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November 1955

New Highway Patrolmen on Graduation Day

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CONTENTS

COVER

Since the war the Institute of Government has conducted 14 Basic Training Schools in Traffic Law Enforcement for State Highway Patrolmen. This month 63 recruits completed the first school to extend over a 12-week period. As they went on active duty, they brought the Patrol up to its new authorized strength of 556 Patrolmen.

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THE CLEARINGHOUSE

League of Municipalities Holds 46th Convention

The largest attendance in history marked the League of Municipalities' 46th annual convention in Durham October 23-25. More than 700 municipal officials from throughout the state put in a busy three days of workshops and general meetings.

Mayor Marshall Kurfees of Winston-Salem was elected president of the League for the coming year at the final session. He succeeds City Manager H. L. Burdette of Hickory. Other officers chosen are Mayor E. J. Evans of Durham, first vice-president; Mayor George W. Dill, Jr., of Morehead City, second vice-president; and Mayor Phil Van Every of Charlotte, third vice-president.

Directors from the various districts are Ernest Ward, Jr., town clerk of Edenton, first district; Hugh Hines, city manager of Jacksonville, second district; H. E. Latham, mayor of Roseboro, third district; Edgar Norris, commissioner of Wilson, fourth district; J. A. McDowell, town clerk of Scotland Neck, fifth district; Fred B. Wheeler, mayor of Raleigh, sixth district; Harold Makepeace, mayor of Sanford, seventh district; D. A. Moose, mayor of Albemarle, eighth district; J. R. Townsend, city manager of Greensboro, ninth district; J. Garner Bagnal, mayor of Statesville, tenth district; J. T. Davis, city attorney of Forest City, eleventh district; and Bruce Nanney, mayor of Canton, twelfth district.

The Reverend George Heaton, of the Myers Park Baptist Church in Charlotte, delivered the keynote address on Sunday, centering his remarks on the theme that communities "go forward" according to how well they tap their resources for leadership. Senator Sam J. Ervin, Jr., the featured speaker at the annual banquet, reviewed the prospects of legislation of interest to municipal officials during the upcoming session of Congress. Mayor Ben West of Nashville, Tennessee, told the final luncheon session that municipal officials must establish much closer liaison with the federal government if they are to secure the aid which they need to handle their problems.

At the principal general program session, J. Reuel Armstrong, solicitor of the U. S. Department of Interior, praised North Carolina for the beginning it has made in producing an overall water policy for the state but warned that "The days for leisurely and piecemeal approaches to the solution of our water problems are gone." C. Settle Bunn, chairman of the new State Board of Water Commissioners, and W. E. Long, Jr., chief of the pollution control section of the State Stream Sanitation Committee, then described the programs of their agencies and the problems which lie ahead.

Please Send Us Your Old Session Laws

The Institute of Government recently wrote Clerks of Superior Court, Registers of Deeds, and Sheriffs throughout the state requesting any surplus copies of old North Carolina Session Laws which they might have. We want to thank those who responded so generously to this appeal. We still have gaps in our collection, however, and would welcome any donations, particularly of volumes before 1900. We shall be glad to pay any costs of postage and handling.

The bulk of the program was given over to group meetings for particular officials. Among the speakers at these sessions were Secretary of State Thad Eure; State Treasurer Edwin Gill; President Wally Dunham of the N. C. County Commissioners' Association; John T. Morrisey, general counsel of the League of Municipalities; George H. Esser, Jr., assistant director of the Institute of Government; W. E. Easterling, secretary of the Local Government Commission; Lawrence A. Stith, city attorney of New Bern; William J. Willis of the Westinghouse Corporation, Charlotte; Dave Tobin of the Hagan Corporation, Pittsburgh, Pa.; Patrick Healy, Jr., executive director of the American Municipal Association; Professor W. F. Babcock of N. C. State College; C. L. Barnhardt, city manager of New Bern; C. L. Lineback, city manager of Salisbury; Henry W. Lewis, assistant director of the Institute of Government; L. L. Ledbetter, city treasurer of Charlotte; and Dr. John Bauer, director of the American Public Utilities Bureau of New York.

At the final business meeting the members adopted the following resolutions, among others: (1) calling for a 10-year highway improvement program financed entirely by the federal government, plus a program (on a matching basis) of federal aid to secondary highways, including urban portions thereof; (2) requesting that municipalities be given priority in the disposition of federal surplus property; (3) supporting legislation authorizing the addition of municipal policemen and firemen to the federal Old Age and Survivors' Insurance system; and (4) pledging greater cooperation with the N. C. County Commissioners' Association.

Institute Undertakes Health Law Revision

The first major revision of North Carolina public health laws in history has recently been undertaken as a joint project of the Institute of Government and the State Board of Health for presentation to the 1957 session of the General Assembly.

The first substantial piece of health legislation applicable to the territory which is North Carolina was enacted in 1712. In the 243 years between 1712 and 1955, hundreds of pieces of legislation concerning the public health have been enacted into law. Relatively few changes have been made in the last quarter century, however. The statutory provisions are often full of meticulous detail and obsolete matters, while silent as to matters now recognized as vital parts of health department programs. Because of the manner in which they have grown over the years, there are ambiguous and contradictory provisions.

It is the purpose of this revision to modernize those health laws by eliminating obsolete matters, clarifying ambiguous provisions, and in general drafting a simple health code which will fit the present day needs and practices of state and local health agencies. This project was undertaken with the understanding that persons representing the various technical specialties in public health would work closely with the Institute of Government, examining with care every detail of every provision of the existing statutes, and that the public health specialists would make the decisions with respect to what should

be kept, what added, and what deleted. The resulting proposals will be submitted to health officials and other interested persons throughout the state for study and suggestions before the final bill is prepared for introduction in the legislature.

This project began prior to the 1955 legislature and is expected to be completed during 1956 so that local health officers will have an opportunity to go over the proposed revisions with their legislators, county boards of health, county commissioners, and other interested groups before the 1957 legislative session. A small portion of the project, the revising of the vital statistics laws, was completed and passed by the 1955 General Assembly.

Wildlife Protectors Training School

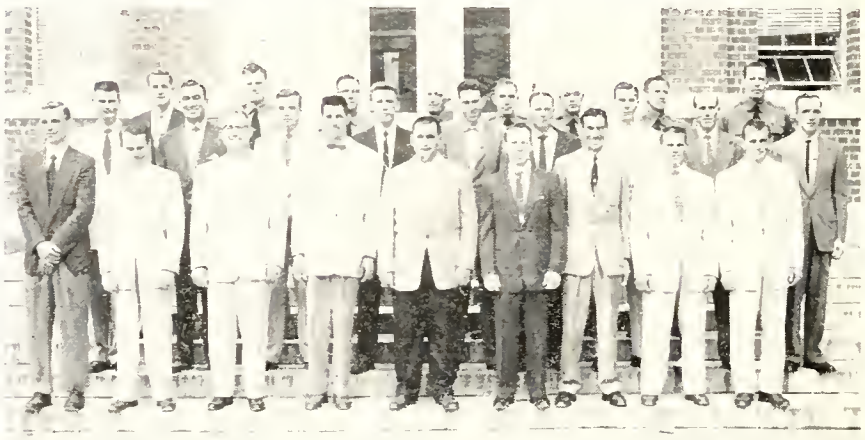
Twenty new wildlife protectors completed a three-weeks, pre-service, training school at Chapel Hill on September 24, 1955. Conducted by the Institute of Government for the N. C. Wildlife Resources Commission, the training school is the most intensive training course offered new enforcement personnel of a state wildlife resources agency in this region.

Included in the broad curriculum were courses in the basic fish and game law, the law of arrest, the law of search and seizure, rules of evidence, investigating techniques, standard and advanced courses in first aid, training in public speaking, life-saving, the use of firearms, and the art of self-defense. Employees of the Wildlife Resources Commission participated in the training program, furnishing instruction in wildlife management and conservation and the various activities of the several divisions of the Wildlife Resources Commission.

Following graduation, five of the graduates were appointed to fill existing vacancies within the enforcement division of the Commission. Six other graduates were immediately given appointments as special wildlife protectors and assigned to various counties. The remaining graduates were appointed deputy protectors and will be carried on a stand-by basis to fill additional vacancies as they occur.

