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The March cover photo, taken in downtown Pittsboro, indicates the degree to which small towns in North Carolina are beginning to encounter growth and development problems similar to those of the larger cities in North Carolina. The need for sound planning to cope with these problems is discussed in the article beginning on page 1.

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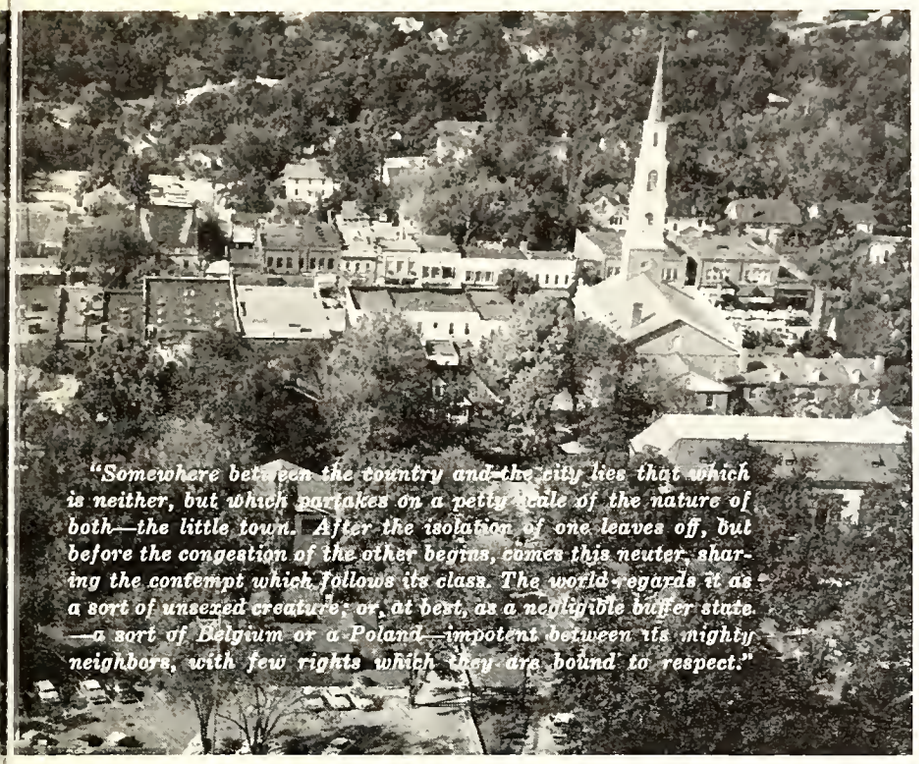

"Somewhere between the country and the city lies that which is neither, but which partakes on a petty scale of the nature of both—the little town. After the isolation of one leaves off, but before the congestion of the other begins, comes this neuter, sharing the contempt which follows its class. The world regards it as a sort of unsexed creature: or, at best, as a negligible buffer state. —a sort of Belgium or a Poland—impotent between its mighty neighbors, with few rights which they are bound to respect."

Small Town North Carolina

---A Look Into The Future

(Introductory note. The following article has been abstracted by Robert E. Stipe, assistant director of the Institute of Government, from several publications of Arthur H. Fawcett, Jr., formerly Research Assistant, Department of City and Regional Planning, University of North Carolina, and presently a staff member of the Division of Urban Planning Assistance, Urban Renewal Administration, U. S. Housing and Home Finance Agency. It is presented here because of its bearing on the future development of the many small towns in North Carolina.)

Whether or not this quaint phrase of H. P. Douglass in *The Little Town*[1] is a fair description of the state of things in North Carolina's small towns, it is well worth pondering. According to the 1950 Census and to estimates of the Division of Community Planning, North Carolina Department of Conservation and Development, there are more than 400 small communities of less than 2,500 population in the state. In these towns live almost 335,000 people, slightly more than eight per cent of the total population of North Carolina, or almost 25 per cent of the entire urban North Carolina population. In other words, almost one out of four city dwellers in North Carolina lives in one of these small towns.

Aside from the importance of these towns as dwelling and working places for a substantial portion of the total urban population of the state, they are important because they are now sharing the problems of growth and development with which their bigger brother cities have been struggling for many years. The problems of increasing automobile use, congestion, industrial development, the provision of schools and other utilities and services such as water, sewage disposal, police protection (and above all, how to pay for these services and facilities), while perhaps more severe in the larger city centers, are no less a problem to the small town.

Although in past years the problems of planning to meet this new growth have received considerable attention in the larger cities, very little effort has been devoted to developing approaches to the problems of the small town. Two very recent developments indicate, however, that this situation will be radically changed in the near future. One of these is the recent beginning in North Carolina of a federally-aided state project to extend planning assistance to these towns. The other is the heavy impact of the multi-billion-dollar interstate highway program on their future growth.

This article thus has three objectives. The first of these is to discuss the present pattern of small town life in North Carolina. The second is to indi-

[1] Harlean Paul Douglass, *The Little Town* (New York: the Macmillan Company, 1921), p. 3.

Pittsboro, N. C., a typical "market center."

cate the probable course of future development in these towns and to point out some of the problems with which they will faced. Finally there is a discussion of the problems encountered in attempting to plan the course of small town development, as well as a number of suggestions as to how some of the most serious of these obstacles can be overcome.

Purpose and Layout Of Small Town, N. C.

The future growth of small communities in North Carolina will be determined in large measure by their present layout and function. The "typical" North Carolina small town is what is known as a "market center," with most local residents employed in the town proper and with the farmers living on farms outside the area. The town is usually diversified to some extent, and in addition to serving as a market place for surrounding areas, it will very often include some manufacturing, governmental, and other functions—most of which are related to the surrounding countryside.

The town is also a social center. As more institutions such as schools, churches, libraries, and clubs locate in nearby towns rather than in the open country, rural people and town people are coming closer and closer to one another. When rural people come to towns for social, educational, and religious activities as well as for shopping, both town and country become better acquainted, and traditional town-country differences begin to disappear. This recent merger of the spirit and purpose of the town with that of the country has a number of implications for the future development of the community.

What is the physical form of this typical community? While it is obvious that no two are exactly alike, there are enough similarities among North Carolina small towns that a few generalizations can be made. The original settlements in rural areas were usually made at the cross-roads; or, even where they were not, they often inadvertently became crossroads as new roads were built from town to town. This stringing out of the typical town along the major road was no accident either. It was simply a matter of stretching out along existing roads to avoid the expense of developing new ones. When the town grew large enough that further development along the main road became inconvenient, new roads would usually be built parallel to the main street. When any planning at all was done, a "gridiron" pattern of streets usually resulted.

Business tended to develop in the center of town as a matter of convenience, usually on both sides of the major highway, while gasoline stations, motels, restaurants, and small local industries usually grew up along the major roads leading into town. The result: a town split into three or more parts by major traffic highways. Residential areas typify small town life: comfortable frame homes on large lots set far back from the street.

Recent Changes In Small Town Life

The quickened pace of the automobile age, and the ready availability of good, all-weather, farm-to-market roads has had a profound impact on

small town life in our time. These better transportation facilities have enabled the farmer to travel longer distances, and instead of satisfying his needs by a trip to the nearest town, today he will tend to travel to that town which has the best selection of merchandise or a larger number of buyers for his product. The goods sold and the services provided in a given community depend in part on its size. Thus, our present-day farmer may find himself buying groceries at the general store in the nearest town; having his machinery repaired and buying work clothes at a slightly larger town; and he will probably buy a watch or a washing machine at a nearby city. Farmer Brown's children, similarly, may attend elementary school in the small community and later go to high school in a large one some distance away.

These relationships are important, for under present patterns of small town living, there are certain services which are especially suitable to the town of a given size and location with respect to its neighbors. Thus, the smallest town may provide a grocery store, a gas station, an elementary school and a church. The slightly larger one will have these plus clothing stores, automobile sales and repair establishments, a bank, newspapers, movies, and a high school. It remains for the city to provide the department and luxury goods stores, the daily newspaper, and specialized educational services.

The 41,100 mile interstate highway program, recently inaugurated by the state and federal governments, will also have a far-reaching effect on North Carolina's small towns. By bringing them closer in terms of time and effort to the state's larger urban centers, major changes in small town living habits and patterns— which can only be guessed at—will be brought about.

