 makes it clear that the attachment, garnishment, and execution procedures in G.S. 20-99 may be used by the Commissioner of Motor Vehicles for the collection of overload penalties as well as for the collection of taxes.

Cancellation of Registration

The addition of subsections (h), (i), (j) to G.S. 20-110 provides for the cancellation or registrations and certificates of title on substantially the same grounds stated for denial of registration and certificate of title under G.S. 20-54. In brief, the grounds for cancellation of registration or certificate of title are (1) that the application contain any false or fraudulent statement, (2) that the holder of the certificate was not entitled to its issuance, (3) that the department has reasonable grounds to believe that the vehicle is stolen or embezzled, (4) that the granting of registration or title constituted a fraud against the rightful owner of the vehicle or a person having a valid lien upon it, and (5) that the registration of the vehicle stands suspended or revoked under the Motor Vehicle Laws.

Chapter 294 (HB 383) provides for the cancellation of a certificate of title when the Department of Motor Vehicles finds that the certificate has been used in connection with registration or sale of a vehicle other than the vehicle for which it was issued. The same chapter also makes it a misdemeanor to give, lend, sell, or obtain a certificate of title for any purpose other than the registration, sale, or other use in connection with the vehicle for which the certificate was issued.

Administrative Provisions

Chapter 472 (HB 522) increases the number of persons who may sign legal documents on behalf of the commissioner of Motor Vehicles. It now includes directors and assistant directors of divisions of the Department, and other employees specifically authorized by the Commissioner.

An amendment to G.S. 20-42(b), made by Chapter 480 (SB 208), is intended to avoid the necessity of an appearance in court by an official of the Department of Motor Vehicles for the purpose of testifying to the authenticity of a certified copy of a Department record.

Notice

G.S. 20-48 has a provision which authorizes the Department of Motor Vehicles to give notice by mail and makes such notice effective upon the expiration of four days after the deposit of such notice in the mail. Chapter 1187 (HB 374) makes this provision applicable to all notices authorized or required under any of the provisions of Chapter 20 of the General Statutes. Prior to the amendment, the section was expressly applicable to article 3, and to the rest of the chapter only by implication.

Inspection of Records

Chapter 554 (SB 178) adds new subsection (l) to G.S. 20-49. The new subsection authorizes agents of the Department of Motor Vehicles to require records of automobile dealers, parts dealers, and persons operating garages or other places where motor vehicles are repaired, dismantled, or stored.

Accident Benefits

Chapter 372 (HB 210) adds new subsection (f) to G.S. 20-185. The new subsection extends to the Director, Assistant Director, and inspectors of the License and Theft Enforcement Division of the Department of Motor Vehicles the same salary payment benefits paid to highway patrolmen for injuries resulting from accidents arising out of and in the course of employment.

Size and Equipment

There were a number of important changes in the statute dealing with the size and equipment of motor vehicles. Unless otherwise indicated the changes discussed in this section were all made by Chapter 1157 (HB 521).

Length

Chapter 296 (HB 435) corrects a typographical error in G.S. 20-116(e) so that the subsection now reads that a vehicle combination shall not exceed a length of 48 feet "exclusive" (rather than "inclusive") of bumpers. Chapter 729 (HB 490) further amends the subsection by providing an exception for combinations composed of house trailers and their towing vehicle. Such a combination may not exceed a total length of 50 feet exclusive of bumpers.

Headlights

G.S. 20-129(b) has been amended to require that the headlights on a motor vehicle be of approximately the same candle power. An amendment to G.S. 20-131(a) requires in effect, the dimming of headlights when 500 feet away from an approaching motor vehicle (no distance was formerly specified). The same subsection has also been amended to require that new motor vehicles registered after January 1, 1956, must be equipped with headlight-beam indicators.

Chapter 913 (HB 524) amends G.S. 20-181 to require the dimming of headlights when following another vehicle at a distance of less than 200 feet, unless engaged in overtaking and passing. Violation of the requirment is subject to a fine of not more than $10 or imprisonment for not more than 10 days.

Lights on Farm Tractors

An amendment to G.S. 20-129(f) (formerly 20-129[g]) requires that farm tractors operated upon the highway at night display at least two lights: a white light visible 500 feet to the front, and a red light visible 500 feet to the rear. Two red reflectors of at least four inches in diameter may be used on the rear of the tractor in lieu of the red lamps. Under the former law, a farm tractor was required to display only one light, a white one visible 500 feet to both front and rear.

Stop Lights

New subsection (g) of G.S. 20-129 requires all motor vehicles manufactured after December 31, 1955, to be equipped with a red or amber brake-actuated stop light. The stop light must be visible at least one hundred feet in normal sunlight.

