IN THIS ISSUE

UNEMPLOYMENT INSURANCE
By Dr. H. D. Wolfe

THE CHEROKEE COUNTY COURTHOUSE
(Our Cover Picture
By Edmund D. Norvell

THE FEDERAL HOUSING ADMINISTRATION
By Theodore B. Sumner

SUGGEST REVISING CRIMINAL PROCEDURE
By James H. Pou

WHO HOLDS THE STATE'S PURSE STRINGS?
By T. N. Grice

Evangel of Democracy
DENNIS G. BRUMMITT
By John A. Livingstone

THE LADDER OF THE LAW
By Dr. R. S. Rankin

SHORTCUTS AND SAVINGS
By M. R. Alexander

STATE DEPARTMENT RULINGS

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POPULAR GOVERNMENT

10c A COPY FEBRUARY, 1935 Vol. 2, No. 4

Are You Interested

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ACTIVITIES

of the

GENERAL ASSEMBLY?

■

EACH week a bulletin is issued by THE INSTITUTE OF GOVERNMENT to Registers of Deeds, City Clerks and local newspapers summarizing all bills of state-wide interest which affect local governmental units and their officials. Each bulletin also carries a summary of bills affecting each particular locality, regardless of subject matter.

WE urge officials of counties, cities and towns to visit their Register's or Clerk's office and avail themselves of these bulletins. We suggest to interested citizens that they follow the bulletins in their local newspapers.

■

The Institute of Government

Box 147

Raleigh, North Carolina

AN INFORMATIVE LETTER

THE
NORTH CAROLINA GRANITE
CORPORATION
MOUNT AIRY, N. C.

January 14, 1935

Mr. T. N. Grice, Associate Director,
The Institute of Government
Box 147
Raleigh, North Carolina

Dear Mr. Grice—

I have just had the pleasure of looking over the January issue of the POPULAR GOVERNMENT, and find that you have adorned the front page with the WRIGHT MEMORIAL and that you have an article starting on page 6, which I have read with interest, and cannot for the life of me understand why you omitted to state that the white granite of the exterior of this building, as well as the star shaped plaza, was quarried and cut here at Mount Airy, and that the red granite which enhances the interior was quarried at Salisbury, North Carolina, and cut at Mount Airy, North Carolina. We people are rather proud of our work and of our granite, and could not help but feel a little bit slighted, as the people reading the article really might like to have known that our own State produced this wonderful monument, and that we have draftsmen and fabricators sufficiently skillful to lay out this piece of work, and so carefully and accurately shaped the pieces that they were assembled with but the very least amount of cutting at the building. The black floor stones were secured from Wisconsin. It was one of the most complicated pieces of work that ever passed through our plant.

Perhaps you were not aware where it was quarried and cut and did not know of the vast amount of detail that was involved, as I am sure that if you had known all this, you would have given some credit to those people of your State who so ably produced this work.

Very truly yours,

THE NORTH CAROLINA GRANITE CORP'N.
J. D. Sargent, President.
JDS/W

Editor's Note: We offer Mr. Sargent and his co-workers our apologies, and thank Mr. Sargent for this interesting and enlightening letter concerning the Wright Memorial. Citizens of North Carolina can be justly proud that located within their State's boundaries are capable craftsmen as well as the beautiful materials to make such a memorial possible.

POPULAR GOVERNMENT

VOLUME 2
NUMBER 4

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT

FEBRUARY
1935

Unemployment Insurance: The State Phase of a National Problem

By DR. H. D. WOLFE

EDITOR'S NOTE: The problems of unemployment and relief incident to the depression have legislators in 48 states pondering the question of unemployment insurance. Shall we insure against unemployment and, if so, what system shall we adopt? The accompanying article summarizes the provisions of the leading systems in use in other States and of the system proposed for North Carolina. The author, Dr. H. D. Wolfe, served as secretary of the Commission appointed by Governor Ehringhaus to study the subject and report to the 1935 Assembly. The views expressed herein are those of Dr. Wolfe of the Commission. POPULAR GOVERNMENT will welcome any criticisms or statements of opposing views.