The Community of The Future

Planning for the future of the small community demands some idea of its future form and function, as well as its past and present form. One of the most obvious population trends in America—to which North Carolina has been no exception—has been the relative decline of the rural and farm population because of the increased productivity of the farm worker. And yet, nearly three-fourths of the nation's medium and large-sized towns are continuing to grow. Why? This is the result, among other things, of an increase in services offered by the towns themselves, and an increased demand for these services due to the mechanization of farming. The decentralization of industry, an increased birthrate, and an increase in the number of farmer retirements delayed by World War II have also played a part in alleviating the migration to the big city.

These factors taken together add up to one thing: the small town and the rural population will not disappear in the future. It has been said that the city sets up the countryside to provide those functions that the city itself cannot perform, and as long as the rural population continues to serve the necessary function of raising food for the city, its market centers—the small North Carolina town —will remain to serve it. In addition, it will serve increasingly as a place of retirement, and in some cases will become a location for industry of limited size. Its most important function will continue to be that of serving the business and social life of the town-country community.

Perhaps it should be stated, however, that not all towns will continue to grow or even survive. Some of them, as transportation facilities and farm sizes continue to grow, will undoubtedly disappear. Those market centers which survive will be those which compete successfully as desirable living places and as providers of commercial, governmental, religious, educational, and social services.

Problems of traffic, parking, circulation—on the increase.

Planning the Small Community

If the survival of the small community depends upon how successfully it meets the increasing demands upon it for additional services and physical facilities of all kinds, then it, no less than the large city, must face the problem of how best to plan for its future growth. The small town planning program, while it may differ in detail, has essentially the same objectives as the big-city program: *to estimate as carefully as possible the need for additional facilities and services, and to meet these needs as systematically and economically as possible.* Based on surveys of past and present trends in local population growth and economic activity, the process is one of estimating the future need for additional residential land and housing, for business and industrial development, and for such public facilities as schools, water supply, sewage disposal, streets, parking, and so on. The problem is not only one of "how much," but also "where" the new growth should take place, and what are the most suitable relationships among these various types of development. Put another way, some of these objectives would be:

(1) to encourage residential building in areas already served or readily serviceable by utilities and streets, to get the most out of existing facilities, and to keep the cost of new facilities to a minimum;

(2) to provide adequate space for the expansion of business;

(3) to prevent, so far as possible, the mixture of traffic and nuisance-producing industry with residences; and

(4) to design an overall street system which serves the entire town in the best possible way at the least expense.

Who is Responsible For Planning?

Planning for this growth is done by a planning commission of local citizens, appointed by the mayor and town board under the authority of North Carolina state planning enabling legislation. Once the plans are drawn up, the town may find it desirable to back up the plan with a zoning ordinance to carry out its objectives, as well as to adopt other legal and administrative policies to complete the program. In addition to serving as the basis for zoning, the development plan is also a basis for estimating the need for improvements and for sparking local interest in the planning program. It goes without saying, however, that the planning program must be a flexible one: should a new industry locate in the vicinity, for instance, its effect on the local population and economy would result in more demand for land of all kinds, as well as for additional local services and public facilities. Planning, if it is to have any effect, must be capable of changing with the times and the circumstances of each individual community.

Special Problems In the Small Community

As far as planning the small North Carolina community is concerned, there are both advantages and problems presented because of its size. Because it is so small, it is more difficult to gather together the basic information about the local population and economy; statistical information is harder to obtain in the small town than in the large city. Because the small town may grow less rapidly than the large one, the problems of housing, congestion, utilities, and so on may not be as pressing as in the large city and the need for sound planning will be somewhat less obvious. In addition, planning in small towns tends to take on a more personal aspect than in the city—not only because of the relatively higher percentage of landowners as against renters, but also because small town planning operates in an atmosphere where everyone knows everyone else. This makes for a situation in which planning questions may tend to be solved on the basis of personalities rather than issues.

None of these difficulties is insurmountable, however. Indeed, the size of the small town lightens certain other aspects of the planning program. Survey work, such as that encountered in conducting an inventory of how various parcels of land in the community are used, is made considerably easier. Other surveys involving local housing conditions, employment, and so on may be accomplished without difficulty in the small town whereas they may be prohibitively expensive in the large city.

On the other side of the picture, moreover, is the fact that in the small town where most citizens know one another quite well, the administration of local government is in closer contact with a larger percentage of the total population than it is in a large city. The ease of maintaining a high degree of interest and participation in the local planning program is increased accordingly.

How Much Does It Cost?

The experience of large cities has been that the proper question is not "how much" but whether they or any city can afford *not* to plan for the future. It has been demonstrated beyond question that a sound planning program will pay for itself many times over. By the same token, it would be foolish to deny that planning costs money, and that the assistance of trained and experienced town planners is necessary in almost every case.

Few, if any, towns with populations less than 5,000 or 10,000 can afford to hire a trained planner on a permanent basis. Even the services of a planning consultant, who might be serving several small towns in the same area, would put a strain on the finances of smaller ones. A 1957 survey of 25 small towns in North Carolina indicates, for example, that the average community of 1,250 people spends about $26,500 annually for all purposes, with about $6,000 of this amount for administration. If the cost of planning were to be paid out of the amount allocated for administration, only a limited program would be possible without hampering other administrative and governmental functions.

Fortunately for the small towns in North Carolina, the problem of financing the planning program has been partially solved by legislation passed by the 1957 General Assembly which permits them to participate in the federal program of urban planning assistance. Under this program, which is administered by the Division of Community Planning in Conservation and Development, matching grants of funds are made to state planning agencies for assistance to cities with populations of less than 25,000. By thus providing half of the total cost of planning, the local share is brought down to the point where the local expenditure is no longer beyond the financial capabilities of the smaller communities. The planning assistance rendered under this program may be done by the state itself or by contract with private planning consultants.

Another highly satisfactory answer to the problem of obtaining help with the planning program is through a regional planning agency which could provide technical assistance to small communities as part of its regular program. A number of small towns in North Carolina, located in counties which are participating members of the Western North Carolina Regional Planning Commission, might benefit in this way. It is to be hoped that local participation in this and other such regional agencies which may be chartered in the future, will smooth the path of planning activity in small towns.

Local planning assistance through a regional planning program has much to commend it as a partial solution to the problems of small town planning, not only because the regional agency may be able to absorb some of the staff work, but also because many of the problems facing the small town are regional in nature. Highways, water supply, waste disposal, flood control, resource conservation, and industrial location, are all factors which should be approached within the framework of a regional planning program.

Conclusion

The small town in North Carolina continues to fulfill an important function in the life of the state. Our growing cities will require increasing amounts of food, textiles, and other farm products. The town proper will have to provide commercial, educational, religious, and social services to farm areas; and farm areas must continue to raise the products most needed by the state and national economy. In order to carry out its functions effectively, the small town must plan for its future. One of the greatest obstacles to effective planning—the cost of a planning program—is tending to diminish as state and regional planning programs get under way in North Carolina.

Equally important, however, is the fact that if the small town is to plan effectively for its future, its citizens must be aware of the value of planning and participate in the planning program to the best of their knowledge and ability. The planning program must deal with the community as a whole and not only with one of its parts; only if this is done will the small town reach its full potential as a place in which to work and live.

Supreme Court Upholds Extra-Territorial Zoning

By Philip P. Green, Jr.
Assistant Director,
Institute of Government

A decision of major importance to fast-growing North Carolina cities was handed down by the state Supreme Court in December, when it upheld Raleigh's extra-territorial zoning ordinance in the case of *Raleigh v. Morand*, 247 N.C. 363. In addition, the court held that cities may validly exclude trailer camps from residence districts in their zoning ordinances.

The *Morand* case has more than local significance. Although there have been several cases upholding by inference the constitutionality of extra-territorial zoning, this is apparently the first square holding on the issue anywhere in the United States.

The Problem

Except where cities have pursued very aggressive annexation policies, the bulk of new residential development today is taking place outside the city limits. Some property owners are building outside so as to avoid city taxes; some because low-priced land is more readily available there; some to enjoy the open spaces which they associate with rural living. Regardless of their reasons, they are apt to find that development of property in such an area frequently is without consideration for other property owners in the area, and property values and living values are subject to sudden and sharp deterioration.