Clearance Lamps

Subsection (a), (b), (c), (d), and (e) of G.S. 20-117.1 contained clearance and side-marker lamps and reflector requirements for semi-trailers operated by for-hire property-carriers. Subsection (e) of G.S. 20-129 contained provision for clearance lamps on vehicles over 80 inches in width. All of these subsections have now been repealed and are replaced by G.S. 20-129.1. The new section is a comprehensive provision setting out requirements for clearance and side-marker lamps and reflectors on all buses, trucks, trailers, and semi-trailers. Its several subsections are too detailed to summarize here. One important provision, applicable to all buses and trucks regardless of size, is the requirement of a stop light and two red reflectors on the rear.

Subsection (h) of G.S. 20-117.1 has

been repealed. It was a verbatim duplication of G.S. 20-117, requiring a red flag (or light, at night) on the end of loads extending more than four feet beyond the rear of a vehicle. Since the latter section remains a part of the law, there has been no actual change in the requirements of a flag or light in such cases.

Brakes

Chapter 1275 (HB 1061) adds subsection (g) to G.S. 20-124. The new subsection requires that brake fluid sold or offered for sale in North Carolina after July 1, 1955, be of a type and brand approved by the Commissioner of Motor Vehicles. Violation of the requirement is declared to be a misdemeanor.

Glass

New subsection (e) of G.S. 20-127 requires that windshields and the rear and side glasses of motor vehicles must be free from discolorations which impair driving vision or create a hazard.

Sirens

Chapter 1224 (HB 1339) amends G.S. 20-125(b) to clarify the authority of the State Highway Patrol to equip its vehicles with sirens and other special equipment.

Red Lights

Chapter 528 (SB 336) amends G.S. 20-130.1 to authorize maintenance and construction vehicles of the State Highway and Public Works Commission to display red lights visible from the front.

Mechanical Inspections

Like its predecessors, this year's mechanical inspections bill was stopped in its tracks. SB 164 did, however, get a favorable report from the Public Roads Committee before it was defeated on second reading in the Senate. The bill would have provided for a simplified kind of inspection to be handled through licensed private garages.

While the mechanical inspection proposal failed, so did HB 112, a bill which would have eliminated the compulsory inspection of used motor vehicles being registered in North Carolina for the first time. The provision which would have been deleted is subsection (i) of G.S. 20-53.

Rules of the Road

Chapter 913 (HB 524) amended several provisions of the Rules of the Road. Unless otherwise indicated, the changes discussed below were made by that chapter.

Reckless Driving

Chapter 917 (HB 822) amended G.S. 20-140.1 to extend the reckless driving statute to some types of private property. More specifically, reckless driving is now a misdemeanor upon the grounds and premises of service stations, drive-in theaters, supermarkets, stores, restaurants, office buildings, and other business or municipal establishments where parking space is provided for customers, patrons, or the public.

Speed

Subsection (c) of G.S. 20-141 formerly required a reduction of speed whenever necessary to avoid collision with persons or vehicles "on or entering" the highway. Chapter 1042 (SB 279) changes the word "entering" to "off," with the result that a reduction of speed is required when necessary to avoid collision with persons on or off the highway.

Chapter 398 (SB 100) amends G.S. 20-141(f) to permit local authorities to fix speed limits on streets and highways in the vicinity of schools and recreational areas. The power afforded to local authorities by this subsection was formerly restricted to speed limits at intersections.

Subsection (h) of G.S. 20-141, prohibiting driving at unreasonably slow speeds, has been completely rewritten by Chapter 555 (SB 193). Formerly, a driver could violate the provision only by wilfully disobeying the directions of a traffic officer to increase his speed. As rewritten, the subsection prohibits the operation of a motor vehicle on a highway at a speed so slow as to impede the "normal and reasonable" movement of traffic. Slow driving because of mechanical failure or in compliance with law is excepted. Farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles are also excepted. The same chapter also inserted into G.S. 20-141 new subsection (h1), allowing the State Highway and Public Works Commission and local authorities, within their respective jurisdictions, to establish minimum speed limits after an engineering and traffic investigation. Such minimum speed limits become effective when appropriate signs are erected. The limits so established do not apply to slow driving made necessary by mechanical failure or compliance with law. Neither do they apply to farm tractors and other vehicles operating at speeds reasonable for the nature of the vehicle.

Chapter 647 (HB 776) requires that all speed zones established by the state be marked with (1) a "Reduce Speed Ahead" sign at least 600 feet in advance of the zone, (2) a sign at the beginning of the zone indicating the speed in the zone, and (3) a sign at the end of the zone indicating the speed which may then be observed.

Racing

Chapter 1156 (HB 499) adds an anti-racing statute, G.S. 20-141.3. Under the new section, racing a motor vehicle on a street or highway is a misdemeanor punishable by a fine of not less than $50, imprisonment for not more than two years, or both such fine and imprisonment in the discretion of the court. Racing is permissible if the race is approved in advance by the Commissioner of Motor Vehicles and conducted according to rules and regulations prescribed by him. It may be questionable whether the new statute, standing alone, is sufficient authority for the Commissioner to approve races, make rules and regulations governing their conduct, permit violations of speed limits and other laws, and close (as would apparently be necessary) portions of highways for the purpose of racing.