THE enactment of unemployment compensation legislation by the present General Assembly has been recommended both by Governor Ehringhaus, and by his Commission on Unemployment Insurance. While there appears to be widespread sentiment within the State for such legislation, its realization undoubtedly depends largely on appropriate prior action by Congress. If Congress follows the recommendations set forth by President Roosevelt in his recent message on economic security, as is generally believed it will, the likelihood of unemployment compensation in this State, as in others, within the next two or three months, becomes practically a certainty. It seems particularly timely, therefore, to examine the findings of the North Carolina Commission on Unemployment Insurance, and to compare the provisions of the bill submitted by the Commission for this State with those of other plans that have been proposed in this country.

Before doing so, however, it should be observed that any unemployment compensation measure that may be enacted by the General Assembly of this State, as is also true of other states, must conform to the forthcoming federal legislation, if the State is to secure the advantages of federal coöperation. While such anticipated federal legislation is still in the formative stage, it seems reasonable to assume, first, that it will actually be enacted in the near future; and, second, that it will follow closely along the lines recommended by the President. A glance at its general nature accordingly seems in order at this point.

DR. H. D. WOLFE

Dr. Wolfe, who is a member of the faculty of the School of Commerce of the University, is Secretary of the North Carolina Commission on Unemployment Insurance. His specialty is labor, and his contributions to the solution of labor problems in this region have been large. In this line, he also served as a member of the committee which helped to shape up the North Carolina Workmen's Compensation Act and drew the bill for the reorganization of the State Department of Labor.

Proposed Federal Legislation

The purpose of the proposed federal legislation is not to establish a federal system of unemployment compensation, except for maritime workers and railroad employees; but rather to offer the states substantial inducements to establish systems; to set minimum standards below which the states may not go, while allowing them practically complete freedom of choice in selecting the type of system they prefer, with provisions above the minima prescribed by the federal act; and to provide for coöperative federal-state administration.

The first of these objectives is expected to be accomplished by levying a three per cent federal tax on the payrolls of all employers, regularly employing four or more workers. Credits up to 90 per cent of the tax are to be allowed employers who have contributed to an approved state unemployment compensation system. The remaining ten per cent of the amount of the tax is to be turned over to the states as grants-in-aid to take care of the costs of administration. Except for this latter provision, this section of the proposed legislation follows along the lines of the Wagner-Lewis bill which was introduced at the last session of Congress.

The minimum standards which the proposed federal legislation will probably require of the states are discussed below, and may be passed over here. With respect to the administrative

POPULAR GOVERNMENT, the journal of The Institute of Government, is published monthly at Raleigh, N. C. Editorial, business and advertising address: Box 147, Raleigh, N. C. Subscriptions, per year: $1.00. Single copies, 10 cents each. Advertising rates will be furnished on request. Editor, Albert Coates; Associate Editors, Henry Brandis, Jr., Dillard Gardner, T. N. Grice and M. R. Alexander. Business and Advertising Manager, M. R. Alexander. Address all correspondence to Box 147, Raleigh, N. C. Application for entry as second-class matter is pending.

features, the actual work of administration is left to the states. It is stipulated, however, that the states must accept the Wagner-Peyser Act, providing for the public employment service, and that the payment of unemployment compensation must be made through the public employment offices established under the Act. It is further stipulated that all moneys collected for unemployment compensation purposes shall be deposited with the Treasurer of the United States, in trust accounts to the credit of the respective states. These funds are to be invested and liquidated as the Secretary of the Treasury may direct; and may be withdrawn only for unemployment compensation purposes, under regulations to be prescribed by the Secretary of the Treasury.

It is not the purpose here to attempt a detailed and critical analysis of the probable forthcoming federal act. It is necessary to keep its broad outlines in mind, however, in analyzing the bill recommended by the North Carolina Commission on Unemployment Insurance. Such an analysis follows immediately after a brief consideration of the findings and conclusions of the Commission.

The Report of the North Carolina Commission on Unemployment Insurance

The North Carolina Commission on Unemployment Insurance was appointed by Governor Ehringhaus in June, 1934. Its membership consisted of Senator W. O. Burgin, chairman, Senator John Sprunt Hill, Mrs. W. T. Bost, Mrs. May Thompson Evans, T. Austin Finch, T. A. Wilson, Major A. L. Fletcher, Thurmond Chatham, P. R. Christopher, Dean W. H. Glasson, Duke University, and H. D. Wolfe, University of North Carolina.