From a local governmental standpoint, these areas create many problems. Their street systems are generally inadequate and fail to connect properly with neighboring systems; water and sewerage systems are sub-par; low-grade industrial or commercial development in the midst of residential neighborhoods causes premature deterioration, with disruptive effects on the tax base; etc.

The tools available for heading off these problems inside most cities are primarily subdivision regulations and the zoning ordinance. Subdivision regulations insure that neighborhoods will be properly laid out, with adequate street and utilities systems and with due consideration for the location of schools, parks, and other public facilities. Zoning prevents improper mixtures of land uses and overloading of the public facilities which are provided. While cities generally have these tools at hand inside their limits, traditionally there have been no such controls in outside areas.

As pointed out in a POPULAR GOVERNMENT article on "The Zoning of Areas Outside City Limits" in October, 1953, there have been three basic approaches to granting local governmental units zoning power over these hitherto unrestricted areas. First, counties may be authorized to zone all or a portion of their unincorporated territories. Second, special districts may be created for the primary purpose of enacting zoning controls. Third, cities may be granted power to zone for a given distance beyond their boundaries, as in the Raleigh case.

County Zoning

At the present time six North Carolina counties have authority to zone at least a portion of their territory. The authority of one such county (Guilford) is derived from an act (Sess. Laws, 1957, c. 416) which is phrased in general law terms but whose effect is limited to "counties having two or more cities each having population in excess of 35,000 people, as shown by the last federal census." Special acts have granted authority to Forsyth, Durham, Dare, Perquimans, and Cumberland Counties. Of these, the Forsyth and Perquimans County acts are worthy of special study. In addition, counties generally have authority to enact

flood zoning ordinances (Sess. Laws, 1957, c. 1005) and airport zoning ordinances (G.S. 63-29 to 63-37).

In the only North Carolina case testing the validity of this approach, an attack was made on the Durham County zoning ordinance. *Fox v. Commissioners of Durham,* 244 N. C. 497 (1956). The plaintiffs, property owners in the county, sought an injunction against expenditure of tax funds for the administration of the ordinance. The attack was primarily in constitutional terms, including contentions that the special act authorizing the ordinance was forbidden by Article II, Section 29 of the State Constitution and that it also constituted an unlawful delegation of legislative authority violating Article VII, Section 2. Superior Court Judge Raymond Mallard ruled that both the act and the ordinance based thereon were constitutional. On appeal by the plaintiffs, however, the Supreme Court directed that the case be dismissed, declaring that plaintiffs' allegations were insufficient to entitle them to either an injunction or a constitutional ruling. This, of course, left the question of the validity of county zoning still unsettled.

Special District Zoning

There has been one instance in the state of a special district created for the sole purpose of establishing zoning controls. This was the district placed under the jurisdiction of the Cherry Point Marine Air Station Zoning Commission in 1949. In the case of *Harrington v. Renner,* 236 N. C. 321 (1952), our Supreme Court knocked out the ordinance adopted by this commission, with scant indication as to whether a modification of the Cherry Point approach would be upheld (see "Cherry Point Zoning Act Invalidated," POPULAR GOVERNMENT, January, 1953.)

In addition to such districts, G.S. 130-128 (18) authorizes sanitary districts adjacent to cities of 50,000 or more to zone areas within their limits, on petition of the residents thereof. No court tests of such ordinances have reached our Supreme Court.

Extra-Territorial Zoning

With special district zoning invalidated and county zoning in an uncertain status, by far the most popular approach in North Carolina has been to grant cities authority to zone areas ranging from one to five miles beyond their limits. Altogether, 19 cities and towns have received such powers via special act, including Carrboro, Chapel Hill, Charlotte, Elizabeth City, Farmville, Gastonia, Goldsboro, Greensboro, High Point, Jacksonville, Kinston, Mooresville, Raleigh, Salisbury, Snow Hill, Spencer, Statesville, Tarboro, and Winston-Salem. The Raleigh decision was of immediate importance to all of these cities.

Legal Background

Apparently only four cases elsewhere in the country and one in North Carolina had considered the validity of an extra-territorial zoning ordinance prior to the *Morand* case. Two Nebraska cases [*Omaha v. Glissman,* 151 Neb. 895, 39 N. W. 2d 828 (1949), appeal dismissed 339 U.S. 960 (1950), and *Peterson v. Vasak,* 162 Neb. 498, 76 N.W. 2d 420 (1956)] involved enforcement of an Omaha zoning ordinance in a three-mile extra-territorial belt around the city. In both cases the ordinance was sustained, but lawyers for both sides and the courts all seem to have assumed the constitutionality of the extra-territorial feature.

Two Kentucky cases limited extra-territorial powers somewhat. In *Smelzer v. Messer,* 311 Ky. 692, 225 S.W. 2d 96 (1949), the court invalidated such an ordinance insofar as it covered land lying across the county line from the city; the court said that the purpose of extra-territorial zoning was to protect lands which the city might later annex, and since Kentucky law prevented cities of that classification from annexing land in another county, the city could not zone in that county. Following somewhat the same reasoning, *American Sign Corp. v. Fowler,* —Ky.—, 296 S.W. 2d 651 (1955), interpreted a statute granting extra-territorial zoning jurisdiction to extend only to land which might in the foreseeable future be annexed by the city.

The North Carolina court in *State v. Owen,* 242 N.C. 525 (1955), considered the validity of Winston-Salem's extra-territorial zoning ordinance. It found that this ordinance had originally been enacted without statutory authority, and that although that authority was later supplied, the ordinance had not been re-enacted pursuant to the amended legislation. For this reason, it held the ordinance invalid. The court declared, in the course of its opinion, that "The single question for decision here is whether the zoning regulation of the City of Winston-Salem is supported by enabling legislation adequate to make the ordinance enforceable against the defendant's property outside the corporate limits of the city." The court's failure to note a constitutional issue at least permitted the inference that it felt the statutory grant of power was constitutional.

In this paucity of authorities, at least two legal writers have raised questions as to whether the grant of extra-territorial zoning authority would generally be held valid. Bouwsma, "The Validity of Extraterritorial Municipal Zoning," 8 Vanderbilt Law Review 806 (1955), and Haar, "Regionalism and Realism in Land-Use Planning," 105 Pennsylvania Law Review 515, 527-529 (1957).

Both writers, however, apparently treated zoning as being in a category by itself and ignored a general rule that the legislature may grant extra-territorial police power jurisdiction to any municipality, provided only that the area covered is a reasonable one. See 37 American Jurisprudence sec. 122, p. 736; 37 American Jurisprudence sec. 284, p. 918; 62 Corpus Juris Secundum sec. 141, p. 283; and the cases cited therein.

In North Carolina, for instance, a statute of long standing (G.S. 160-203) provides that ordinances of any city enacted in exercise of police powers granted for sanitary purposes or for the protection of property of the city shall apply to territory within a mile of the city limits, as well as to certain other specified properties outside the city. In *State v. Rice*, 158 N.C. 635 (1912), our court upheld an ordinance enacted under a similar provision in Greensboro's charter. G.S. 160-226 grants one-mile extra-territorial effect to subdivision regulations. Although there are no North Carolina cases under this provision, a number of other states have upheld such grants of power; e.g., *Prudential Co-op Realty Co. v. Youngstown*, 118 Ohio St. 204, 160 N.E. 695 (1928), and *Petterson v. Napierville*, —Ill.—, 137 N.E. 2d 371 (1956).

Since zoning is clearly an exercise of the police power, it was felt by many city attorneys that the general rule would apply and that extra-territorial grants of zoning power would be upheld. But in the absence of a direct holding, there was always the danger that the North Carolina court would decide otherwise. The *Morand* case has now removed this doubt.

The Morand Case

Raleigh was granted authority to zone for one mile beyond its limits by Chapter 540 of the 1949 Session Laws. Pursuant to this authority, the city adopted such an ordinance in January, 1952. In November, 1955, the zoning ordinance was amended to prohibit the parking of house trailers (with specified exceptions) in residence districts (whether inside or outside the city). According to the city's brief, the defendant in the case was actually present at the hearing which preceded adoption of this amendment.

At some subsequent date the defendant commenced construction of a trailer park on his property. The city gave him notice that construction or use of the park would be a violation of the zoning ordinance, but he continued his operation. In June, some six months later, when the city brought suit for an injunction against his continued operation of the camp, he was renting space for 16 trailers at $16 per month for each space.