Passing

Chapter 862 (HB 1097) modifies G.S. 20-150(c), which prohibits passing at intersections. In effect, the amendment removes the specific prohibition against passing at rural intersections unless such intersections are designated and marked as such by the State Highway and Public Works Commission. It is still unlawful to pass at any intersection in a city or town.

A new subsection (e) has been added to G.S. 20-150. It provides that a driver may not overtake and pass another vehicle on any part of the highway marked by signs or markers clearly indicated that passing should not be attempted. This new provision gives legal effect to the no-passing signs and barrier lines erected and painted by the State Highway and Public Works Commission.

Passing on the Right

Chapter 679 of the Session Laws of 1953 added G.S. 20-150.1, permitting passing on the right in four situations: (1) overtaking a vehicle in a lane designated for left turns, (2) on streets or highways marked for two or more lanes in each direction, (3) on one-way streets, and (4) driving in a lane designated for right turn on red traffic light. Certain conflicts between this provision and other statutes governing passing have been eliminated by the General Assembly of 1955. G.S. 20-149(a) has been amended so that the requirement that the overtaking vehicle pass at least two feet to the left of the overtaken vehicle does not apply when the passing takes place on the right under the provisions of G.S. 20-150.1. Simi-

larly, G.S. 20-151 has been amended so that the requirement that the overtaken vehicle give way to the right does not apply when the passing is on the right pursuant to the provisions of G.S. 20-150.1.

Three-lane Highways

An amendment to G.S. 20-153(a) clarifies the method of making left turns from three-lane highways. Such left turns are to be made from the lane closest to the centerline and which is designated for use by vehicles traveling in the same direction as the vehicle about to turn. If only the extreme right-hand lane is designated for use by vehicles traveling in the same direction as the vehicle about to turn, the left turn must be made from that lane. If the center lane is designated for use only by vehicles traveling in the same direction as the one about to turn, or for use by vehicles traveling in both directions, the turn must be made from the center lane. It should be noted, however, that subsection (c) of G.S. 20-153 allows local authorities to modify the method of turning at intersections.

Signals

Chapter 1157 (HB 521) adds a new paragraph to subsection (b) of G.S. 20-154. It requires that turn and stop signals must be given by electrical or mechanical signal devices if (1) the distance from the top of the steering post to the left outside limit of the body, cab, or load of a motor vehicle exceeds 24 inches, or (2) if the distance from the top of the steering post to the rear limits of the body or load of a motor vehicle exceeds 14 feet.

Right of Way

An amendment to G.S. 20-155(a) excepts vehicles governed by stop or "yield" signs from the rule giving right of way to the vehicle on the right when two vehicles approach an intersection at approximately the same time. New G.S. 20-155(d) requires the driver of a vehicle approaching a traffic circle to yield the right of way to vehicles already within the circles.

Stop Signs

G.S. 20-158(a) has been amended to make it clear that stopping at stop signs is not enough. In addition, a driver must also yield the right of way to vehicles operating on the through highway.

Yield Signs

Chapter 295 (HB 384) adds a new section, G.S. 20-158.1, authorizing the State Highway and Public Works Commission and municipalities, within their respective jurisdictions, to erect "yield right of way" signs at intersections. Drivers approaching intersections so marked must yield the right of way. Failure to do so, however, is not negligence or contributory negligence *per se* in civil actions. A violation is punishable by a fine of not more than $10 or imprisonment for not more than 10 days.

Fire Apparatus

Subsection (b) of G.S. 20-157 makes it unlawful for a driver to follow fire apparatus traveling in response to a fire alarm closer than a distance of one block. It also makes it unlawful to drive into or park within a block of where fire apparatus has stopped in answer to a fire alarm. Chapter 173 (HB 184) adds subsection (c) to make these provisions applicable in rural areas and sets the distance at 400 feet rather than a block. Chapter 744 (SB 309) further amends G.S. 20-157, making it unlawful to drive over fire hose or other fire-fighting equipment. This chapter also makes it unlawful to block fire apparatus from its source of supply, regardless of distance from the fire.

Traffic Lights

Chapter 384 (HB 248) amends G.S. 20-158(c), applicable to rural stop lights erected by the State Highway and Public Works Commission, and G.S. 20-169, applicable to stop lights in cities and towns. It requires that stop lights be so arranged that the red light appears at the top of the unit and the green light at the bottom.