The Commission was instructed by Resolution No. 38, 1933 General Assembly, which authorized its appointment, to ". . . investigate the practicability and advisability of requiring the establishment of unemployment reserves or an unemployment insurance system to provide against the hazard of unemployment, and to recommend what form of legislation, if any, may be best adapted to this end in North Carolina, and to compile such other information and make such other analyses as may be useful in enabling the General Assembly to plan constructively for meeting future periods of unemployment."

The Commission's study covers the period from 1920

TABULAR ANALYSIS OF LEADING PLANS IN THE UNITED STATES

		WISCONSIN	OHIO	VIRGINIA	NORTH CAROLINA
Amount		50% avrg. wk. wage; max. $10; min. $5 wk.	50% avrg. wk. wage; max. $15 per week	50% avrg. wk. wage; max. $15 per week	50% avrg. wk. wage; max. $20 per week
Benefits	Max. per yr.	10 weeks	16 weeks	26 weeks	17 weeks
	Ratio wks. benefits, wks. worked	One to four		One to four	One to four
Contributions	State	None	None	None	None
	Workers	None	1% of all wages	None	1% of all wages
	Employers	2% payrolls	2% payroll until January, 1937	1st two years, 2% payroll	1st three years, 3% payroll
Eligibility	Residence	Resident of State 2 years, or			
	No. wks. employment	Employed 40 wks. within past 2 yrs.	26 wks. in 12 mo. or 40 wks. in 2 yrs.	13 wks. in preceding 52	30 wks. in preceding 52
	Waiting pd.	Two weeks	Three weeks	Four weeks	Three weeks
Incentives to stabilize (in addition to self-insurance)		Contributions reduced to 1% when fund averages $55; O. when fund avrg. $75	Merit rating system after Jan. 1, 1937; min. 1%; max. 3½%	After 2 yrs., contribution reduced to 1% at avrg. $65; O. when fund avrgs. $100	Merit rating system based on experience after three years; min. 1½%; max. 3½%
Handling of Funds		Separate accounts; joint accounts may be set up	Single State fund	Separate accounts; Insurance fund pooled	Single State Fund
If Funds Prove Inadequate		Benefits reduced $1 for each $5 fund falls below $50	Funds may be borrowed, and/or benefits reduced	May increase waiting period, or adjust benefits	Funds may be borrowed, and/or benefits reduced

NOTE: It will be kept in mind that any forth-coming Federal legislation will, doubtless, establish minimum standards which will require revision in some of the above provisions.

down to the present, with emphasis on the period from 1929 to 1934. Its findings and conclusions were set forth in a report to Governor Ehringhaus, as was also a draft of the recommended bill. This report will probably appear in printed form in the near future.

The chief findings of the Commission may be summarized briefly as follows:

1. That the extent of unemployment in North Carolina, during the present depression, has ranged from about 10 per cent of the State's gainful workers in 1929, to about 23 per cent in 1932, since which time it has declined. The number of unemployed industrial workers today is about 90,000, including agricultural workers.
2. That unemployment, not only since 1929, but over the whole period from 1920 to the present, has been less severe for North Carolina than for the nation as a whole. The chief reasons for this appear to be:
   a. The fact that a relatively large proportion of the State's gainful workers are engaged in agriculture.
   b. The fact that the State's dominant industries, namely, textiles, tobacco, and furniture, are engaged in the production of consumer goods, which typically are not hit as hard by depressions as are the heavy industries. .
   c. The fact that, especially during the decade of the 20's, considerable amounts of capital were immigrating into the State, which gave rise to employment here, even though it might be declining elsewhere.
3. That the fluctuations of employment and unemployment in North Carolina will probably conform more closely to that of the country as a whole in the future than they have in the past.
   a. Because of the fact that most of our industries have reached maturity, and will not continue to expand in the future as they have in the past.
   b. Because of the likelihood of less capital immigration into the State in the future.
   c. Because of the equalizing effects of the national codes.
4. That the unemployment situation will probably be aggravated in the future by the fact that industry will be less able to absorb the large numbers who will probably be released by agriculture; and that a solution to the agricultural problem is essential to a solution to the problem of unemployment.