Since 1952 the Wildlife Resources Commission has required all new applicants for a position in the law enforcement division to assemble in Chapel Hill for comprehensive tests of intelligence and familiarity with the fish and game of North Carolina and an oral examination. Candidates are selected on a competitive basis and are then required to pass a thorough physical examination and complete the training school before entering on duty as wildlife protectors.

WILDLIFE PROTECTORS SCHOOL



Front row: Rhyne, Savage, Moore, Wallace, Renegar, Jarrett, Trip, Welch, Godwin.

Second row: Camp, Rawls, Forbis, Boone, Reel, Gause, Metters, Wiles, Lackey.

Rear row: Lineberry; Sups. Wooten, Watson, Woolard, Childers, Rollins, Edmiston, Robertson.

ESC Employees Hold Institute on Economic Development

The "Economic Development of North Carolina" was the theme of the 4th annual Employment Security Institute held in Chapel Hill September 29 through October 1, 1955. The institute was attended by approximately 245 persons, including members of local industrial development councils,

(Continued on page 10)

EMPLOYMENT SECURITY INSTITUTE

Pictured above are speakers and persons attending the 4th annual Employment Security Institute held in Chapel Hill on September 29-October 1.

EROSION OF NORTH CAROLINA'S GENERAL PROPERTY TAX POLICIES BY LOCAL ACTS

By
HENRY W. LEWIS
Assistant Director of the Institute of Government

In preparing a resume of property tax legislation enacted by the 1955 General Assembly for presentation to the annual convention of the State Association of County Commissioners, I decided it might widen my understanding to look not only at legislation of state-wide application but also at special and local acts dealing with property tax matters. This was not a new notion, for anyone who has watched the pattern of North Carolina legislative activity knows that state-wide laws often have their beginnings as local measures. What appears in a local act or series of local acts this year may become law for the whole state a few legislative sessions hence. For present purposes I will omit any discussion of new acts affecting the property tax generally and confine my remarks to special local acts.

As I thought about the project I decided that a fair perspective might best be outlined by reviewing the local property tax acts passed in the five sessions of the General Assembly since the Second World War. Perhaps, I reasoned, these local acts may help diagnose defects in the Machinery Act and other general property tax statutes; and it might be, as I have already suggested, that they will furnish some measure of prophecy of what is going to happen in the future. In addition, I felt it might be well to note the kinds of acts which seem to raise substantial constitutional problems.

Motivation

At the outset I must say that my examination of the local acts has not been exhaustive and that my findings cannot be considered conclusive. At best they are illustrative. My first observation is that more than one reason for using local property tax laws can be discerned without too much study, and I think these reasons should be taken into account from the start.

Lack of Understanding. Some of the local tax laws are unnecessary in that they actually duplicate provisions of existing state-wide laws. Such acts can be explained best by saying that their sponsors were uninformed, or that they were unwilling to rely on their informants and felt that assurance should be made doubly sure. I suppose there is nothing particularly wrong with special acts in this category, but it is plain to everyone that they clutter up the statute books and tend to raise questions when there should be no basis for questions.

Shifting Responsibility. A second class of acts goes a step beyond the first category. The typical situation is one in which the general law permits, but does not require, an official to pursue a certain course of action or remedy. Here the typical special act will remove the discretionary power and force the official to adopt the course of action or remedy. If we assume the sponsors of these special acts know what the general law says on the subject, only one reasonable explanation for such local laws is indicated: Someone—an official, a board, a legislator—wants a prop to support action he desires to take or wants someone else to take; or else he wants to eliminate legitimate excuses for such action not being taken. Two excellent examples of this category suggest themselves:

a. While the legislature has consistently permitted all boards of county commissioners to postpone revaluing real property year after year—even in 1955—at least six counties received from the 1955 General Assembly special acts which in a general sense ordered the boards to proceed to revalue without delay.

b. At least two counties have obtained special acts making it mandatory that deeds be presented to the tax supervisor before they can be admitted to record by the register of deeds. The Machinery Act already gives county commissioners ample authority to require this procedure, but it does not make them do so.

Acute Local Problems. It is incorrect to assume that all local property tax legislation falls into one of the two classes I have described. On the contrary, many such acts reflect thoughtful attempts to solve problems created in some instances by outmoded features of the Machinery Act and in others by what seem to be peculiar local necessities. A few examples may be pertinent:

a. One county obtained from a recent legislature authority to divide its townships for tax listing purposes. At the time the special act was passed the Machinery Act was drawn up on the assumption that ordinarily there would be one list taker for each township and the listing would be done on a township basis. It is significant that the general law was amended in 1955 to follow the theory first advanced in the earlier special act.

b. There is a constantly increasing number of local acts designed to coordinate county building and electrical inspection programs (especially in rural areas) with the work of the tax supervisor's office. This serves the obvious purpose of helping assessors locate the new construction they bave a duty to add to the tax books. There have been six such acts in the last two legislative sessions. Some form of state-wide law in this field seems a reasonable expectation within the next few years.

c. When counties begin to experiment with new kinds of tax records as, for example, upon the introduction of complicated business machines, the general law concerning records alteration and disposal is not always adequate. One county has by special act received legislative permission to do away with the scroll as a required tax record. Two counties have secured permission to print tax rate breakdowns on separate sheets to be used as enclosures to tax notices rather than print the breakdowns on the notices themselves.

Red Flags

Looking across these general classes or categories of local property tax acts it seems to me that there are four general subject-matter areas in which these acts must be most carefully observed. I have in mind (1) discounts for prepayment, (2) statutes of limitations on tax claims, (3) the granting of exemptions, and (4) the allowance of rebates, refunds, and compromises of property taxes. It

is in these fields that the local acts can be productive of most inequality, most legal doubt, and, consequently, of most litigation.

Prepayment Discounts. The granting of a discount as a reward or incentive for paying tax bills before the statutory due date presents an area in which the policies of the counties and municipalities make a complete patchwork. The Machinery Act has established a state-wide pattern for discount rates, but a tally made following the 1955 General Assembly shows that there are twenty-nine local acts on the statute books which authorize local (county or county and municipal) variations from the state-wide provisions. Not only does the rate vary from county to county but in some instances from town to town within a single county. In such a situation it seems to me that the question is not primarily whether the local acts are constitutional but rather whether it is desirable to have a state-wide discount system. Certainly the legislature must have originally taken the view that uniformity would be preferable, but subsequent action as reflected in local acts has so chipped away the general plan that there is a serious question as to whether, in fact, the state has a general discount plan.

The issue can best be raised with a particular kind of taxpayer or class of taxpayers in mind. I am thinking of those who own property and do business in more than one place, more than one county, more than one town. If the discount pattern is uniform throughout the state these taxpayers will adjust their business and accounting practices to meet that pattern; if the discount pattern varies from location to location (not to say from one session of the legislature to another) the taxpayer must make a series of business and accounting adjustments which, it can be argued with force, place him at a distinct disadvantage. Perhaps the new taxpayer or the one who first meets this situation will feel the discrimination most sharply. So long as the state itself imposes no property tax for administration by local units of government the question of the constitutionality of local variants from the state-wide law runs little risk of judicial testing, but whether they do violence to the spirit if not the letter of the Constitution's uniformity requirement is still a serious question for those concerned with law-making in this state.

Statutes of Limitations. Local acts limiting the time within which counties and municipalities may use legal means (foreclosure, levy, and garnishment) to force payment of property tax obligations, it seems to me, fall into the same difficulties as those setting local prepayment discount rates. At the present time sixty-nine counties and the municipalities in those counties[1] operate under some kind of ten-year continuing statute of limitations. This kind of statute was, it seems to me, clearly designed to set the state-wide pattern. Nevertheless, two counties still have no statutes of limitations on tax claims.[2] In between there are rather wide variances: twenty-two counties can collect taxes for years as far back as 1927, but no further;[3] three counties have varying local limitations provisions that make no pattern;[4] and four counties have been given the privilege of deciding whether they will accept the 1927 bar, but without investigation there is no way to determine whether they have accepted it.[5]

Here, as with the prepayment discount issue, the problem is whether there is a firm reason for uniform state-wide policy. Is it wise to have different statutes of limitations from county to county, and in some instances from town to town within a single county? To bring the matter to a point, suppose, as improbable as it may sound, that the state should re-enter the property tax field. It is apparent that uniformity would be a necessity, and the patchwork would be unsatisfactory. Is it wise to build up what amounts to local option on property tax statutes of limitations?