Accidents

G.S. 20-166, the hit-and-run statute, has been rewritten. All of the provisions applicable to property-damage accidents are now contained in subsection (b), and provisions applicable to accidents resulting in death or injury or contained in subsection (c). A driver involved in a property-damage accident is required to (1) stop; (2) identify himself to the driver or occupant of other vehicles involved in the accident, to persons whose property is damaged in the accident, or, if the persons are unknown, to the nearest peace officer. A driver involved in an accident resulting in death or personal injury is required to (1) stop, (2) identify himself, and (3) render aid and assistance to the injured.

An amendment to G.S. 20-182 makes it clear that the felony penalty for a violation of G.S. 20-166 applies only to accidents resulting in death or injury. In the case of such accidents, the felony penalty applies not only to failure to stop, but also to failure to render aid or give required information for identification.

G.S. 20-166.1(c), governing the reporting of collisions with parked or unattended vehicles, has been amended to make it clear that reports to the nearest police agency and to the department of motor vehicles are required whenever the driver is unable to find the owner of the parked or unattended vehicle, regardless of the amount of damage.

Parking

Chapter 1019 (SB 464) makes it a misdemeanor for any person other than the owner or lessee of a private parking space to park within such space without express permission. This space must be clearly marked by a sign showing the name of the owner or lessee. The provisions of the new law are applicable only within the corporate limits of municipalities.

School Buses

Chapter 1365 (HB 1365) amends G.S. 20-217 to bring privately owned school buses within the requirement that vehicles approaching from either direction must stop when school buses have stopped to take on or let off children. The provision is applicable, however, only if the privately owned bus bears upon both the front and rear a plainly visible sign indicating that it is a school bus in letters not less than five inches in height.

Enforcement

Resistance to the Highway Patrol's campaign of intensive traffic law enforcement found expression in two proposals; one of these was approved and the other defeated. Chapter 1132 (SB 370) amends G.S. 20-190 to require that all Highway Patrol cars, except those used for purposes other than highway patroling, be painted a uniform color of silver and black. Cars used in connection with the operation of speed watches and radar are expressly included in the requirement.

HB 183 was the "anti-whammy" bill. It probably attracted as much attention as any other single bill introduced during the session. In effect, it would have drastically restricted the use of radar and electric speed-measuring devices. Under its provisions, evidence of speeding based on the reading of such devices would not have been admissible in evidence until expert testimony had established (1) that the device was properly installed, (2) that it was in good operating condition, and (3) that it was being operated by an experienced, skilled, and trained person at the time the evidence of speeding was obtained. As originally introduced, the bill also required, as a condition of admissibility, that the operators of speed-measuring devices be in full view of persons operating motor vehicles on the highways. Another pro-

vision of the same bill would have granted a tolerance of five percent of the speed indicated by the device in all cases tried upon evidence obtained by use of such devices. Although the anti-whammy bill received favorable reports from two House committees, on second reading it went down to defeat by a 74 to 35 vote.

Financial Responsibility

Most of the many changes in the financial responsibility acts were made by Chapter 1152 (HB 342), a bill sponsored by the Department of Motor Vehicles. Unless otherwise indicated, the amendments discussed below were made by that chapter.

Duration of Proof

G.S. 20-230 and 20-231 (part of the 1947 Financial Responsibility Act) are still applicable to persons whose drivers' licenses were suspended or revoked because of convictions prior to January 1, 1954. These sections were interpreted as requiring proof of financial responsibility to be maintained for two years after reinstatement of a license, and the maintenance of proof had to run concurrently with the license status. Thus, if a person maintained proof for one year, then allowed his proof to lapse and surrendered his license, he had to maintain proof for another year on becoming relicensed. Amendments to these sections make it clear that the requirement of proof in such cases runs for two years from the expiration of the suspension or revocation, regardless of whether or not the person is licensed during the two-year period.

Limits of Coverage

An amendment to G.S. 20-279.1(10) modifies the definition of "proof of financial responsibility." It must now be proof of ability to respond in damages to the amount of $5,000 (rather than $1,000) for property damage.

In G.S. 20-279.5(c), the amount of property-damage coverage in an insurance policy sufficient to exempt a person from the requirement of making a security deposit in the event of an accident has also been raised from $1,000 to $5,000. A third amendment makes the same change in G.S. 20-279.21(b), which sets forth the definition of a "motor vehicle liability policy." Such a policy is the usual method of satisfying the requirement of proof of financial responsibility. All of these changes in property-damage coverage are applicable only to policies written or renewed after July 1, 1955. They were all made by Chapter 1355 (HB 1315).

Definition of Conviction

An addition to G.S. 20-279.1 introduces into the Safety and Responsibility Act of 1953 a definition of conviction which includes a plea of *nolo contendere*. The definition is similar to that contained in G.S. 20-226 of the 1947 Act.