Convinced that a certain amount of unemployment may be expected to continue, even after the full return of prosperity, and that some provision should be made whereby unemployed workers need not be forced to fall back on charity, except as the last possible resort, the Commission recommended the enactment of an unemployment compensation law. The chief provisions of the bill recommended by the Commission are analyzed in the following pages, and an attempt is made to compare them with the provisions of the leading plans that have been proposed in other states, as well as with the requirements of the proposed Federal legislation.

An Analysis of the Bill Recommended by the North Carolina Commission on Unemployment Insurance

The two leading plans of unemployment compensation that have been proposed in the United States are the Wisconsin, or reserves plan; and the Ohio, or insurance plan. An attempt to reconcile the chief differences between these two plans has resulted in an interesting compromise that is to be found in the plan recommended by the Virginia Commission on Unemployment Insurance. A comparison of the essential features of these plans, as well as the main provisions of the bill recommended for North Carolina, is set forth in the accompanying tabular analysis.

As was suggested above, the proposed federal act permits the states to exercise practically complete freedom in choosing the type of plan they prefer. In fact, the adoption of all types is encouraged, in order that their respective merits may be studied. Since the states have this choice, and since the issue is likely to be not whether we will or will not have unemployment compensation, but rather, what type of unemployment compensation, it seems desirable at this point to observe the differences between the several plans, and to note the arguments advanced in behalf of each.

The Wisconsin Versus the Ohio Plan

Disregarding details, the fundamental differences between the reserves plan, as embodied in the Wisconsin Act, and the insurance plan, as typified in the Ohio bill, are two: first, the respective ways in which the reserves are kept; and, second, the parties who are required to contribute.

Considering first the matter of reserves, the Wisconsin Act provides for the establishment of a separate account for each employer. Groups of employers may set up a joint account, if they so desire, but the basic idea is a separate account for each employer, from which benefits may be paid only to his own employees when he is unable to give them work. The reasoning back of this arrangement is, first, that unemployment is largely preventable, and, second, that it is the employer who is in the best position to prevent it. By setting up a separate account for each employer and allowing him to reduce his contributions when the average amount of reserve per employee reaches a certain figure, and to suspend all contributions when the average reserve per employee reaches a higher figure—it will be noted from the accompanying chart that under the Wisconsin Act an employer's contributions are reduced from 2 per cent of his pay-roll to 1 per cent when the average reserve per employee amounts to $55.00, and are entirely suspended when the reserve averages $75.00—the advocates of the reserves plan believe the necessary incentive is present. The individual employer, it is argued, is given a free hand to initiate such measures as seem to him most likely to bring about stabilization and regularity of employment in his own plant. He is assured that if he succeeds he will reap the benefit of his efforts by having his contributions reduced or entirely suspended. The relationship between the accumulation of such an amount in his account and reducing his unemployment is direct and obvious. He knows further that good management on his part will not be counteracted, so far as he is concerned, by poor management or inability to regularize on the part of another employer.

The proponents of the Ohio plan not only challenge the reasoning back of the system of individual reserves, but also point to certain weaknesses in the system itself. They maintain that the advocates of the Wisconsin plan overemphasize the power of the individual employer to cope

(*Continued on page seventeen*)

The Cherokee County Courthouse

By EDMUND D. NORVELL
Member of the Cherokee County Bar

NOT until January 4, 1839, (Chapter 10, Laws of North Carolina, page 18) was there such a County in North Carolina as Cherokee County. Before this date and up to May 23, 1836, the territory embracing Cherokee County was owned and occupied by the Cherokee Indians. On the 29th day of December, 1835, a treaty between the Cherokee Indians and the United States Government was concluded, which was ratified at New Echota, Georgia, May 23, 1836. By the terms of this treaty the Cherokee Indians ceded all of their possessions East of the Mississippi to the United States.

Upon the removal of the Cherokee Indians under command of General Winfield Scott, preceded by General John Wool, in 1836-38, the Government of the United States established a fort overlooking the Hiawassee River on the Southwest, about a half mile from the present courthouse, known as Fort Butler being named after B. F. Butler, then Seretary of War.