In the superior court, defendant first contended that his property did not lie within one mile of the city; the court found this fact against him. He also (a) moved to dismiss on the basis that the subject of the action was not a proper matter for application of the remedy of injunction, (b) moved for nonsuit, and (c) excepted to the court's signing the judgment, on the basis that it was not supported in law or in fact. The court, however, issued the injunction sought by the city, and he appealed.

On the appeal, the Supreme Court had no difficulty in finding that the remedy of injunction was available, as provided by G.S. 160-179. With regard to his further contentions, the court found that they raised two issues: (1) is the grant of extra-territorial zoning power constitutional? and (2) is the prohibition against trailer camps in residence districts constitutional?

The court proceeded directly to the point on the extra-territorial issue. It found that zoning was an exercise of the police power and that the general rule both in North Carolina and elsewhere was that the legislature could grant police power jurisdiction to cities for stated distances beyond their limits.

With regard to the exclusion of trailers from residential districts, the court found ample authority to support such exclusion. It further declared,

> "The contention that the provisions of the zoning ordinance prohibiting the use of the defendants' property, which lies within an area zoned for residential purposes, for use as a trailer camp, constitute arbitrary, unreasonable, and discriminatory restrictions upon the property of the defendants, is untenable. The ordinance applies alike to all property within the territory."

The court then went on to note the presumption of validity which must be overcome by one attacking a municipal ordinance, and it declared that the defendant had failed to carry this burden.

In sum, said the court, "We hold that the ordinance under consideration, which prohibits the construction and maintenance of a trailer camp within areas zoned for residential purposes within the City of Raleigh and within one mile of its corporate limits, is a valid exercise of the police power and may be enforced by injunctive relief."

Public Construction:

Bonds for the Protection of Laborers And Materialmen

By
Warren Jake Wicker
Assistant Director, Institute of Government

No lien can be acquired against a public building by laborers who worked in erecting the building or by suppliers of material used in its construction.[1] To provide laborers and materialmen on public construction with the protection normally provided by a laborers' or materialmen's lien, the statute now codified as G.S. 44-14 was enacted.

This statute requires that on certain public works projects the contractor shall execute a bond to guarantee the payment of laborers and materialmen. The statute also makes the official, whose duty it is to take the bond, guilty of a misdemeanor if he does not do so.

As to when the bond is required, the statute states:

> Every county, city, town or other municipal corporation which lets a contract for the building, repairing or altering of any building, public road, or street, shall require the contractor for such work (when the contract price exceeds five hundred dollars) to execute bond with one or more solvent sureties before beginning any work under said contract, payable to said county, city, town or other municipal corporation, and conditioned for the payment of all labor done on and material and supplies furnished for the said work under a contract or agreement made directly with the principal contractor or subcontractor.

It will be noted that the statute refers only to contracts involving buildings, roads and streets. Thus it would seem that such contracts as those for the grading of playgrounds and parks or the installation of water and sewer lines are not covered by the statute. Governing boards, of course, may require such a bond on all construction contracts, whether directed to do so by the statute or not.

The minimum amount of the bond required by G.S. 44-14 is as follows:

On contracts for $500 to $2,000 . . . . 100%

On contracts for $2,000 to $10,000 . . . . $2,000 plus 35% of excess over $2,000

On contracts for more than $10,000 . . . . $2,000 plus 25% of excess over $2,000

The statute further provides for the procedure to be followed by laborers and materialmen in collecting under the bond if they have not been paid by the contractor or subcontractor.

Relation to Performance Bonds

It will be recalled that the competitive bid statute, G.S. 143-129, requires the taking of a performance bond[2] for the full amount of the contract price on all construction and repair contracts involving more than $3,500. This bond is required for the protection of the governmental unit. It is given to guarantee the "faithful performance" of the contract only. As usually written, a performance bond does not assure the payment of laborers and materialmen.

There seems to be no question, however, that a single bond could meet the requirements of both sections if it is properly drafted. A number of cities and counties in North Carolina already use such a bond. The bond used by the City of Charlotte is a good example of one which explicitly covers both the faithful performance of the contract and the payment for all labor or materials used in the construction. The key provision of the Charlotte bond reads as follows:

> NOW, THEREFORE, the condition of this obligation is such, that, if the Principal shall faithfully perform the said Contract on his, its, or their part, and satisfy all claims and demands, incurred for the same, and shall fully indemnify and save harmless the City from all cost and damage which the City may suffer by reason of failure to do so, and shall fully reimburse and repay the City all outlay and expense which the City may incur in making good any such default, and shall pay all persons who have Contracts directly

[1] *Robinson Manufacturing Company v. Blaylock*, 192 N.C. 407, 135 S.E. 136 (1926).

[2] In lieu of the bond, governing bodies may require the deposit of cash, a certified check, or governmental securities in an amount equal to the contract price.

> with the Principal, or any sub-Contractor of the said principal for labor, or material, or both, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

And in another section of the bond specific reference is made to G.S. 44-14. Thus there is no question about the dual purpose of the bond.

The Charlotte bond, it should be noted, appears to be broader in the type of protection which it affords than required by statute. The statutory bond would protect laborers and materialmen. The Charlotte bond requires the contractor to guarantee the satisfaction of "all claims and demands" incurred. Thus in one case[3] the North Carolina Supreme Court held that the "all claims and demands" provision obligated the surety on the bond to pay for the rental of equipment used on a contract. In the absence of this broader provision, the Court might have found that one who supplies rented equipment on a contract is not protected by a bond assuring the payment of laborers and materialmen.

Combining the 100 per cent performance bond with the laborers' and materialmen's bond, of course, provides greater protection for laborers and materialmen than is required by G.S. 44-14. Experience indicates, however, that the combined bond costs no more than a simple performance bond. Thus additional protection may be extended to laborers and materialmen without additional cost. The governing body is free to contract for greater protection than that required by the statute if it wants to do so.

Combining the bond requirements could also work to the advantage of the governmental unit in the case of smaller contracts. A bond for the protection of laborers and materialmen is required on most construction and repair contracts involving $500 or more. Faithful performance bonds, however, are not required except on construction and repair contracts involving $3,500 or more. (A few cities and counties have special acts which establish different limits.) Thus if a combined bond for the full amount of the contract is used, the governing body is protected on the fulfillment of the contract when sums between $500 and $3,500 are involved as well as on contracts involving larger expenditures.

[3] *Owsley v. Henderson*, 228 N. C. 224, 45 S.E. 2D 263 (1947).

Contracting Official's Responsibility

The statute is clear as to the responsibility of the contracting official for securing the bond required by G.S. 44-14. Failure to take the required bond makes the official guilty of a misdemeanor. The provision reads as follows:

> If the official of the said county, city, town or other municipal corporation, whose duty it is to take said bond, fails to require the said bond herein provided to be given, he is guilty of a misdemeanor.

Suppose the amount of the bond taken by the responsible official is less than the amount required by the statute. Would the official still be guilty of a misdemeanor? Speaking on this point in *Standard Supply Co. v. Vance Plumbing and Electric Co.*[4] the Court said:

> We think that this provision, making it a misdemeanor, is still applicable where the amount of bond required by the public agencies, in accordance with the terms of the statute, is not taken.

Thus the appropriate official is responsible for taking, *as a minimum*, a bond in the amount specified in the statute.

While officials are criminally liable for failure to take the required bond, the governmental unit is not civilly liable to laborers or materialmen when a bond is not obtained. The case of *Warner v. Halyburton*[5] developed out of the failure of a board of education to take a bond assuring the payment of laborers and materialmen on a school construction contract. A materialman who had furnished supplies for use in the construction and who had not been paid by the contractor sued the board. The Court held that the board was not civilly liable to the materialmen and that no claim can be made against the public treasury because public officials fail to take the required bond. The court made a point, however, of noting that they were not deciding on the civil liability of the members of the board as individuals. Said the Court: "Whether the members as individuals may be held civilly liable to claimants is not before us, as they have not been sued in that capacity."[6]

[4] 195 N.C. 635, 143 S.E. 252 (1928).

[5] 187 N.C. 414, 121 S.E. 756 (1924).

In light of the responsibility of the appropriate official and his liability for failure to require the proper bond, care should be taken to see that the demands of the statutes are met. Notice of the bond requirements should be included in all public works contracts involving $500 or more. A provision in the specifications of the Town of Chapel Hill, designed to advise all bidders of the bond requirements, reads as follows for a combined bond:

> A performance bond in the amount of 100 per cent of the contract price will be required, conditioned upon the faithful performance of the contract and upon the payment of all persons supplying labor and furnishing materials for the construction of the project.