Security Deposit

Chapter 854 (HB 154) amends G.S. 20-279.5(b) to eliminate the requirement of a security deposit when the amount of security that would otherwise be required is $100 or less. Prior to the amendment, smaller security deposits were required in accidents resulting in death, injury, or damage to the property of any one person in the amount of more than $100.

Postponement of Suspension

An amendment to G.S. 20-279.5(b) provides that the Commissioner of Motor Vehicles has 60 days in which to take action after receipt of correct information if erroneous information on any matter affecting his action has previously been submitted. Before this amendment, such postponements were authorized only when the erroneous information previously submitted related to insurance coverage.

Another amendment to the same subsection authorizes the Commissioner to postpone the effective date of a suspension for failure to deposit security for 15 days, if such extension would, in his opinion, aid in the settlement of accident claims.

Forms of Insurance

An amendment to G.S. 20-279.5(c) adds sinking funds and group assumptions of liability to the types of insurance coverage exempting persons from the requirement of making security deposits, provided that such funds or assumptions of liability do, in the judgment of the Commissioner, cover the liability of an owner or operator.

Chapter 1296 (HB 1361) adds a proviso to G.S. 20-281. The proviso allows renters of motor vehicles to qualify as self-insurers or give bond (as provided in G.S. 20-279.24) in lieu of carrying the required insurance.

Chapter 855 (HB 839) inserts into G.S. 20-279.5(c) new provisions governing insurance policies issued by companies not authorized to do business in North Carolina. Insurance policies issued by companies not authorized to do business in North Carolina, but authorized to do business in the jurisdiction where a vehicle is registered, are sufficient to exempt insured drivers from the requirement of making a security deposit in the event of an accident. A policy or bond filed on behalf of a non-resident operator who is not a vehicle owner will be sufficient if the company filing the policy or bond is authorized to do business in the jurisdiction of the operator's residence. These provisions apply only to accidents occurring after July 1, 1955. They do not apply to insurance contracts "now" (apparently a reference to the effective date of the act—July 1, 1955) in effect, but do apply upon expiration or renewal of such contracts.

Settlements, Releases, and Minors

New paragraph (5) of G.S. 20-279.6 provides for the recognition of a more informal kind of settlement agreement than that described in G.S. 20-279.6(4). Under the new paragraph, the Commissioner of Motor Vehicles may exempt a person from the requirement of posting security if he has satisfactory evidence that the person has settled the claims of other persons involved in the accident. Settlement by an insurance company is, for the purposes of this paragraph, considered a settlement by the insured.

New paragraph (6) of G.S. 20-279.6 exempts a person from the requirement of making a security deposit if some other person has been convicted of a motor vehicle offense arising out of the accident, and if the Commissioner of Motor Vehicles determines that the purpose of the article is best served by not requiring a security deposit or a license suspension.

New section G.S. 20-279.6A permits the Commissioner of Motor Vehicles to accept, as the releases of minors, releases which have been executed by parents or guardians. He may also accept the release or settlement agreement of an emancipated minor. The commissioner may, if in his opinion the circumstances make it advisable, refuse such releases and settlements and require the approval of the Superior Court. Apparently the acceptance of such releases and settlements by the Commissioner is effective only for the purposes of the Financial Responsibility Act and does not affect the other rights of a minor who has been involved in an accident.

Technical changes in G.S. 20-279.5(a), 20-279.7(3), and 20-279.10 implement the changes discussed immediately below.

Failure to File Proof

G.S. 20-279.17(a) has been rewritten. It requires licenses suspended or revoked under the Drivers' License Act (rather than under any law), except those suspended under G.S. 20-16.1, to remain suspended or revoked until proof of financial responsibility is filed. Restoration of a license at the end of a suspension or revocation is now subject to re-examination.

Employees of Self-Insurers

G.S. 20-279.5(c) formerly exempted persons qualifying as self-insurers from the requirement of making a security deposit in the event of an accident. A new proviso now exempts also the employees of self-insurers from the requirement of making security deposits in the event of accidents, if the Commissioner of Motor Vehicles determines that the accident probably occurred in the course of employment.

Government Employees

Substantially to the same effect are amendments to G.S. 20-279.5(c) (Chapter 138 [HB 238]) and to G.S. 20-279.32 (Chapter 1152 [HB 342]). Taken together, the two amendments exempt from the requirement of a security deposit federal employees while operating vehicles within the scope of their employment for the federal government. Such exemption is subject to a determination by the Commissioner of Motor Vehicles that the accident probably occurred within the scope of employment.

An amendment to G.S. 20-279.32 exempts from the requirement of a security deposit the operator of a state-owned vehicle when the Commissioner of Motor Vehicles determines that the vehicle at the time of the accident was probably being operated in the course of employment.

A further amendment to the same section exempts from the requirement of a security deposit the operator of a vehicle owned by a political subdivision of the state if the Commissioner determines that (1) the vehicle at the time of the accident was being operated in the course of employment as an employee of the subdivision and (2) that the subdivision has waived immunity and has insurance or some other means of satisfying claims.