Exemptions. For purposes of discussion I have grouped into one class what might be called "discriminations," that is, those special acts granting exemptions, authorizing reductions in assessed valuations, or permitting taxation at less than 100% of the rate applied to property in general. Such discriminations are not necessarily illegal, but each act must be carefully scrutinized in the light of what Article V, §5, of the North Carolina Constitution says *shall* be exempt and what it says the General Assembly *may* exempt.

> Property belonging to the State or to municipal corporations, *shall* be exempt from taxation. The General Assembly *may* exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. . . . [Italics supplied].

A few illustrations of local acts granting discriminations of this kind will make plain the need for careful examination:

a. Agricultural products furnish a favorite subject for discriminatory local acts. Sweet potatoes, peanuts, and tobacco for the year following the year in which they are grown are granted full tax exemption in County A and in County B if they are held by "any purchaser." (This, it will be observed, is a substantial extension of the constitutionally questionable state-wide exemption of farm products in the hands of the "original producer" for the year following the year in which grown.) In County C anyone who purchases sweet potatoes is entitled to have the valuation of the potatoes he has on hand on January 1 reduced by the amount of money he still owes on the loan he obtained (if any) in order to buy the sweet potatoes. Re-dried tobacco has produced its share of local legislation also: If it is stored in County D or County E "for shipment outside the county" re-dried tobacco is entitled to a full year of total tax exemption. In County F, however, this one-year exemption is granted only if the re-dried tobacco is stored in that county "for foreign shipment".

b. The properties of new industries furnish another fertile field for

(Continued on inside back cover)

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[1] Alamance, Alexander, Alleghany, Anson, Avery, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Craven, Davidson, Durham, Forsyth, Franklin, Gaston, Graham, Granville, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Jackson, Johnston, Jones, Lee (this year), Lincoln, Martin, Mecklenburg, Mitchell, Montgomery, Northampton, Onslow, Pamlico (in 1957), Pasquotank, Perquimans, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rowan, Rutherford, Sampson, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Wake, Warren, Washington, Watauga, Wilkes, Yadkin, Yancey.

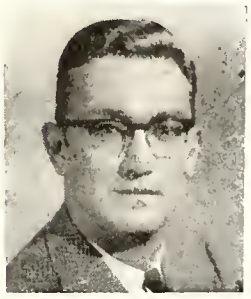
[2] McDowell and Orange.

[3] Ashe, Carteret, Clay, Columbus, Cumberland, Currituck, Davie, Duplin, Edgecombe, Gates, Greene, Hoke, Iredell, Lenoir, Macon, Madison, Nash, Pender, Scotland, Vance, Wayne, Wilson.

[4] Buncombe, Burke, and Dare.

[5] Camden, Moore, New Hanover, and Rockingham.

SOME EQUITABLE PRINCIPLES TO GOVERN CITY-COUNTY FINANCIAL RELATIONSHIPS



By
JOHN ALEXANDER MCMAHON
Assistant Director of the Institute of Government

Some months ago, the Forsyth County Board of Commissioners and the Winston-Salem Board of Aldermen asked the Institute of Government to undertake a study of all existing and potential financial relationships between their respective governments, and to suggest possible ways of arriving at an equitable allocation of financial responsibility between the city and county. The study revealed a variety of financial relationships, not only in Forsyth and Winston-Salem but in other counties and cities throughout the state.[1] Financial relationships were found in connection with property taxation, elections, courts, law enforcement, rural fire protection, public health, hospitals, public welfare, libraries, airports, National Guard, civil defense, and several other areas. While a few relationships had been arrived at through attempts to allocate equitably the costs of joint activities, the general rule seemed to be that historical accident or negotiation or compromise, or perhaps a combination of these three, had brought most relationships into being.

The fact that there is little or no logic in these financial relationships should come as no surprise, for the allocation of governmental functions between counties and cities has not always been logical, either in North Carolina or elsewhere in the United States. In this connection, it must be remembered that county governments preceded city governments in North Carolina, and initially all responsibility for local governmental functions was vested in the county. Later on, cities and towns were incorporated to help persons in more densely settled communities provide the services which the counties could not, or were unwilling to, provide, including more intensive law enforcement than was available from the sheriff's office, fire protection, street construction, water and sewer systems, regulation of the public health, and other urban-type services. Subsequently, city activity was expanded to include the operation of libraries, recreational facilities, airports, hospitals, and other similar services.

Until recently, there was no problem of tax equity. The cities wanted more and better services than the county could perform, and their citizens were willing to pay for them. But more recently, citizens of unincorporated areas have become interested in these new services, too, as they have become aware of the advantages derived therefrom. These citizens, with no one to turn to but county commissioners, have requested county governments to enter into these areas and finance the services for unincorporated areas or to bargain with the city to extend the services to unincorporated areas. With this development, the city taxpayer has been taking a new look at the way governmental services are financed. He wants to know whether he should pay for or subsidize services rendered to unincorporated areas, either by making them available without cost to citizens of such areas or by paying a disproportionate share of the cost of these services. But he has in many cases found that even a suggestion that the county participate more heavily in the financing of such services meets opposition from taxpayers in unincorporated areas who claim that the county should not assume responsibility for more governmental functions.

In this connection, the city citizen has been heard to complain of "double taxation." For example, suppose that a county and city are jointly supporting an activity serving people throughout the county, such as a county-wide library, a county-wide health department, or some similar operation. Suppose further that the county pays fifty percent of the cost of the activity and the city pays fifty percent, and that fifty percent of the total assessed valuation in the county lies within the city. City taxpayers therefore pay one hundred percent of the city's fifty percent share of the activity, plus fifty percent of the county's fifty percent share—or seventy-five percent of the total cost of the activity. The city citizen has questioned not only the equity of such an arrangement, but also its constitutionality. The Supreme Court of North Carolina, however, has recently made clear that there is no constitutional barrier.[2] But the fact that such an arrangement is not unconstitutional does not mean that it is equitable.

The fact that city-county financial relationships may not have developed over the years in a logical manner is no reason why logic and equity cannot be applied to these relationships for the future. In an attempt to do so, the Institute of Government developed four principles in its report to Forsyth and Winston-Salem which can be applied to these relationships. As a brief examination will show, the relationships are of many kinds, and a principle which will fit one area is not applicable to another area. Moreover, brief examination also makes clear that the general principles are almost truisms and that real difficulty comes in attempts to apply them to specific situations. These principles and a brief discussion of them are set forth below.

PRINCIPLE NO. 1

Where a county and a city or cities are co-operating to carry out an activity that each must perform for its citizens, the cost of the activity should be apportioned to each participating government on the basis of its use of the activity.

The activities involved here are those in the general administration area, those which are often referred to as overhead services. The distinguishing feature of all of them is that they are ones that each local government must perform for its own

[1] The full study is available at the Institute of Government in two sections. The first section is entitled *A Study of Seven Large Counties and Seven Large Cities*, and the second section is entitled *A Report to the Forsyth Board of County Commissioners and the Winston-Salem Board of Aldermen Concerning County-City Financial Relationships*. Copies of both sections are available, at a total cost of $2.50.

[2] See "Is 'Double Taxation' of City Residents by the City and County Constitutional?" by John Alexander McMahon, in POPULAR GOVERNMENT, April 1955, at page 7.

citizens, and thus there are possibilities of duplication of effort. The administration of the property tax is a good example.

In administering the property tax, counties are required to obtain lists of property from all taxpayers, to assess such property, to prepare bills for each taxpayer after applying the tax rate to the valuation of such taxpayer's property, and finally to collect the taxes so billed. Cities are required to obtain lists of property from their taxpayers, to use the valuation of such property as set by the county, to prepare bills for their taxpayers, and then to collect the taxes billed.