Summary

1. A bond must be taken from all contractors on *most* public construction projects involving more than $500, to assure the payment of laborers and materialmen. The bond may be taken on *all* contracts at the discretion of the governing board.

2. The minimum amount of the bond is set forth in the statute, G.S. 44-14. Governing bodies are free, however, to require bonds in larger amounts if they so desire.

3. Failure to secure the bond when required, or in the minimum amount required, makes the responsible public official guilty of a misdemeanor.

4. Many governmental units take a single bond designed to meet both the faithful performance bond requirements of G.S. 143-129 and the laborers' and materialmen's bond demands of G.S. 44-14. Combining the bond requirements simplifies the procedure and lowers the cost. The language of the bond should clearly indicate its dual role.

5. Notice of the bond requirements should be contained in the specifications for all proposed public works projects coming under the two statutes.

[6] 187 N.C. 416, 121 S.E. 757 (1924).

PUBLIC PERSONNEL

By DONALD B. HAYMAN

Assistant Director, Institute of Government

Fayetteville Employees Receive Merit Increments

When Fayetteville's new classification and pay plan was adopted in June, 1957, all employees were brought up the minimum step of the new pay plan or to the next highest step if their present salary was not on an established step. As funds for salary increases were limited, no employees could be given merit increments at that time.

In January, the Fayetteville city council appropriated $11,000 for merit increments to be effective the last six months of the fiscal year. Salary increments were given to 60 of 98 employees of the street and sanitary departments, to 33 of the 66 firemen, to 32 of 74 policemen, and to several other municipal employees. The increments were granted by the city manager upon the recommendation of the department heads in recognition of superior or improved performance. Each increment granted was the equivalent of a five per cent raise.

State Departmental Personnel Officers Organize

Joe Garrett, assistant commissioner of motor vehicles, was elected chairman of the departmental personnel officers at their February meeting. Other officers elected for a one-year term were Carlton F. Edwards of the Commission for the Blind, vice-chairman; and C. P. Deyton of the Teachers' and State Employees' Retirement System, secretary.

Future meetings during the spring will be held from 2:15 to 4:30 p.m. on the second Thursday of each month in the library of the Department of Public Instruction in Raleigh.

The March 13 program will be a discussion of the problems involved in preparing and maintaining a pay plan. Employee performance rating will be considered at the April 10 and May 8 meetings.

The program committee for the coming year includes Robert Barrett, Claude Caldwell, John McDevitt, Mrs. Grace Malloy, J. E. Miller, James Swiger, Miss Susan Womble, and the elected officers.

Departmental personnel officers have been meeting bimonthly since October, 1956.

Employee Award Inaugurated

Patrolman Sam Judge of Fayetteville was named "Trooper of the Year" by Troop B of the N. C. State Highway Patrol at a banquet in Fayetteville on February 3. Judge was selected from eight district winners who had been selected because of their initiative, ability, and contribution to their communities and to highway safety.

As first winner of the employee award, Judge received a trophy and will have his name engraved on a plaque that will hang in Troop B headquarters in Fayetteville.

The winner and runner-up in each of the eight districts of Troop B were honored at the banquet which was attended by approximately 300 persons including patrolmen, their wives, and local civic leaders. The other district winners were Patrolman T. H. Ashley of Durham; R. L. Apple of Louisburg; E. T. Green of Fuquay Springs; J. P. Carter of Kenley; M. N. King of Garland; J. F. Cardwell of Parkton; and E. E. Worrell of Carolina Beach.

The runners-up included T. L. Bullard of Smithfield; K. K. Daniel of St. Pauls; D. R. Emory of Garner; W. T. Felton of Oxford; V. W. Heath of Roseboro; M. C. Parnell of Efland; W. B. Richardson of Elizabethtown; and R. E. Smart of Hampstead.

The award program was initiated by Captain Raymond Williams of Troop B and may be extended next year to the other four troops of the patrol. Banquet speaker was Stanhope Lineberry of Charlotte, former chief of the Mecklenburg County Rural Police, and new security officer of the Nike missile plant in Charlotte.

TROOPER OF THE YEAR

The State Highway Patrol's first "Trooper of the Year," Pfc. Samuel R. Judge of Fayetteville, is shown receiving a silver cup from patrol commanding officer Col. James R. Smith at a banquet held last month at Troop B Headquarters in Fayetteville. The award will be made annually to the year's outstanding trooper.

RETIREMENT and ETHICS:

Should Misconduct Disqualify a State Employee for a Pension?

By Donald B. Hayman
Assistant Director, Institute of Government

Modern public retirement systems seldom have been used as instruments for enforcing ethical standards among public employees. The consequences of the prevailing practice have been described in the December 8, 1957, issue of the Raleigh *News and Observer*.

On the above date "Under the Dome," a daily column devoted to past, present, and future events of interest to state employees, announced the retirement of a public official. The official mentioned had retired following the disclosure by the State Auditor that he had been unable to account for receipts from certain vending machines in state buildings and cash paid for personal long-distance calls made by State employees over office telephones. Under the present retirement act the 64-year old official, who has completed 31 years of state service, will soon be eligible to receive a retirement allowance and a Social Security primary benefit for the rest of his life.

The column further reported that a few state employees have drawn and are continuing to draw retirement pay after having been fired for malfeasance or misconduct in office. Two former state employees were cited who have received monthly retirement checks while serving terms in Central Prison.

The newspaper account did not attempt to justify or criticize the existing practice. Only the three cases were cited. No mention was made of the 80,000 persons now working for the State or the 4,200 retired employees who have not been convicted of malfeasance in office. No mention was made of the 300,000 to 400,000 persons who have worked for the State since 1941 when the retirement system was established. No mention was made of the fact that only employees (1) with 20 years of service, or (2) over 60 years of age are able to draw their retirement allowances if they are discharged from state employment. Employees discharged with less than 20 years of service or less than 60 years of age are not eligible for a retirement allowance as they receive a refund of their contributions plus interest at 2 per cent.

The newspaper column, however, undoubtedly raised several questions in the minds of its many readers. Among the questions raised may have been the following:

(1) Do other retirement systems pay retirement benefits to employees convicted of malfeasance in office?

(2) Should employees convicted of malfeasance be paid a retirement pension from state funds?

Practices Followed by Other Retirement Funds

In the early days of public retirement systems many retirement acts provided that employees discharged for malfeasance in office or convicted of a crime were not eligible for retirement benefits. The first retirement system in North Carolina for police officers was the Wilmington Police Pension Fund established in 1915. In 1923 the Wilmington act was amended as follows: "Provided, however, if a police officer is discharged for the conviction of a crime, then, it shall be the option of the pension board whether said officer shall be put on the pension roll or receive any benefits whatever under this Act."[1]

The first retirement act for Charlotte firemen, the Charlotte Firemen's Retirement Fund Association, contained the following provisions: "Sec. 32. That no member of this association who is dismissed from the service of the Charlotte Fire Department [for violation] of any rule and/or regulation thereof shall be entitled to any benefits whatsoever from this association."[2] A similar provision can be found today in the by-laws of the Winston-Salem and Forsyth County Peace Officers' Protective Association and in some local retirement acts in other states.

With the passage of time the vast majority of the early restrictive provisions similar to those described above has been repealed. They still exist in some local retirement acts, but a spot check of the retirement acts of 30 states failed to reveal a single general state employees' retirement act containing such a provision. The Federal Civil Service Retirement Act contains no such provision, but military pension rights may be lost by a serviceman

[1] Private Laws of 1923, c. 228, Section 10.
[2] Private Laws of 1933, c. 12.

eligible for retirement if he is dishonorably discharged.

Most retirement systems, public and private, today provide that service credits will vest after a stipulated number of years. Such vesting provisions grant an employee a right to a benefit upon fulfilling certain qualifying conditions. The minimum service requirements for vesting in state retirement acts range from 5 to 20 years. The N. C. Teachers' and State Employees' Retirement System still retains a 20-year vesting clause although an increasing number of states have reduced the minimum to 15 and 10 years. Employees belonging to a joint-contributory retirement system who are discharged by their public or private employers before they have served long enough for their service to vest have their own contributions returned to them. However, they forfeit all rights to an annuity financed by their employer's contributions.