Chapter 1282 (HB 1275) specifically exempts school bus drivers from the requirement of a security deposit, when accidents occur in the course of their employment.

Dealers

Chapter 1243 (SB 427) is a comprehensive act providing for the licensing of dealers and other firms and individuals engaged in the manufacturing and distribution of motor vehicles. It is effective July 1, 1955. Specifically, it provides for the licensing, by the Department of Motor Vehicles, of motor vehicles dealers (new and used), manufacturers, factory branches, distributors, wholesalers, distributor branches, factory representatives, distributor representatives, and salesmen employed by dealers. Operation as any of the above without a license is a misdemeanor.

As stated in the act, its purpose is to prevent frauds, impositions, and other abuses, and to eliminate unfair trade practices and unfair methods of competition.

Licenses are obtained from the Department of Motor Vehicles by making application on prescribed forms. Remittance in amounts sufficient to cover the license fees must be enclosed with the application; the Department must act upon all applications for licenses within 30 days.

Fees

License fees are as follows: Manufacturers, $50.00; factory branches, $20.00; dealers, distributors, and wholesalers, $15.00; license for a dealer's supplementary place of business, $5.00; and salesmen and factory and distributor representatives, $2.00. Fees collected for such licenses are applied to the administration of the Act. The fees paid under the new act do not exempt persons from any other license tax or fees imposed by other laws. Unless sooner suspended or revoked, licenses issued under the Act expire annually on June 30.

Display of Licenses

Each license must be conspicuously displayed on the premises of the place of business for which it was issued. A dealer must conspicuously display a current list of his licensed salesmen, showing the names, addresses, and license numbers. A salesman or representative must carry his license while engaged in his business, and must display it upon request. When a licensee advertises in a newspaper or other publication, the type and serial number of his license must appear in the advertisement.

Denial, Suspension, and Revocation

A license may be denied, suspended or revoked on any one of the following grounds: (1) material misstatement in application for a license; (2) willful and intentional failure to comply with any provision of the Act, or with any lawful regulation issued by the Department of Motor Vehicles under the Act; (3) failure of a motor vehicle dealer to have an established place of business; (4) the willful defrauding of any person during the course of business, to that person's damage; (5) fraudulent devices, methods, or practices in the repossession of motor vehicles under retail installment sales contracts, or in the redemption and resale of such motor vehicles; (6) unfair methods of competition or deceptive acts or practices; (7) misleading or deceptive advertising in connection with the operation of the licensee's business; and (8) advertising a used motor vehicle for sale as a new motor vehicle.

There are provisions for notice and hearings in the event that the Commissioner denies, suspends, revokes, or refuses to renew a license.

Insurance

It is unlawful for a dealer to coerce, or offer anything of value to, a purchaser in order to induce a purchaser to provide insurance coverage on a motor vehicle which is the subject of sale. A policy of insurance may not be accepted as collateral on any motor vehicle sold by a licensee unless the company issuing the policy is authorized to do business in North Carolina.

Installment Sales

Every retail installment sale must be evidenced by a written agreement, signed by the buyer, containing all of the agreements of the parties. On or before the delivery of a vehicle, the seller must deliver to the buyer a written statement setting forth the following information: (1) a clear description of the vehicle sold; (2) the cash sale price; (3) the down payment actually paid; (4) the amount credited for trade-in; (5) a clear description of the vehicle, if any, accepted as a trade-in; (6) the amount of the finance charge; (7) the amount of any other charge, and its purpose; (8) the net balance due from the buyer; (9) the terms of payment of the net balance due; and (10) a summary of any insurance protection obtained.

Coercion of Dealers

It is unlawful for a manufacturer, wholesaler, or distributor to coerce or attempt to coerce a dealer to transfer or assign any installment sales contract to a specific company or class of company. Such coercion or attempted coercion is declared an unfair trade practice and an unfair method of competition.

It is also unlawful for a manufacturer or distributor to force a dealer to accept any vehicle or equipment not ordered by the dealer, to enter into any agreement by threatening to cancel the dealer's franchise, and to cancel the dealer's franchise without due regard to the equities of the dealer and without just provocation.

Salesmen

A motor vehicle salesman may not operate as such except for the particular dealer or dealers by whom he is employed. Neither may he sell, assign, or transfer any sale which he has negotiated to another sales-

man or to a dealer other than his employer.

Registration Plates

Only dealers licensed under the Act are entitled to receive and use dealers' registration plates.

Vicarious Responsibility

A licensed dealer is responsible for the acts of his salesmen which are performed while acting as agent of the dealer if, with knowledge of such acts, the dealer retains the proceeds or advantages resulting from the salesmen's act or otherwise ratifies the act. A licensed manufacturer or factory branch is responsible for the acts of its agents which are performed in the course of the licensee's business, whether or not the licensee approves, authorizes, or has knowledge of such acts.