Several counties and cities are co-operating in this area. The variety of relationships, however, indicates that there is no agreement on what is a fair allocation of costs between co-operating governments. The costs of assessing property for taxation might properly be paid by the county, since it is responsible by law for property assessments; but in some cases cities are assisting in meeting the cost of assessment, perhaps in return for a voice in the selection of assessment personnel or the determination of assessment policies. More often, the joint activity is concerned with preparation of tax bills or with tax collection. Sometimes the costs of the joint activity are shared on a fixed percentage basis, whereas in others the costs are shared on the basis of tax bills. Since a tax bill is the best measure of tax workload, it would seem that formulas which allocate costs on the basis of tax bills prepared or collected would seem to represent an equitable allocation of costs.

Other examples of activities governed by Principle No. 1 are to be found in the law enforcement, elections, and planning areas. A number of counties and cities co-operate in the maintenance of a bureau of identification which serves the law enforcement personnel of both governments. Several counties and cities co-operate in the conducting and financing of elections. And some have joined together to finance a planning board and planning department, which in turn render services to both governments. Again it must be emphasized that these services must be performed by each government, and hence are to be distinguished from the other types of services which are governed by different principles.

PRINCIPLE NO. 2

Where a city is supporting an activity that renders a special service to the county within which the city lies, the county should pay the cost of the service rendered to it, and if that cost is met from the county treasury the service should be available equally to all citizens in the county.

In some cases, cities maintain hospitals or medical clinics, and where the services of such activities are available to residents of both incorporated and unincorporated areas of the county, the county should pay the cost of the service rendered to all of the residents. In some cases, city utilities or other city services are extended to county-owned property in unincorporated areas, and here again the county should pay for the cost of these services. But care must be taken to apply this principle only where the service rendered to the county is available to or benefits all citizens of the county, including those citizens within incorporated areas. The next principle to be discussed, rather than this one, deals with the situation where the city renders a service to citizens of particular unincorporated areas.

PRINCIPLE NO. 3

Activities financed by county-wide taxation should be available to all geographic areas in the county; if a particular activity is performed only in one geographic area, either it should be financed from taxes or other charges in that area or the activity should be extended in some manner to all areas of the county.

The activities covered by this principle include law enforcement, rural fire protection, garbage disposal, and public health.

With the development of city and town police departments, the sheriff at times has been given or has accepted law enforcement responsibility only for unincorporated areas. Little thought has been given to the possibility that this arrangement results in inequitable treatment to city residents, in part perhaps because certain duties performed by the sheriff (such as the service of process and other civil duties) are performed on a county-wide basis, and it is difficult to separate these activities from the costs of criminal law enforcement. Nevertheless, where members of the sheriff's office are assigned to law enforcing duties in rural areas alone, an activity which is not available equally to all areas of the county is being financed by county-wide funds. And while it is true that crime knows no boundaries and a relatively crime-free rural area is of advantage to a city, consideration should perhaps be given to providing more equitable treatment for city taxpayers. It would not seem feasible to finance this rural law enforcement through a tax levied only on rural areas, but it might be feasible to make a per capita payment to the city which would be proportionately equal to the amount spent for law enforcement in the unincorporated areas.

One of the newest county activities is rural fire protection. In some counties, payments are made by the county to fire departments organized and operating in rural areas. In some counties, payments are made to cities to buy or man equipment stationed in the city which is then available to both city and unincorporated areas. And in some counties, a tax is levied in rural areas which desire to establish a fire department so that those who benefit support the program. Under Principle No. 3, if money from the county treasury is used solely to benefit unincorporated areas or areas outside the central city, an inequitable situation results. It is, however, hard to generalize about the rural fire protection programs now in existence. In some counties, the program provides equipment which is available to supplement efforts of city fire departments in emergencies. Moreover, the resulting protection to county-owned property in areas not covered by municipal fire departments is also an advantage to all taxpayers of the county, including those living within the city, all of whom would have to pay for any loss due to fire. Nevertheless, it would not seem to be equitable to finance a program for unincorporated areas *alone* through taxes levied on both unincorporated and incorporated areas of the county, and where such a situation develops a per capita payment to cities for fire protection in incorporated areas might bring equity into the situation.

Because of its close relationship to the public health, counties in recent years have been called upon to supervise the collection by private individuals of garbage in heavily populated areas outside the corporate limits of municipalities. In some cases, this has entailed the necessity of providing garbage disposal facilities for these collectors, and costs have been incurred in so doing. Where such an expenditure benefits only the citizens of unincorporated areas, either directly or indirectly, such an ar-

rangement would not seem to be in accord with Principle No. 3.

In years gone by, counties and cities both maintained their own public health programs, with the city program usually limited to the incorporated area and the county program being carried on in unincorporated areas. The resultant duplication led to a movement to consolidate county and city health departments beginning as early as 1913 and continuing through the late 1930's and 1940's. In many cases, joint financial support accompanied this consolidation, though in recent years there has been a definite trend toward the elimination of city contributions. Joint support of a county-wide health department, however, brings on a clear case of "double taxation" in those cases where the same range of service is provided throughout the county, with the taxpayers living in the city paying for all the city's share plus a substantial portion of the county's share. Of course, the double taxation question does not arise where the city demands a higher level of service than is provided for the county as a whole; in such cases, it would seem to be equitable for the taxpayers living in the city to pay for the costs of special services rendered to them by the county department.

It is to be noted that Principle No. 3 applies to the situation where the county is rendering a service to one area of the county that is not available to other areas. This situation is to be distinguished from one which may look similar in practice but is vastly different in theory: the situation where a service is available to everyone in the county, but because of peculiar circumstances is utilized more in one area than in another. For example, the services of the farm agent are available to everyone in the county, though as a practical matter the services are used more by the people in rural areas than those in incorporated or suburban areas. The reverse is true in health and welfare services, where generally the services are used more in heavily populated incorporated and suburban areas than in rural areas. Nevertheless, all of these services are available to all persons in the county, and it would be a questionable procedure to attempt to allocate the costs of these services according to the use of the services. This would in reality be an attempt to apply the benefit theory to governmental operations, and is most clearly reduced to absurdity in the welfare area. There, the application of the benefit theory would mean that the indigent individual who needs public assistance and is thus most benefited by the program should in turn pay increased taxes to finance the assistance granted to him.

Thus it is suggested that the test should be "availability" and that only services available to one area and not to another should be financed by taxes or other charges levied in the area of availability. No attempt should be made to apportion the costs of services available county-wide to the particular areas utilizing the services. Of course, the line between the area service and the county-wide service will at times be extremely difficult to draw, and will at times give rise to differences f opinion between individuals. But the board of county commissioners and the city governing body concerned would seem to be in the best position to make the determination in a particular instance.

PRINCIPLE NO. 4

At times, the city may wish to undertake an activity that its county is unwilling or unable to undertake, or the city may desire a higher level of service than the county is willing to or able to provide; and the city as a by-product of providing the activity or higher level to its citizens may make such activity or higher level available to outside-city residents. In such situations, city taxes are providing services for outside-city residents, and therefore attention might well be given to the possibility of ultimate county-wide support of the entire activity, recognizing that the acceptance of such support will entail agreement of a majority of all the citizens in the county. If ultimate county-wide support is impossible, the city will have to choose between restricting the benefits of the activity or the higher level to city residents, or if that be impractical, either discontinuing it completely (inside and outside the city) or continuing to make it available to outside-city residents.

This principle and the activities it covers include the most troublesome areas of county-city financial relationships. The main activities in issue are libraries, recreation programs, and airports, though there are others now in existence and still others which may be anticipated in the future.

A number of counties and cities are jointly supporting a public library. In some cases the costs are allocated on a fifty-fifty basis, in some the county carries the main burden of support, and in some the city carries the main burden.

Recreation programs are still predominantly municipal in character, with most large cities making substantial appropriations for a municipal recreation program. At the county level, recreation expenditures are found in only a few places, though these few may portend increased county interest in the future.

A number of counties and cities are jointly supporting an airport. While a large airport may be self-supporting, generally airports in small cities must have governmental subsidization to stay in existence. Here again, some of this subsidization comes from cities and counties jointly, some comes mainly from a city, and some comes mainly from a county.