As restrictive provisions have been repealed, clauses exempting employees' retirement allowances from state and municipal taxes, garnishment, attachment, and other process have been adopted. As a result, it is possible for an embezzler in North Carolina who squanders or cleverly conceals his defalcation to draw his retirement allowances while the state or bonding company seeks in vain for restitution.

Should Employees Convicted of Malfeasance Be Paid a Retirement Pension from State Funds?

This question is one to which reasonable men will give conflicting answers. Some persons will advocate that public retirement acts should be amended to prevent employees convicted of certain crimes committed while in public service from receiving a retirement annuity from state funds. Some would prefer that such provisions be broadened to include employees discharged for misconduct. A few will still argue for an amendment similar to the early prohibitions which required the errant employee to forfeit his own contributions as well as the pension paid from the governmental unit's matching contribution. Still others will argue that no change is necessary and that the present retirement acts should not be tied to any standard of conduct.

Certain points appear clear. First, in the absence of statutes or rules disqualifying employees guilty of misconduct from receiving pensions, an employee who requests retirement and is otherwise eligible is entitled to a pension even though criminal charges are pending or he has been suspended pending an investigation. A retirement board has no discretion to deny a pension on grounds of misconduct unless the retirement act, ordinance, or retirement board rule specifically authorizes such a denial. Misconduct must be proved and the burden of proof would be on the retirement commission.[3]

Second, no case has held that the legislature, having once enacted a pension statute, is powerless thereafter to amend it at all. Even California, which has been more fruitful of cases in this field than any other state and which follows the rule that the employee acquires at least some vested rights upon acceptance of employment, holds to the view that legislative power to modify pension statutes from time to time is a practical necessity.[4]

Third, most courts would probably uphold legislation denying a pension from state funds to an employee convicted of embezzlement, bribery, false pretense, forgery, etc., if the employee's own contributions were returned to him with interest at the time of his discharge or if he were granted an annuity equal to his contributions plus interest.

Fourth, the definition of the limits of any plan would be very important. What crimes or what conduct would be grounds for an employee losing his pension? Would only crimes performed in the course of his official duties be disqualifying? Accepting a bribe? Embezzlement? False pretense? Forgery? Disloyalty? Would crimes committed in private life be disqualifying? Drunken driving? Manslaughter? Murder? Would unethical conduct while on official duty also be disqualifying? Disclosing confidential information? Securing special privileges or exemptions? Accepting gifts or favors? Would misconduct while away from work be disqualifying?

Fifth, such a provision would also raise questions as to how violations would be determined and possible penalties. Conviction in court? Decisions by the retirement board after a hearing? Or in some other way? Would all of the state's contribution be withheld or only the contribution made during the years that the employee was guilty of misconduct?

Affirmative

The arguments pro and con would vary with where the line was drawn and the proposed plan of administration. Creating a hypothetical case, let us assume that legislation has been proposed authorizing a retirement board to withhold the state's half of an employee's retirement pension from any employee convicted of a crime committed in the course of and arising out of his official duties.

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[3] Charles S. Rhyne, *Municipal Law*, National Institute of Municipal Law Officers. Washington, 1957. p. 204.

[4] Donald B. Hayman, *Social Security and State and Local Retirement in North Carolina*, Institute of Government, Chapel Hill, 1953. p. 105.

The following are some of the arguments that might be proposed by those who would support such legislation:

(1) The retirement of dishonest employees is not one of the declared purposes of public retirement systems.

The principal objective of a public retirement system is to increase the efficiency and effectiveness with which governmental policy is carried out. Of course weeding out the dishonest would contribute to this objective; but the more frequently stated methods of achieving that objective are (a) aiding in the recruitment of new employees, (b) rewarding faithful service, and (c) keeping the avenues of advancement open by removing the aged and disabled employees.[5]

(2) For the preservation of the state and the maintenance of law and order, governmental policy should encourage obedience to the civil and criminal laws.

Honesty and an attitude of stewardship on the part of all employees are assumed by public employers. Governmental officials and employees hold positions of public trust. To violate their stewardship in matters related to their official duties is to violate their public trust and to make them unworthy of the rewards which the state bestows on its faithful servants.

(3) The present retirement acts give the employees whose retirement benefits have vested a protected position. Making ethical conduct a qualification for retirement would serve as a deterrent to law violation.

Today, income taxes, earlier compulsory retirement, longer life expectancy, high-pressure advertising, and rising expenses make it difficult for the average public employee to raise and educate a family and provide for his declining years. Without OASI and governmental retirement plans many public employees would approach retirement without sources of income to provide for their comfort in old age. Tying the state's half of an employee's retirement pension to an ethical standard would tend to remind employees that "honesty is the only policy for public employees."

Negative

On the other hand, the following are some of the arguments which might be proposed by those who believe no legislation is necessary and that retirement systems should not be tied to any code of conduct:

(1) Amending retirement acts to provide that misconduct in office would disqualify an employee from the state's half of his retirement pension would not serve as a deterrent to lawlessness.

An embezzler, who first takes a small amount and later continues to keep his hand in the till, does not believe he will be caught. Consequently, to increase the penalty does not increase the deterrent. Even if the reduction of pension rights were a deterrent, the loss of pension would be an insignificant additional penalty when compared with the loss of earning power, loss of friends, possible imprisonment, personal humiliation, and the humiliation of family and children. Certainly to the embezzler who is mentally sick and incapable of reason, the additional penalty would be meaningless. The most probable result of such legislation would be to intensify the suffering of the members of the employee's family.

(2) The penalties provided by the criminal code are sufficient.

The penalties imposed by statute are sufficiently severe. They permit the state to extract its full pound of flesh. Under G.S. 14-90, 91, and 99, public officers or employees found guilty of embezzlement may be imprisoned either five, ten, or twenty years depending upon the nature of their crime. According to G.S. 14-100 any person found guilty of securing money under false pretenses is declared a felon and shall be imprisoned not less than four months nor more than ten years, or fined, in the discretion of the court. G.S. 14-119 provides that any person guilty of forgery shall be guilty of a felony and shall be punished by imprisonment for not less than four months nor more than ten years, or by fine in the discretion of the court.

In addition to the criminal penalties, the convicted felon is confronted by an array of civil and economic penalties. These would include his loss of suffrage, employment, and perhaps the privilege of practicing an occupation or profession. The effect of this accumulation of penalties is rarely appreciated by the public.

(3) Public employees convicted of a crime should not be singled out for greater administrative punishment than that imposed upon persons in private employment.

Under most private retirement plans, an employee who has met the minimum age and service requirements for retirement may receive his entire pension even though he is discharged for misconduct.

(4) To deny a pension for conviction of a crime in line of duty might be the first step toward denying pensions to employees for other reasons.

Early court decisions viewed pensions as the equivalent of public appropriations into the pension fund. This freedom to grant or withhold pensions coupled with practices of political rewards and retribution postponed a public career service in some areas for many years. Restrictions on the

[5] *Ibid.*, pp. 1 and 2.

granting of pension or even placing discretion in the hands of the pension board might lead to abuses. Assuming a line of disqualification is to be drawn, reasonable men would differ as to how it should be drawn. Should it be fixed in detail or be only a general standard to be interpreted by an inexperienced lay board and subject to case by case review in the courts.

Reasonable men would differ as to where a line of disqualification should be drawn. If conviction for a crime committed while on duty is disqualifying, why should an off-duty employee who commits a crime which results in his dismissal be permitted to draw a pension? If an employee who is convicted of taking money is disqualified, why shouldn't an employee who takes a pencil or a paper clip also be disqualified?

Unless the provision were carefully drawn and administered, it might permit a return to the practices and abuses which have existed in other states in an earlier day—abuses from which North Carolina public employees have been largely, if not entirely, free.

(5) The instances of misconduct are so infrequent that they are really no problem at all.

So might the arguments run.

Conclusion

The incidents cited raise the question of what means should a governmental unit use to encourage faithful service among its employees. In between the positive incentive of a retirement benefit and the negative incentive of fine and imprisonment, is there a place for tying the state's half of the retirement benefit to a code of ethical conduct?

The Attorney General Rules...