Administrative Powers

The Commissioner of Motor Vehicles is charged with the enforcement and administration of the Act. He is responsible for promoting the interest of the retail buyer and is given the power to prevent unfair competition and unfair trade practices by the use of injunction. He may promulgate rules and regulations for the effective administration of the Act. A copy of such rules and regulations must be mailed to each dealer 30 days prior to the effective date. The Department of Motor Vehicles may inspect the pertinent books and records of any licensee against whom a written complaint is directed.

State Government

(Continued from page 8)

Representative Roger C. Kiser of Laurinburg; Representative Ashley M. Murphy of Atkinson; Senator O. Arthur Kirkman of High Point; Senator John Kerr, Jr., of Warrenton, former Speaker of the House; Senator Robert F. Morgan of Shelby; and D. L. Ward of New Bern, former Senator and former Speaker of the House.

Highway System Study Commission. Resolution 31 (SR 326) authorizes the Governor to appoint a seven-member Commission on the Study of the State Highway System, to study operations of the State Highway and Public Works Commission and make recommendations to the 1957 General Assembly for improvements, and to make recommendations from time to time to the Governor and the Highway Commission as to improvements which can be accomplished without legislation. The Governor has recently announced appointment of the following as members of this commission: Senator Claude Currie of Durham, Chairman; Harold Makepeace of Sanford; John G. Clark of Greenville; Senator Clarence Stone of Rockingham; Representative James Stikeleather of Buncombe; Representative Carroll P. Holmes of Perquimans; and Representative B. T. Falls of Cleveland.

Legislative Reapportionment. Resolution 48 (SR 363) authorizes appointment of a nine-member commission to study the entire problem of legislative reapportionment, and report back to the 1957 General Assembly.

Salt Marsh Mosquito Study. Chapter 1197 (HB 892) authorizes the Governor to appoint a seven-member Salt Marsh Mosquito Study Commission, to study the mosquito problem in eastern North Carolina and make recommendations for mosquito control. This commission is appropriated $15,000 from the General Fund with which to employ professional, technical, and clerical help. The Governor has recently announced appointment of the following as members of this commission: Charles M. White of the State Health Department; Paul A. Griffin, Assistant State Forester; Yates M. Barber, Jr. of Wrightsville Beach; Dr. W. W. Johnston of Manteo; Charles J. McCotter of Bayboro; Dr. C. B. Davis of Wilmington; and Edward McKinley of Morehead City.

Prison Separation Study. Resolution 23 (HR 166) directs the Chairman of the State Highway and Public Works Commission, the Chairman of the Prison Advisory Council, and the Director of Prisons to make certain administrative studies to determine further the feasibility of separating the state prison system from the State Highway and Public Works Commission. Report of their recommendations is to be made to the Governor and to the 1957 General Assembly. In taking this action the General Assembly adopted the recommendation of the 1953-55 Commission on Reorganization of the State Government that further administrative and cost studies be made on the prison separation issue.

Miscellaneous

The 1955 General Assembly heeded a long-standing plea for more office space for state agencies in Raleigh. For many years crowded and congested office quarters have been particularly acute in the Revenue Building, which has been housing a great many agencies other than the Revenue Department. The Board of Public Buildings and Grounds is authorized under Chapter 1190 (HB 629) to construct and equip an office building in Raleigh to house the Motor Vehicles Department, the Wildlife Resources Commission, the Banking Department, and such other agencies as may be assigned quarters by the Board of Public Buildings and Grounds. The cost is not to exceed $1,415,000. At this writing, it is anticipated that construction of the new building will get under way in the late fall or by the first of next year.

The Governor's emergency war powers, due to have expired March 1, 1955, have been extended to March 1, 1957. The law was also amended so that these emergency powers will cover periods of threatened war as well as an existing state of war [Chapter 125 (SB 138)].

The Attorney General was authorized an additional assistant attorney general, to be assigned to the Department of Revenue and the Department of Motor Vehicles [Chapter 56 (HB 124)].

The North Carolina Tort Claims Act, permitting suits against state agencies, was amended in several respects. The maximum allowable recovery from a state agency was increased from $8,000 to $10,000 [Chapter 1102 (HB 451)]. The state may now be liable for tort claims arising out of acts of any officer, employee, or involuntary servant or agent of the state (rather than "employee" alone) while acting within the scope of his office, employment, service, agency or authority (rather than "employment" alone) [Chapter 400 (HB 503)]. This change apparently grew out of a case against the Prison Department, based on an alleged tortious act of a prisoner, in which recovery was denied as a matter of law because the prisoner was not an "employee" of the state. Under another change in the Tort Claims Act, the state and its agencies are prohibited from appealing from a decision of the Industrial Commission involving $500 or less [Chapter 770 (HB 886)].