Understanding county-city financial relationships in this area depends on understanding how and why the activities were originally established. City residents were the first to demand libraries and recreation programs, as salaried workers and wage earners acquired leisure time that farmers had never had; and city residents interested in commerce and industry were the first to demand airports as they discovered the time-saving advantages of air travel. With the demands came enabling legislation, and invariably the legislation was broad enough to authorize a county, or a city, or both together, to undertake the activity at issue, and the legislature invariably left in local hands the decision both as to whether to undertake the activity or not and as to the level of service to be provided. Thus each government could do just as much or just as little as its citizens desired.

Because the impetus to undertake these activities originated with city residents, cities were generally first to begin the activities and even today are more ready to undertake and expand financial support. In part this is true because no activity is begun or long continued unless it has the support of a majority of the citizens of the government concerned, and residents of unincorporated areas have been slower than city residents to recognize the value of these new activities. In the second place, libraries, recreation programs, and airports have been categorized as non-necessary expenses by the Supreme Court of North Carolina; and Article VII, section 7, of the North Carolina Constitution provides that taxes may not be levied for the support of a non-necessary expense without the approval of a majority of the

voters. Unlike cities with their revenue-producing water and light systems, counties, with the possible exception of those operating alcoholic beverage control stores, have had no large non-tax revenue sources with which to support these activities without a vote of the people.[3] Thus cities have been financially better able to begin these activities, for as a practical matter it is far easier to begin an activity when an approving vote is not required than it is if such a vote is a condition precedent to support.

In some cases, these activities were begun by cities acting by themselves, and in other cases these activities were begun by cities and counties acting jointly. In either event, the benefit of the activity was often extended equally to all citizens of the county for practical reasons. For example, traffic at airports could not be limited to city residents; in many cases there was no practical way to limit the use of recreation facilities to city residents alone; and state aid to libraries including city libraries was predicated on the rendering of county-wide service.

As these activities came to render equal service to all citizens of the county, city residents began to feel that an inequitable situation had developed. Some of them have been and are ready to argue that Principle No. 4 should read: "County-wide services should be financed from county-wide taxation." In this connection, a number of things must be kept in mind.

First, the present situation, insofar as it might be said to treat taxpayers living in incorporated areas inequitably, was entered into voluntarily by the city and was not imposed on the city by the county. The city was not required to undertake any of these activities and is not required to continue their support. Moreover, it would not seem to be fair for the city to begin an activity, offer the facilities to anyone who might care to use them, and then without further ado say that since the activity is available equally to all citizens of the county, in all fairness the county should assume full financial support.

Second, it must be recognized that where a county-wide service is supported in part or in full by a city, and where the service is reasonably accessible to and accepted by residents of unincorporated areas, the city is subsidizing outside-city residents. It would not seem to be an answer, even if it were true, that greater use by city residents justifies a contribution by the city over and beyond county-wide support, because in the discussion of Principle No. 3 the use of an activity by geographic areas was discarded as an appropriate measure of allocation of costs, and it was pointed out that the more appropriate measure was availability of services to geographic areas.

Third, the assumption of increased or full support by the county will depend on the willingness of residents of both unincorporated and incorporated areas of the county to assume the increased burden, and in the case of substantially increased or full support the absence of sufficient non-tax funds may well necessitate a county-wide tax vote. Because individuals when they vote are motivated by a variety of considerations, the election may not depend solely on the question of the equitable allocation of support between county and city governments.

Fourth, if a county is unwilling to assume full or even greater support, the city can limit the activity to city residents. If that is not practical, then the choice is more difficult: it may either eliminate the activity or continue it in hopes that the county at a later date will accept support. The city is therefore not without alternatives, though none may be as acceptable as county support.

With these things in mind, let us re-examine the library situation where a county and a city within its borders are jointly supporting county-wide library service. Undoubtedly the original impetus came from the city. Nevertheless, the city property owner is now paying twice: he assists in the county's portion of support and he assists in the city's portion of support.[4] Moreover, the full services of the library are available equally to all citizens of the county, both the individual who lives in the city across the street from the library and gets books from the circulation desk and the individual who lives miles away in an unincorporated area and gets the same books from the bookmobile. The city may thus be entitled to ask the county to assume full support, perhaps on a gradual basis over a period of years, but it must find willingness and ability of residents of unincorporated as well as incorporated areas to assume such support. If the citizens of the entire county are not willing to assume full support at present levels, the city then has several alternatives: restricting the use to city residents and abandoning the present joint support arrangement, abandoning the activity altogether, reducing the level of service to that supportable by the present county contribution, or continuing the present arrangement in hopes of full county support in the future.

In the recreation area, the situation is much the same but with one difference. Whereas the bookmobile brings library facilities to every part of the county, recreation facilities have fixed locations, and the problems of accessibility to residents of unincorporated areas does present a problem. But basically the situation is the same as that discussed above in the case of the library.

In other areas, similar problems exist or may be anticipated. Both civil defense activities and National Guard contributions are areas where joint support has been found in many places, though total support is relatively small. Moreover, the 1955 General Assembly has opened up additional possibilities, by authorizing joint county and city support of historical societies and museums, art galleries, art museums, and art centers. In these latter areas, we may well find the traditional pattern of residents of incorporated areas being more ready to embark upon such activities and to support them at a higher level than is true of residents of unincorporated areas.

It can be readily seen why the activities that fall under Principle No. 4 are so troublesome. They are optional activities, with neither counties nor cities required to undertake them. City residents have been more ready to demand them than have residents of unincorporated areas. Where these activities are supported in part or in full by the city and are equally available and reasonably accessible to all citizens of the county, there is subsidization of the outside-city residents. But even where there is subsidization, county-wide support

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[3] The Supreme Court of North Carolina has repeatedly held that while tax support of these activities may only be undertaken with a vote of the people, non-tax revenues can be used for such support without a vote.

[4] The fact that non-tax revenues are used for support does not change the picture. If these non-tax revenues were not used for this non-necessary expense, they would probably be used to reduce the tax burden of financing necessary expenses.

PUBLIC PURCHASING

By WARREN JAKE WICKER
Assistant Director, Institute of Government

Bulletin and Other Purchasing Services Started by Institute

The Institute of Government, in cooperation with the Carolinas' Chapter of the National Institute of Governmental Purchasing and other purchasing officials in North Carolina, has begun a purchasing bulletin service for the purchasing officials in the cities, towns, and counties of North Carolina. Commenting on the new purchasing bulletin, Albert Coates, Director of the Institute of Government, said:

"This Bulletin is the latest in a series of services to purchasing officials, the beginnings of which are to be found in the 1930's. In the past the Institute held schools for purchasing officials, published special studies of interest to them, and carried a number of articles in the magazine, *Popular Government*, containing discussions of purchasing problems.

"Since the end of World War II, the staff of the Institute has been planning expanded purchasing services. These plans were still in their formative stage when the Carolinas' Chapter of the National Institute of Governmental Purchasing was founded in the spring of 1953. The Institute was represented at the first meeting of the newly formed chapter and discussed with those present the kind of services they wanted from the Institute. These discussions continued with the officers of the chapter until the present plans were formulated.

"The Institute has been fortunate in securing the services of Warren Jake Wicker to put these plans into effect. Mr. Wicker joined the staff this past August, after several years of experience in private business. In the future, all purchasing services will come under his direction.

"I wish to take this opportunity on behalf of myself and the other members of the Institute staff to thank the officers and members of the Carolinas' Chapter of NIGP for their assistance in the formulation of plans for the Institute's present purchasing services. Without their help the plans could not have achieved their present stage of development. And without their help in the future, and the help of other officials with purchasing duties in the municipalities and counties of North Carolina, the services cannot reach their full potential. We ask the cooperation of everyone in this undertaking: send us your materials, and ask for our help in solving your problems. That will be the best way to make these services useful."

The expanded purchasing services of the Institute include the establishing of a library of purchasing materials and the conducting of special studies in addition to the publishing of the BULLETIN.

The PURCHASING BULLETIN will be published monthly and will be distributed to over 300 officials with purchasing interests in the cities, towns, and counties of North Carolina. The BULLETIN will serve as a monthly forum for the exchange of purchasing information. News on the development of new specifications, new products, reviews of books and articles, news of people in the purchasing field, reports on bids received, and other similar items will be carried regularly. All purchasing officials are urged to contribute their ideas and experiences with new practices and products for publication.