By Section 7, Chapter 11, Laws 1839, it is provided as follows:

"That until a courthouse and jail shall be built in said County, any of the buildings put up by the army at Fort Butler on the four hundred acres of land on which the Town of Murphy is situate, shall be for the use of the courts of the County, until a Courthouse and jail shall be built."

It was not until January 11, 1841, that Superior Courts were allowed to be held in Cherokee County. All Courts prior to this date were Courts of Pleas and Quarter Sessions. The Minute Book for the first term of Cherokee Superior Court evidently has been lost or destroyed.

From the best information I can gather, which is contained in Deed Book No. 1 in the Office of the Register of Deeds for Cherokee County, the first term of Superior Court for Cherokee County was held on March 17, 1841, presided over by Honorable W. H. Battle, Judge. The first Clerk was James Whitaker, Sr., and the first Sheriff was Francis M. McGee, who was chosen by the Justices constituting the Court of Pleas and Quarter Sessions, of which Court John Tatham was Chairman and John W. Grady was Clerk. It appears that Courts were held in the buildings at Fort Butler for several years after the establishment of Cherokee County.

When the first Courthouse was built I am not able to say, as I cannot find the record of the County authorities providing for the building of the Courthouse. However, it was subsequent to January 11, 1841, for it was not until that date that provision was made for the erection of a Courthouse and jail. Subsequent to this date streets were laid out near the center of the Town property running at right angles from a square, commonly called the Public Square, and in the center of the square a frame Courthouse was erected which stood until April 4, 1865, when it was burned during a raid through Western North Carolina by Federal troops under command of General Kirk. After this the County authorities built a two-story brick courthouse, with four rooms below for offices and one room above for holding Courts, on the site of the building that was burned.

In 1892 the County authorities acquired property on Peachtree Street and erected a large (and then) up-to-date Courthouse built of brick and trimmed with native marble.

On the 13th day of December, 1895, this brick Courthouse was destroyed by fire, and in 1896 the County authorities rebuilt the Courthouse using the same outer walls. This building stood until the morning of January 16, 1926, when it was again destroyed by fire.

The County Commissioners, (T. W. Axley, Chairman, W. T. Holland and W. J. Martin) immediately took steps to erect another Courthouse virtually on the same site. This is the present Courthouse, built of native marble and in every way fire-proof. Fortunately, none of the important records of the County were destroyed in either of the three fires.

THE handsome courthouse pictured on our cover is that of Cherokee County, far-western outpost of North Carolina, and stands on land over which the Indian roamed and hunted until well after the beginning of the 19th century. After having three courthouses burn to the ground, Cherokee officials determined to build against the ravages of time and fire. The result is the present imposing structure, dedicated in 1927, which was constructed of native marble and which is fireproof throughout. Mr. Norvell, the author of the accompanying sketch, is a leading member of the Cherokee Bar and a long-time student of the history of the county.

The present Courthouse was formally dedicated at a term of Superior Court held in Murphy on the 11th day of November, 1927, presided over by Judge Thos. J. Shaw, of Greensboro, the dedicatory exercises being presided over by Honorable J. D. Mallonee as Chairman of the Cherokee Bar Association.

State Highway No. 10 (Federal No. 19) passes through Murphy where the old Courthouse stood. Also State Highway No. 28 (Federal No. 64).

After its abandonment the property on which Fort Butler was built was acquired by Dr. Charles M. Hitchcock, surgeon in the United States army, who was with General Winfield Scott while stationed here to supervise removal of the Cherokee Indians. Several years ago the property was acquired by the Tar Heel Investment Company.

In 1925, through the efforts of Mr. Donald Witherspoon, an attorney here who represented the Tar Heel Investment Company, the Company donated the land on which Fort Butler stood to the Town of Murphy. A monument now stands where the old fort stood.

Among noted jurists who presided over terms of Superior Court for Cherokee County in addition to Judge Battle were Honorable Richmond M. Pearson, afterwards Chief Justice of the Supreme Court of North Carolina, and Honorable John M. Dick, father of Honorable Robert P. Dick, who became United States District Court Judge.

At one time Honorable Augustus S. Merrimon was prose-

(Continued on page fifteen)

The Federal Housing Administration

Its Purpose and Work

By THEODORE B. SUMNER

THEODORE B. SUMNER

Mr. Sumner, who is the author of the accompanying article, is State Director of the Federal Housing Administration for North Carolina.