By Durward S. Jones

Assistant Director, Institute of Government

Banks and Corporations

Authority of North Carolina Banking Commission. Because of two rather large shortages by bank officers recently which would have been discovered much earlier had the officer been compelled to take a continous vacation of at least ten days, does the Banking Commission have authority to require all bank officers and/or employees to take a continous vacation of not less than ten days each year?

To: Ben R. Roberts

(A. G.) As I understand it the purpose of the proposed regulation is to make it more difficult for a bank officer or employee to falsify books and embezzle money. In my opinion a regulation requiring a certain limited continuous vacation with respect to persons in position to embezzle money would be valid because of the following portion of G.S. 53-104:

> For the more complete and thorough enforcement of the provisions of this chapter, the State Banking Commission is hereby empowered to promulgate such rules, regulations, and instructions, not inconsistent with the provisions of this chapter, as may in its opinion be necessary to carry out the provisions of the law relating to banks and banking as herein defined.

Counties

Application of accrued interest on sale of bonds. Must a county receiving accrued interest at the time of the sale of its bonds pay that amount into the debt service fund to be used to retire the bonds, or may it treat the accrued interest as an increment to the proceeds of sale and invest it under G.S. 159-49.1?

To: Sloan W. Payne

(A. G.) Since the county received the money in question only because the bonds were not sold on the date of issuance (the bonds bearing interest from date) the amount should be paid over to the debt service fund.

Selection of jury list. If a duplicating machine is used to copy the names appearing on the county tax books and these names so duplicated are used as a part of the names to be placed in the jury box, would this procedure comply with the requirements of G.S. 9-1?

To: Harley B. Gaston

(A. G.) Yes. It is the view of this office that the method in question would be perfectly satisfactory as long as the list is not limited to persons whose names appear on the tax books.

Sick leave regulations for county officers. Do county commissioners have authority to adopt sick leave regulations for elective county officers?

To: Arthur A. Bunn

(A. G.) No. In my opinion, county commissioners have no authority to adopt sick leave regulations for constitutional officers elected by a vote of the people.

Domestic Relations

Jurisdiction of juvenile court. May the clerk of superior court in his capacity as judge of the juvenile court hear cases under the Uniform Reciprocal Enforcement of Support Act in which North Carolina is the responding state?

To: Walter J. Cashwell, Jr.

(A. G.) No. I am aware of no provision of the Juvenile Court Act (G.S. 110-21 through 110-44) which gives that jurisdiction; neither does the definition of "Court" under the Uniform Act [G.S. 52A-3 (4)] confer jurisdiction. In my opinion a juvenile court does not have jurisdiction to hear cases under the Uniform Reciprocal Enforcement of Support Act.

Jurisdiction of juvenile court to find probable cause in felony charges. A 15-year-old child, charged with second degree burglary, had preliminary hearing before and was bound over to superior court by the city

court trial justice. Was this the proper procedure or should this hearing have been held before the juvenile court judge?

To: Don Gilliam, Jr.

(A. G.) In *State v. Burnett*, 179 N. C. 735, the Supreme Court said children 14 years of age and over who are charged with a felony for which the punishment may be more than ten years shall be subject to prosecution as in case of adults. In *State v. Smith*, 213 N. C. 299, our court held that the juvenile court was without jurisdiction to try a 15-year-old charged with a capital crime. On the basis of the above authorities, noting that the crime charged could carry a sentence of more than ten years, and that a preliminary hearing is not a prerequisite to the finding of an indictment, it is my opinion that the juvenile court has no jurisdiction to investigate the case and bind this defendant over to the superior court.

ELECTION LAWS

Change of party affiliation for primary voting. May a voter presently registered as a member of the Republican Party have his registration changed to show affiliation with the Democratic Party? If so, and if the county in which he resides does not use the "loose-leaf registration system," when is he entitled to have the change made?

To: Floy Wilkinson

(A. G.) The voter is entitled to have the records changed as he desires, but in a county not using the loose-leaf registration system he must wait until the regular registration period before getting the record changed. The first part of G.S. 163-50 provides that such a change can be made during the regular registration period and at no other time. Before being permitted to have the record of his party affiliation changed, however, the voter must take the oath of loyalty to the party with which he desires to affiliate.

MUNICIPAL CORPORATIONS

Assessment on corner lots and lots not abutting on lateral main. May a municipality assess the owner of the last lot in a subdivision on the basis of the street footage of his lot for extension of water and sewerage systems when the lines are carried only to the corner of his lot? If not, may the municipality deprive the property of the water and sewerage services? May a municipality assess the owner of a corner lot on the basis of the front footage of that lot, when the lines run along one side and the front of that property?

To: W. S. Privott

(A. G.) I do not see how any front foot assessment could be made against the property owner whose property does not abut a street in which there are lateral mains. In my opinion, the town would be without authority to discontinue water and sewer services merely because, under the statute, the person was not subject to assessment. I see nothing in the statute that would relieve the corner lot owner from having an assessment computed on the basis of both the footage on the front and on the side of his property.

Separate contracts for plumbing, heating, and electrical work. Must a municipality award separate contracts for plumbing, heating, electrical installations, and air conditioning in the erection, construction, or alteration of a building to house municipal sewage treatment works?

To: E. C. Hubbard

(A. G.) Yes. G.S. 160-280 contains no exceptions to the requirement that separate specifications must be prepared and separate contracts awarded for the following branches of work to be performed when the entire cost of such work exceeds $10,000: (1) heating and ventilating and accessories; (2) plumbing and gas fitting and accessories; (3) electrical installations; (4) air conditioning for the purpose of comfort, cooling by the lowering of temperature, and accessories.

OCCUPATIONAL LICENSING

Rural plumbers. A person is engaged in the business of plumbing outside the corporate limits of the city. The county has adopted the city's plumbing code which requires that a plumber be duly licensed under the state-wide law before plumbing in the city. May the county require this license?

To: R. P. Reade

(A. G.) No. G.S. 87-21(c) provides that the plumbing contractors' article shall apply "only to persons, . . . who engage in, . . . the business of plumbing . . . in cities or towns having a population of more than 3,500 in accordance with the last official United States census." Thus the person in question would not only not be required, but he would not be authorized to obtain a state-wide license.

PUBLIC CONTRACTS

Construction of bid bond provisions. Low bidder for plumbing and heating for new county school building filed a bid bond executed by a duly authorized casualty company in lieu of the cash deposit. The bidder failed to execute the contract which was then awarded to next low bidder. Surety denies liability beyond the difference between the amount of the original low bid and the contract awarded next low bidder. Is surety liable for full amount of bid bond?

To: Martin Kellogg, Jr.

(A. G.) G.S. 143-129 authorizes a bid bond in lieu of cash or certified check on condition that the surety will, upon demand, forthwith make payment to obligee if bidder fails to execute the contract, and further provides that if surety fails to pay forthwith he shall then pay an amount equal to double the amount of the bid bond. Our Supreme Court has not construed that statute, and it is the view of this office that the board of education is bound to consider that the statute means what it says and cannot agree with surety's position.

SCHOOLS

Applications of teachers. Must teachers and principals presently employed by a county or city administrative unit, and for whom applications are on file, present new applications each year they wish to retain employment?

To: Everett P. Cameron

(A. G.) G.S. 115-142, in addition to terminating the contracts of all principals and teachers in the state at the end of the 1954-1955 school term, declares that new written contracts must be entered into each year. The offer (an essential element to the formation of the contracts) in the case of the contract of a teacher or a principal is made by the filing of an application by the teacher or principal. It is felt that the requirement for filing a written application may be waived. It would be waived if the superintendent and board of education know that the application is before the board and act upon it and the written contract is signed.

It would seem desirable to file a new application where some material change has occurred in the status of the teacher or principal, e.g., he has earned another degree and is thus entitled to higher salary, a woman teacher marries thus changing her name.

THE CLEARINGHOUSE

Health Directors

Thirty local health directors, the State Health Director, some members of the administrative staff of the State Board of Health, and some members of the faculty of the School of Public Health of the University of North Carolina attended a conference for local health directors at the Institute of Government on January 24 and 25. Roddey M. Ligon, Jr. was the staff member in charge.