A library of materials and reports in the purchasing field will also be developed and maintained by the Institute of Government. Especially important here will be a library of specifications. Every purchasing agent is requested to send to the Institute a copy of every Invitation for Bids. In this way, a large file of specifications will soon be accumulated. The BULLETIN each month will list the specifications received so that all subscribers will know which specifications are on file. Any specification on file may be borrowed by writing to the Institute.

Special studies of problems in the purchasing field will be made from time to time by members of the Institute in cooperation with purchasing officials throughout the area. For example, special surveys will be made with respect to emergency purchase practices, with respect to the use of central stores and warehouses, and the use of bid deposits and performance bonds. Reports on these will be carried in the BULLETIN and will be available to any interested official.

Procedure for Opening Bids

A county purchasing official recently raised a question with respect to the procedure which should be followed in the opening of sealed bids on proposed construction or purchases of a city or county or other governing board. Section 143-129, General Statutes of North Carolina, provides in part as follows:

> "All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract."

Does this provision require that all bids be opened before the board or governing body only, or may a duly authorized official open the bids at a time and place announced to the public, tabulate the results, and at a later time bring these results before the board or governing body for recording on the minutes and further action?

Some cities and counties follow the first procedure outlined and others follow the second. In general, the larger municipalities tend to follow the second procedure while in the smaller units bids are usually opened before the governing body itself.

It is obvious that much time will be saved for the members of the governing body if the bids are opened and tabulated before the meeting of the body. This allows copies of the tabu-

lation to be prepared for each member and eliminates the time consumed in opening and reading the bids aloud. Thus consideration of the bids by the members of the governing body is made easier.

On the other hand, since in actual practice the public openings of bids by a designated official are frequently attended by few people, such an official becomes more susceptible to charges of favoritism.

Considering these factors, the Institute of Government asked the Attorney General to render an opinion as to which procedure should be followed in the opening of bids, or if either procedure might be followed and still comply with the provisions of G.S. 143-129 quoted above. In a letter dated October 3, 1955, and referring to the two possible interpretations as to procedure, the Attorney General stated in part:[1]

> ". . . I agree . . . that G.S. 143-129 is susceptible of either of the interpretations. . . .
> "I see no objection to having a designated official open the bids in public, tabulate them, and report them to the governing body for appropriate action."

Since either procedure achieves compliance with the statutory requirements, governing bodies are free to choose the one which best fits their particular situation.

1. Letter to Mr. John Alexander McMahon, Assistant Director of the Institute of Government, who had addressed the inquiry to the Attorney General.

City-County Financial Relationships

(Continued from page 8)

will depend on the willingness of all the citizens of the county to undertake the entire or increased financial support of the activity, and in the case of substantial support of a non-necessary expense this will probably mean an approving vote of the people.

Perhaps in some of these areas, there currently exists an equal desire for the service by all people in the county, including those in unincorporated as well as incorporated areas, and the service may be accessible equally to all. But until this situation exists, the area may still be one for negotiation and compromise, perhaps increasing county support, perhaps working toward ultimate county support. Progress can come, however, only with a spirit of whole-hearted co-operation on the part of all concerned: county and city governing bodies and outside-city and inside-city residents.

CONCLUSION

The Institute of Government hopes that this discussion of county-city financial relationships will stimulate thinking about them, for therein lies the approach to agreement and equity. It must be noted that there is yet no general acceptance of the principles herein discussed. Subjecting these principles to critical examination in the market place of ideas may reveal flaws in the principles and suggest modifications of them. And of course even in the event of agreement on the principles, there may still be difference of opinion in their application to specific situations. Progress in this area will depend largely on the spirit with which counties and cities having financial relationships approach an examination of them.

ESC Institute on Development

(Continued from page 2)

industrial committees of local chambers of commerce, state and local officials, and employees of the Employment Security Commission.

The institute was sponsored this year by the North Carolina Chapter of the International Association of Personnel in Employment Security, the N. C. Employment Security Commission, the Institute of Government, and the N. C. Department of Conservation and Development.

In addition to an address by Governor Luther H. Hodges, 26 persons, including businessmen, college professors, and federal and state officials, spoke to the institute. At the opening session of the institute, Dr. C. S. Logsdon, Professor of Marketing of the University of North Carolina, spoke on "What is Economic Development," and Dr. Lowell Ashby, Professor of Economics of the University of North Carolina spoke on "North Carolina's Income Standing."

The second session of the institute considered the topic of "Schools and Colleges and Economic Development." Speakers included Dean Marcus E. Hobbs, Graduate School, Duke University; Dean J. H. Lampe, School of Engineering, N. C. State College; J. Warren Smith, State Director, Vocational Education, N. C. Department of Education; C. L. Beddingfield, Director, Division of Apprenticeship Training, N .C. Department of Labor.

"Water, Taxes, and Economic Development" was discussed by Col. B. C. Snow, Chief Engineer, Water Resources Division, N. C. Department of Conservation and Development; E. C. Hubbard, Executive Secretary, State Stream Sanitation Commission; Eugene Shaw, Director of the N. C. Department of Revenue; and Dr. Frank deVyver, Professor of Economics, Duke University.

"Promoting Economic Development" was discussed by Cecil Bell, Industrial Engineer, Commerce and Industry Division, N. C. Department of Conservation and Development; Capus Waynick, Director of the Governor's Small Industries Plan; and George Colclough, Executive Secretary, Chamber of Commerce, Burlington, N. C.

"Industry and the Economic Development of North Carolina" was the topic of speeches by Stanley W. Black, Jr., Senior Vice President, American Trust Company, Charlotte; Dan Stewart, Agricultural Development Director, Carolina Power and Light Company; George Spaulding, Sales Promotion Manager, McLean Trucking Company, Winston-Salem; and J. W. Goodwin, Traffic and Sales Manager, Eastern Airlines, Raleigh.

A panel composed of T. S. Tolar, Vice President, Burlington Industries, Inc.; John O. deVries, Manager, General Electric Plant, Asheboro; and Harry Smyth, Vice President, Saco-Lowell, Sanford, discussed "The Experience of Industry in North Carolina."

On Saturday morning, J. W. Beach, Director, Employment Service Division; Hugh M. Raper, Director, Bureau of Research and Statistics; Alden P. Honeycutt, Supervisor of Industrial Services, Employment Service Division; and Dr. Louis Levine, Assistant Director, Bureau of Employment Security, Washington, D. C., discussed "What Can the Employment Security Commission Do to Further the Economic Development of North Carolina?"

Dr. Paul Guthrie, Chairman of the Department of Economics, University of North Carolina, summarized the institute during the concluding session. The proceedings of the institute will be published as the Fall, 1955, issue of "The Voice," the quarterly publication of the N. C. Chapter of the International Association of Personnel in Employment Security.

THE ATTORNEY GENERAL RULES...

PUBLIC HEALTH

Expenditure of health funds; health officer as county physician. (1) Is the compensation of a county health officer, and the amount of funds to be expended by the county board of health controlled by the board of county commissioners? (2) Is a county health officer required to perform the duties of county physician?

To: R. J. Hester

(A.G.) (1) G.S. 130-19 provides that all expenditures by county boards of health shall be approved by the board of county commissioners before being paid, and G.S. 153-59 provides that the board of county commissioners is invested with full power to direct the application of all county revenue. Therefore, I am of the opinion that the health officer's compensation and other expenditures by the county board of health must be fixed by the board of county commissioners. (2) Construing G.S. 130-21 and 130-22 together, it is our opinion that if the county fails to appoint a county physician, the county health officer is to perform the duties of county physician.

PUBLIC WELFARE

Adoption. May a next friend appointed by the court represent the minor spouse of a petitioner in an adoption proceeding?

To: Dr. Ellen Winston

(A.G.) It is our opinion that G.S. 48-4, providing that any person over 21 years of age "may petition" to adopt a child, was intended only to permit the creation of the relationship of parent and child through adoption in cases where the petitioners (husband and wife) have reached the age of twenty-one years at the time the petition is filed, and that this relationship may not be created by a next friend appearing for an infant petitioner since the infant herself is the real plaintiff (petitioner) in the proceeding.