Public Schools

(Continued from page 26)

the superior court from a decision of the clerk of the superior court in a dispute as to the amount of current expense and capital outlay funds, to have the issues tried by a jury.

Countywide current expense and debt service funds will continue to be apportioned among the administrative units on a per capita enrollment basis. Capital outlay funds are now to

be apportioned on two bases. All capital outlay funds other than those for the cost of new sites, additions to present sites, new school buildings, additional construction on existing buildings, and equipment for new buildings, are to be apportioned to administrative units on the same per capita enrollment basis used in the apportionment of current expense funds. Funds for building sites, buildings, and equipment, as listed above, will continue to be apportioned on the basis of need. A new provision requires the county treasurer, at the end of each month, to remit to each administrative unit in the county all current expense and capital outlay funds collected. The law now spells out that where a greater amount is paid over to an administrative unit than it is authorized to spend in its approved budget for current expense and capital outlay, such fund is to remain as an unencumbered balance to be credited to those funds the following year, and shall not be spent unless a supplemental budget is approved by the board of education and the county commissioners.

The law continues to require the superintendent to examine the records of all the courts in the county, including JPs, to see that all fines, forfeitures, and penalties are correctly and promptly accounted for to the school fund. The county auditor is required to furnish the superintendent on the first day of each month a detailed list of all such funds that may have been paid into the school fund during the preceding month. The provision that this examination be made each three months has been changed to require that the examination be annual. Another change provides that all moneys due witnesses and jurors which have remained unclaimed in the hands of the clerks of inferior courts, as well as of the superior court, for over a year (was two) shall be paid over to the county treasurer on the first day of January each year for the use of the public schools.

A change in the budgetary requirement provides that copies of all school budgets are to be filed with the State Board for information only, rather than for approval as to their fiscal soundness.

Local control over the expenditures of local tax district funds has been strengthened by a provision which prohibits the secretary of a board of education from drawing a voucher for the disbursement of such funds without a written order signed by the chairman of the district committee.

Courts, Judges

(Continued from page 43)

Changes Relating to Miscellaneous Duties of Court Officials

Chapter 658 (HB 424) amends G.S. 47-2 (authorizing certain officers of the armed forces to acknowledge legal instruments for members of the armed forces) to extend this authority to officers of the rank of warrant officer or higher and to make it apply to persons "accompanying" as well as serving with the armed forces.

Chapter 1345 (HB 1080) modifies the forms for proof of an attested instrument slightly. HB 62, which would have modified the corporate acknowledgment form, was reported unfavorably in the House.

Chapter 467 (HB 689), Chapter 696 (HB 897), and Chapter 629 (HB 232) all validate instruments executed in the past which were defective for particular reasons.

SB 383, which would have required the register of deeds to refuse to register any instrument conveying an interest in land which did not contain a reference to the next preceding source of title; SB 354, which would have fixed the sheriff's fees for serving process from courts located outside his county; and SB 559, which would have authorized judicial sales of undivided interests of minors, all received unfavorable committee reports.

Copies of the Institute's "Summary of 1955 Legislation, General Assembly of North Carolina," which contains summaries of all new statewide legislation, organized according to General Statutes chapter, article, and section numbers, may be secured for $2.00 per copy. Copies of a special publication, "Changes in the Motor Vehicle Laws of North Carolina (Chapter 20 of the General Statutes) Enacted by the General Assembly of 1955," which contains in engrossed form all changes made by the recent General Assembly in this area, together with comments thereon, may be secured for $1.00 per copy. Both publications should be ordered from the Institute of Government, Box 990, Chapel Hill.

Publications for Sale

The following Institute of Government publications are currently available for sale to interested citizens, libraries, and others. Orders should be mailed to the Institute of Government, Box 990, Chapel Hill.

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GUIDEBOOK FOR COUNTY ACCOUNTANTS by John Alexander McMahon, 1951, 210 pp mimeo ($2.00)

CALENDAR OF DUTIES FOR CITY OFFICIALS, 1954-55, 12 pp prtd ($.50)

CALENDAR OF DUTIES FOR COUNTY OFFICIALS, 1954-55, 12 pp prtd ($.50)

PUBLIC LIBRARIES IN NORTH CAROLINA, PROCEEDINGS OF THE FIRST TRUSTEE-LIBRARIAN INSTITUTE (Ed. George H. Esser, Jr.), 1952, 47 pp prtd ($1.00)

SOURCES OF COUNTY REVENUE by John Alexander McMahon, rev. ed., 1954, 65 pp mimeo ($1.00)

FORECLOSURE OF CITY AND COUNTY PROPERTY TAXES AND SPECIAL ASSESSMENTS IN NORTH CAROLINA by Peyton B. Abbott, 1944, 86 pp mimeo ($2.50)

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