The program began on the afternoon of the 24th with words of welcome from Dr. J. W. R. Norton, State Health Director, Mr. Ligon, and Dr. O. David Garvin, health director for the Orange-Person-Chatham-Lee-Caswell District Health Department. Dr. Norton and Dr. Garvin had participated in the planning for the conference. This was followed by a discussion by Dr. Norton of items of general interest from the State Board of Health. The remainder of the afternoon session and a portion of the evening session were devoted to a discussion of the public health laws of North Carolina. This discussion was led by Mr. Ligon. The public health laws were completely rewritten by the 1957 General Assembly, effective January 1, 1958. This discussion was followed by a business meeting of the local health directors.

The morning session of the 25th began with a discussion of the disposition, reproduction, and preservation of public records by H. G. Jones, state archivist. The remainder of the morning session was devoted to a discussion of personnel problems and practices by Donald Hayman, assistant director of the Institute of of Government; Dr. Dorothy Atkins, merit system supervisor; Claude Caldwell, assistant merit system supervisor; and C. P. Deyton, assistant to the executive secretary of the Local Governmental Employees' Retirement System.

A series of district conferences are being planned for the benefit of the local health directors who are not able to attend the sessions at the Institute of Government. These district conferences will be limited to a discussion of the public health laws and legal problems.

Municipal and Industrial Waste Conference Slated

The Seventh Southern Municipal and Industrial Waste Conference will be held at Duke University's Department of Civil Engineering on March 27-28. This conference which has been organized jointly by Duke, University of North Carolina, and State College, is held at one of these institutions annually for the purpose of bringing together representatives of industry, officials of municipalities and governmental agencies, and consulting engineers who deal with utilization of water resources in the Southeast.

Health Directors Conference

Industrial Park for Forsyth

The Committee on the Industrial Development of the County Farm in Forsyth County has proposed that the County Farm, which is located approximately two miles north of Winston-Salem, be jointly developed by the city and county as an "industrial park." About 300 acres of this 600-acre tract are potentially usable for industrial purposes. This recommendation was based on findings that "there is demand for industrial land in this area and that the farm is appropriately located and physically adequate to meet a portion of this demand."

The suggested arrangement would provide for the formation of a non-profit corporation, or its equivalent, with the city and county each owning fifty per cent of the stock. Costs of development, revenues and other benefits from its sale to and use by industry would also be shared on a fifty-fifty basis. A non-salaried commission would be appointed to administer the affairs of the corporation.

In the event that the city and county cannot develop the farm, the Committee suggested that it be sold to private developers under deed restrictions providing for high-standard industrial development.

To carry out this program, the Committee recommended that the farm and vicinity be zoned in order to guide the future development of the area and to protect anticipated public and private investment in the venture. The Committee further recommended that careful consideration be given to arranging for reliable water and sewer services which are not presently available. It is suggested that a sewage disposal system be constructed on the site and that arrangements be made for extension of city water lines to serve the site.

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.

Bulletins

County finance bulletins:

#4 An explanation of budgetary and accounting procedures prescribed by the new County Fiscal Control Act. 1955. $0.50.

#6 Accounting for welfare funds. 1956. $0.50.

A directory of planning and zoning officials in North Carolina. 1955. $0.25.

Municipal finance bulletin:

#1 An explanation of budgetary and accounting procedures prescribed by the new Municipal Control Act. 1955. $0.50.

#2 How can law enforcement officers be brought under social security? 1957. $0.50.

1951 legislation affecting property and dog tax administration. 1951. $0.50.

Property tax bulletins:

#1 1951 county tax rates. 1952. $0.50.

#4 How does your county stand? 1953. $0.50.

#5 1953 legislation affecting property tax administration. 1953. $0.50.

#6 Property tax assessment notes from other states. 1953. $0.50.

#7 Amendments to the listing and assessing provisions of the Machinery Act of 1954. $0.50.

#8 Allowing discounts for the prepayment of property taxes. 1954. $0.50.

#9 Amendments to the tax collection provisions of the Machinery Act of 1939. 1954. $0.50.

#10 Collecting property taxes from persons and property in North Carolina outside the taxing unit. 1955. $0.50.

#12 How does your county stand? Second report. 1955. $0.50.

#13 The reduction, release, compromise, and refund of county and city property tax claims—revised. 1955. $0.50.

#14 Property tax changes to be proposed in 1957. 1956. $0.50.

#15 Tax Study Commission treatment of property tax. 1956. $0.50.

#16 Property tax statistics. 1957. $0.50.

#17 1957 legislation affecting property tax administration. 1957. $0.50.

Purchasing bulletins for local government, monthly: #1, October 1955—. $1.25 a year; $0.25 single copy.

Guidebooks

Administrative procedure: occupational licensing boards, by Paul A. Johnston, 1953. $2.00.

Cooperative agricultural extension work in North Carolina, by John Alexander McMahon. 1955. $0.50.

County commissioner responsibility in budget making and administration, by John Alexander McMahon. 1954. (A companion study of County finance bulletin #4). $1.50.

The foreclosure of city and county property taxes and special assessments in North Carolina, by Peyton B. Abbott. 1944. $2.50.

Guidebook for accounting in cities, by John Alexander McMahon. 1952. $2.00.

Guidebook for accounting in small towns, by John Alexander McMahon. 1952. $1.50.

Guidebook for county accountants, by John Alexander McMahon. 1951. $2.00.

Guidebook for wildlife protectors, by Willis Clifton Bumgarner. 1955. $2.00.

Guidebook on the jurisdiction of the State Highway Patrol, by Ernest W. Machen, Jr. 1951. $0.50.

Investigation of arson and other unlawful burnings, by Richard A. Myren. 1956. $1.50.

Law enforcement in forest fire protection, by Richard A. Myren. 1956. $1.00.

Municipal budget making and administration, by John A. McMahon. 1952. (A companion study of Municipal finance bulletin #1). $1.50.

Notary public guidebook, by Royal G. Shannonhouse and W. C. Bumgarner. 1956. $2.00.

Preparation for revaluation, by Henry W. Lewis. 1956. $5.00.

Public school budget law in North Carolina, by John Alexander McMahon. 1956. $1.50.

Public welfare programs in North Carolina, by John A. McMahon. 1954. $1.50.

Sources of county revenue, by John Alexander McMahon. 1954. $1.00.

Sources of municipal revenue, by John Alexander McMahon. 1953. $1.00.

Traffic control and accident investigation, by the Federal Bureau of Investigation. 1947. $1.00.

LAW AND GOVERNMENT

(Succeeding Law and Administration)

The General Assembly of North Carolina—organization and procedure, by Henry W. Lewis. 1952. $1.50.

The law of arrest, by Ernest W. Machen, Jr. 1950. $1.50.

——— Supplement. 1955. Free.

Legislative committees in North Carolina, by Henry W. Lewis. 1952. $1.50.

The school segregation decision, by James C. N. Paul. 1954. $2.00.

Social security and state and local retirement in North Carolina, by Donald B. Hayman. 1953. $2.00.

Zoning in North Carolina, by Philip P. Green, Jr. 1952. $3.50.

Special Studies

Revenues and Service Costs for General Fund Activities: A Special Report on Annexation for the City of Durham. October, 1957. $.50. Warren J. Wicker.

Residential Service Costs Durham Water and Sewer Department. September, 1957. $.50. Warren J. Wicker.

Are New Residential Areas a Tax Liability? $1.00. George H. Esser, Jr. December, 1956.

County privilege license taxes in North Carolina . . ., by George H. Esser and John Webb. 1956. $0.75.

Harbor Island study [Annexation or Incorporation? A report to the people of Harbor Island], by Warren J. Wicker. 1956. $0.50.

North Carolina old age assistance lien law, by Roddey M. Ligon, Jr. 1955. $0.75

Problems involved in separating the Prison System from the State Highway and Public Works Commission, by V. L. Bounds. 1953. $0.50.

A report to the Forsyth Board of County Commissioners and the Winston-Salem Board of Aldermen concerning county-city financial relationships, by John Alexander McMahon and George H. Esser, Jr. 1955. (A companion study of A Study of Seven Large Counties and Seven Large Cities.) $2.50.

Salaries, working hours, vacation, and sick leave of county employees in North Carolina, by Donald B. Hayman. 1956. $1.00.

Statutory limits on city license taxes in North Carolina, by George H. Esser, Jr. and John Webb. 1956. $2.00.

A study of seven large counties and seven large cities, by John Alexander McMahon. 1955. (A companion study of A Report to the Forsyth Board of County Commissioners and the Winston-Salem Board of Aldermen Concerning County-City Financial Relationships.) $2.50.