Uniform Reciprocal Enforcement of Support Act. Do the 1955 amendments to the Uniform Reciprocal Enforcement of Support Act (ch. 699, S.L. 1955) confer jurisdiction in such cases upon the Henderson County Recorder's Court, which has only criminal jurisdiction?

To: J. W. Jackson

(A.G.) In my opinion, the amendments do confer civil jurisdiction upon the recorder's court in the case of proceedings received in your county which have been filed in another state against a defendant residing within the jurisdictional bounds of the court. Where the proceedings are initiated in this state to be sent to another state, they are to be commenced in the Superior Court or Domestic Relations Court.

FIRE PROTECTION

Municipal Liability for Failure to Protect.

To: Bruce B. Brown

(A.G.) Under G.S. 69-25.8, no liability shall be incurred by any municipality on account of the absence from the town of any or all of its fire-fighting equipment or firemen while furnishing fire protection outside the corporate limits under the Rural Fire Protection Districts law.

Warning Signals on Cars of Volunteer Firemen.

To: W. C. Oliver, Jr.

(A.G.) A volunteer fireman may install a red light on the front of the automobile in which he responds to calls, but under G.S. 20-130.1 it may be turned on only while the car is being used in the performance of his duties as a fireman. Under G.S. 20-125 the chief and the assistant chief of any fire department (paid or voluntary) may use a siren on privately-owned cars used in performance of their duty, but no other fireman may use such a siren.

Rural Fire Protection District Election.

To: J. N. Pruden.

(A.G.) It seems to me that under the provisions of G.S. 69-25.1 and 69-25.2, the Board of County Commissioners, rather than the County Board of Elections, has the responsibility of conducting an election as to the creation of a Rural Fire Protection District.

DOUBLE OFFICE HOLDING

Member of Board of Appeals under Airport Zoning Ordinance.

To: T. C. Hoyle

(A.G.) I am inclined to believe that membership on the Board of Appeals created in connection with an airport zoning ordinance (under G.S. 63-33 (3)) would constitute an office under Article XIV, Section 7 of the N.C. Constitution.

CRIMINAL LAW

Sentence for Involuntary Manslaughter. Is the maximum punishment for involuntary manslaughter 10 years under G.S. 14-2 or 20 years under G.S. 14-18?

To: Honorable Clarence W. Hall

(A.G.) Since the punishment for involuntary manslaughter is "in the discretion of the court," which has been held to be a specific punishment, G.S. 14-2 does not apply. Since the purpose of the separate punishment for involuntary manslaughter is mitigation, the maximum of twenty years applicable to voluntary manslaughter as set out in G.S. 14-18 applies, but the minimum of four months does not. Less than four months or even a fine might be set as the punishment.

MOTOR VEHICLE LAW

Sentence for Violation of G.S. 20-180. Is punishment for violation of the motor vehicle law provisions listed in G.S. 20-180 limited by G.S. 20-176 or may imprisonment of up to two years be decreed?

To: Honorable Clarence W. Hall

(A.G.) It is our opinion that G.S. 20-176 is a limitation upon the punishment assessable under G.S. 20-180, making the maximum punishment for the offenses there listed a fine of not more than $100, imprisonment in the county or municipal jail for not more than 60 days, or both such fine and imprisonment.

PROPERTY TAXES

Tax Situs of Personal Property Owned by North Carolina Linen Service Corporation Operating in More Than One County. The charter of a linen service corporation indicates that its principal office is located in County X. In practice this company maintains no property at that address, but it does have a plant in County Y "consisting of offices, the cleaning plant with storage space, and some parking space for its trucks". In addition, the plant in County Y maintains a stock of towels and linens which this plant launders and rents to various customers. No one customer routinely gets the same towels and linen; each merely gets a supply of laundered items sufficient to meet his needs. In addition, the company furnishes cabinets to its customers to hold the rented towels. These cabinets remain on location with a customer as long as he continues to be a customer. The plant in County Y carries on its rental and laundering activities for customers in both County Y and County Z. Which personal property of this company is subject to taxation in each of these two counties?

To: Thomas A. Banks and Fred P. Parker, Jr.

(A.G.) The linens and towels, that is, all materials which are regularly laundered by the plant in County Y, are subject to ad valorem taxation in County Y. The towels and linen are not maintained in County Z in such a manner and for such a period as would make County Z the tax situs thereof within the meaning of any of the exceptions set out in G.S. 105-302. On the other hand, the towel cabinets or racks placed on location in County Z and left there indefinitely are subject to taxation in County Z under G.S. 105-302(4), and if they have not heretofore been listed for taxation there, the provisions of G.S. 105-311(3) give County Z authority to assess such towel cabinets or racks for preceding years, not exceeding five, in addition to the current year. Furthermore, in view of the strict provisions of G.S. 105-403 and G.S. 105-406, it is doubtful that County X would be authorized to make any refund of taxes collected on towel cabinets and racks located in County Z unless the taxes were paid under protest with notice in writing to that effect at the time payment was made.

Tax Situs of Resident's Property outside County on Tax Day. A resident of County X purchased two tractors from a corporation in County Y in the month of December, but the purchaser did not actually receive the tractors in County X until January 2. By whom should the two tractors be listed for taxation and in which county?

To: E. R. Eller

(A.G.) Personal property is subject to ad valorem taxation on the basis of ownership as of January 1,

(Continued on inside back cover)

Books of Current Interest

AUTOMOBILES

THE BIG THREE AND ONE MORE MAKES FOUR. *By Andrew J. White. Lee, New Hampshire: Motor Vehicle Research Inc. 1953. $2.00. Pages 64.*

This booklet is a detailed and interesting report of a research project designed to bring out the strong and weak points of four low-priced automobiles. The cars under study were a Ford, a Plymouth, a Chevrolet, and a Willys.

DRIVER EDUCATION

Teacher Training

HIGHWAY SAFETY AND DRIVER EDUCATION. *Edited by Leon Brody and Herbert J. Stack. New York: Prentice-Hall, Inc. 1954. $6.00. Pages 464.*

This book, written at the college level for prospective teachers of Driver Education, meets a need of long standing. The editors are both well qualified for the task they have undertaken. Dr. Stack is Director of the Center for Safety Education at New York University, and Dr. Brody is the Center's Director of Research and Publications. In addition to those of the editors, the book includes contributions of members of the Center's staff and other persons well known in the fields of highway safety and driver education. (E. L.-R.)

Texts

LET'S DRIVE RIGHT. *By Maxwell Halsey. Chicago: Scott, Foresman and Company. 1954. $3.48. Pages 496.*

MAN AND THE MOTOR CAR (5th ed.). *By the Center for Safety Education, New York University. New York: Prentice-Hall, Inc. 1954. $3.70. Pages 367.*

SPORTSMANLIKE DRIVING (3rd ed.). *Washington: American Automobile Association. 1955. $2.80. Pages 480.*

The first of the three books listed above is new. The other two are complete revisions of standard texts. All three are designed for use as standard texts in high school driver education classes. All three of the books are clearly written and each is profusely illustrated. While individual instructors may differ as to the relative merits of these books, it should be gratifying that there are three good texts to choose from. The North Carolina Department of Public Instruction has given its approval to all three for use in driver education courses. (E. L.-R.)

HOW TO DRIVE BETTER AND AVOID ACCIDENTS. *By Paul W. Kearney. New York: Thomas Y. Crowell Company. 1953. $2.95. Pages 242.*

Mr. Kearney has written this book for adult drivers. A conversational tone and frequent anecdotes enliven the style and make for enjoyable reading.

GIVING AND SCORING DRIVING TESTS. *Evanston, Illinois: The Traffic Institute. 1951. $.50. Pages 40.*

A GUIDEBOOK FOR AUTOMOBILE DRIVING SCHOOLS. *Edited by J. Duke Elkow and Samuel T. Messer. New York: Center for Safety Education, New York University. 1952. $1.00. Pages 51.*

INDUSTRIAL DEVELOPMENT

FINDING PROSPECTS FOR COMMUNITY INDUSTRIAL DEVELOPMENT. *Washington 6: Chamber of Commerce of the United States. 1954. $.50. Pages 27.*

In the words of the manual, the classic recipe for making a rabbit stew begins with the direction, "First, catch a rabbit." Because the most difficult part of an industrial development program is, in many ways, the discovery of prospects who might be interested in locating in one's town, city officials and others engaged in building their home town's economic base will find this an invaluable collection of "tips." (PPG)

REDEVELOPMENT FOR INDUSTRIAL USE (Technical Bulletin No. 25). *By Robert B. Garrabrant. Washington 6: Urban Land Institute, 1737 K Street, N.W. 1955. $3.00. Pages 32.*

Although there has been a strong tendency in the mind of the public to tie urban redevelopment to public housing, many of the redevelopment programs actually undertaken have called for re-use of the cleared land for other purposes. This study points out the possibilities available through redevelopment for providing badly-needed space for industrial development at appropriate locations. It includes descriptions of a number of projects in which industry will be the predominant use of the land after redevelopment and outlines experience in carrying out such projects. (PPG)

CITY PLANNING

STUDYING YOUR COMMUNITY. *By Roland L. Warren. New York: Russell Sage Foundation. 1955. $3.00. Pages 385.*

This book is described by its author as "a working manual for people who are interested in studying their own community in one or all of its aspects." As such, it is wide-ranging in its scope. The bulk of the book is devoted to particular fields which might be surveyed, such as the community's economy, housing, education, etc.; the means of coverage of such fields is a listing of pertinent questions which might be asked, together with a discussion of what is involved. Perhaps the most valuable part of the book, however, is contained in the final chapters, which contain many suggestions concerning the organization and conduct of various surveys. For the city official or citizen interested at getting at the "facts" concerning local questions, this is a good starting point. (PPG)

GREENBELT: THE COOPERATIVE COMMUNITY. *By George A. Warner. New York 16: Exposition Press, 386 Fourth Avenue. 1954. $3.50. Pages 232.*

One of the interesting experiments of the early New Deal days was the development of the Greenbelt communities: Greenbelt, Maryland; Greenhills, Ohio; and Greendale, Wisconsin. These "new towns," planned from the ground up, were erected primarily to furnish low-cost housing while providing large-scale employment but gave planners an invaluable opportunity to test many of their theories. This book gives the history of the Greenbelt, Maryland, community, from the standpoint of a resident (and civic leader) of that community. It will be of much interest to city planners. (PPG)

EXPERIENCE IN URBAN REAL ESTATE INVESTMENT. *By Leo Grebler. New York: Columbia University Press. 1955. $9.00. Pages 277.*

This is another in the remarkable series of publications which has been issuing from Columbia University's Institute for Urban Land Use and Housing Studies. Filling in another chink in our knowledge of what makes cities develop as they do, the author traces the financial record of 581 income-producing properties in New York City during the period 1900 to 1950. It is on such information as is disclosed here that public policies may be built. (PPG)

Erosion of Tax Policies

(Continued from page 4)

special local tax considerations. In one county a local act makes it plain that when a new industry purchases real property on which to build a plant and conduct manufacturing operations, the county tax authorities are prohibited from changing the assessed valuation on that land for a period of ten years. Thus, for example, if an industrial taxpayer buys land in that county that is assessed at $40 an acre, and builds a $1 million plant on it, the county (with or without holding a general revaluation) is unable to change the assessed valuation to reflect value changes in that property for ten years. Another special act is considerably less specific in its language but equally clear in its intent: It authorizes the commissioners of a certain county "to give favorable consideration to the valuation and tax rate" applied to new industries locating in the county. Presumably "favorable consideration" would include reduction in assessment or tax rate.

c. Recreational property and community buildings of various kinds are often granted some sort of preferential tax treatment by local act. For example, one act grants full tax exemption to the country club in the Town of X "so long as it is used as a non-profit community center." Another exempts an agricultural fairground owned by a veterans organization. Still another declares two women's clubs in the Town of Y to be charitable in nature and, therefore, entitled under the Constitution to full exemption. In this connection, however, it is interesting to note that the 1955 General Assembly turned down a proposal to grant state-wide exemption to "buildings, with the land actually occupied, used exclusively for community or public purposes and completely without profit" and the "furniture, furnishings, books, and other tangible personal property contained in and used in connection with" such buildings. (See Senate Bill 65, General Assembly of 1955.)

In examining the local exemption acts—regardless of the form in which they are drafted—it seems to me that it is wise to consider the constitutional issue in terms of a series of questions framed in the language of the section of the Constitution already quoted:

Does the property exempted by the act belong to the state? To a municipal corporation? To the United States government?

Is the exempted property used as a cemetery?

Is it held for educational purposes? For scientific purposes? For literary purposes? For charitable purposes? For religious purposes?

If the particular property granted exemption falls into one of these classifications so that one of the questions can be answered in the affirmative the constitutional issue may be settled. But if it fails to fall into any of these classifications it is only prudent for tax administrators to be concerned about the constitutional status of the act.

Accepting Less than the Legally Collectible Tax. The fourth danger area seems to raise questions both with respect to a state-wide pattern and with respect to constitutionality. I refer to local acts having to do with rebates, adjustments, refunds, and compromises of taxes. This is a subject to which the Institute of Government has devoted its *Property Tax Bulletin* No. 13 and there is no need to reiterate the points made there. It is sufficient to say that the state's constitutional limitations on exemptions (already quoted above) probably have a bearing on these acts, and it is abundantly clear that the state has adopted a strict and careful state-wide policy based on the premise that taxpayers must pay taxes before they challenge their validity and that board members voting to allow rebates and refunds run the risk of personal liability if their decision is incorrect. Yet in the face of these standards, in a kind of surplus of laxity, the legislature has now and then granted local governing bodies most unusual powers of rebate, refund, and compromise. Let me cite a few examples of what I have in mind.

a. The City of X has been allowed "to discount such amounts as the governing body may see fit, or to forgive in whole, all taxes due" the city by Mr. Y. (The act recites a number of reasons why such authority is desirable, but those reasons do not fall within the pattern set for the whole state by the general refund statutes, nor do they help meet the possible constitutional objections to such legislation.)

b. A few years ago a certain city extended its limits to take in several adjacent areas. Later the city found that it would prefer, under the particular circumstances, not to keep one of the annexed areas, and it took the steps necessary to re-locate the boundary so as to exclude that area. By the time this was done, however, taxes had already been levied on property in that area along with all the rest of the city. The General Assembly then authorized the city to give a rebate of 50% on the taxes that had been paid on property in the area taken out of the city.

c. At least five counties have obtained local acts granting the governing bodies broad discretionary powers to adjust, refund, or compromise tax claims. In one of these acts no time limit is set; in the others some time limitation is present. For example, one county has power to compromise any claim for 1942 and prior years; another has power to adjust or cancel any 1950 or 1951 tax the board thinks is not fully collectible. Another permits the board to cancel everything except the principal amount of the tax on claims for 1953 and prior years if the principal is actually paid; still another makes the same provision for claims fc 1954 and prior years.

d. In almost every session the legislature passes a series of local acts purporting to validate and confirm adjustments, refunds, and compromises of property tax claims already made by county and municipal governing boards.

Here again the issues are clear: Is it desirable to have a state-wide pattern? If not, why leave the stringent general laws on the books? If the pattern is needed, why sanction its biennial erosion by local acts?

AG Rulings

(Continued from page 11)

and tangible personal property is taxable in the county of residence of the owner unless it has acquired a situs elsewhere under the provisions of G.S. 105-302(4). The first question to be answered is that of who was the owner of the tractors on January 1. If the sale was not complete until delivery was made, then the seller was the owner as of January 1 and should have listed the tractors for taxation in County Y. If the sale was complete before January 1, and the purchaser merely delayed removing the tractors from County Y to County X until January 2, then the purchaser was the owner as of January 1 and should have listed the property for taxation in County X.

Service of Tax Garnishment Notices by Constables. Does a constable have authority to serve garnishmer' papers for a tax collector?

To: W. C. Hardison

(A.G.) G.S. 151-7 provides in part that "Constables . . . shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county. . . ." In view of this statutory provision, garnishment notices properly directed to a constable could be served by such constable.

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