THERE has been a great deal written and said about the benefits the public may receive through the Federal Housing Administration's activities. Numerous speakers and many articles emphasize this or that phase of the program and it gives me great pleasure to be able to explain in detail the actual operation of Titles I, II and III of the National Housing Act as interpreted by me as State Director for North Carolina.

Every citizen and institution in the State of North Carolina will be affected directly or indirectly by this far-reaching piece of legislation. Of course, there are certan citizens and groups of citizens who will feel the benefits sooner than others.

I shall take up the discussion of these three titles in their regular order:

Title I of the National Housing Act provided for the creation of the Federal Housing Administration and the appointment of the Federal Housing Administrator by the President to whom great latitude was allowed in the setting up of the administrative organization, establishing policies and prescribing regulations.

Title I of the Act also provides a form of insurance for loans made by approved financial institutions whereby such institutions would be enabled to lend their funds with the maximum amount of security, and liquidity, and with a most satisfactory return in interest.

Insurance of Loans

We can insure loans of from $100 to $2,000 for any permanent improvement to any owner of improved real property at a cost not to exceed a 5 per cent discount rate, payable in equal monthly installments, provided the character and credit responsibility of the applicant are satisfactory and he has a known earning capacity of five times the annual payments due on his note. These few facts cover practically all of the cold details in Title I.

Editor's Note: "Popular Government" presents herewith a short but authoritative summary of the purposes and plan of operation of that important new member of the New Deal family, the Federal Housing Administration, by the State Director for North Carolina.

Mr. Sumner has authorized us to say that any real property owner who desires more detailed information or who is uncertain as to the exact procedure he should follow in obtaining a loan may write direct to him at the Haywood Building, Asheville, N. C.

From our acquaintance with Mr. Sumner, we can assure you that, while you may or may not get a loan, your inquiry will receive prompt and careful attention.

To acquaint the owners of improved real property with these facts was the first purpose of the various field agencies of the Federal Housing Administration.

This educational work was started by forming Better Housing Campaigns in the various cities, towns and counties of this and all other states of the United States and its territorial possessions. Better Housing Campaign committees, by advertising and publicity and through speakers, have done a pretty thorough job in advising the public as to the benefits it may receive through using the single and inexpensive Modernization Credit Plan for securing the necessary funds to repair, alter or modernize properties. Much good has been achieved already by this stimulus of the building trades and its resultant reëmployment of unemployed craftsmen.

The Better Housing Campaign committees in this State are now conducting active house to house canvasses to collect in detail information about the actual physical condition of each piece of real property in their respective territories. This information is being given gratis to the building contractors and building supply dealers, and they are being urged not only to sell their products and services but to inform themselves as to the various financial institutions making Modernization Credit loans and to assist in arranging for loans for their customers.

Active campaigns to inform and instruct rural home owners, and to urge them to take advantage of the Housing Act, are in the process of formation, and this vast field will be covered in a most thorough manner.

Three Results

The expected results of this work are: First, the education of the real property holder to appoint where he realizes that, despite the depression, he has a real asset in his property and not a liability. and that in order to keep this asset he must maintain his property in a good state of physical repair. Second, the uncovering of actual business for the contractor and building supply dealer, and, education of these contractors and dealers in modern selling and in the necessity of having financing arrangements available wherever it is necessary in order to make a sale. Third the selling of the idea of installment lending to the commercial banking institutions. This will make it possible for many home owners, not now able to secure proper credit, to arrange for their loans on a basis which is satisfactory to them—and, at the same time, is a safe and sound one for the lending institutions.

When one realizes that all of this work, in its final analysis, is aimed at and is actually accomplishing a gigantic stimulus of the building trades, a reëmployment of unemployed labor, on a large scale, thus creating tremendous payrolls, which are stimulating general business in every trading area, and an easing of credit through insured loans to thousands of property owners, it is easy to foresee a resumption of normal business. But, while the accumulation of needed repairs and improvements upon real property is large, activity in this field alone cannot be expected to support the building industry continually throughout the years to come. The revival of new construction must be brought about as well, if the building industry is to keep pace with other forms of economic activity. This brings Title II into the picture.

It has taken sometime to organize this plan and put it in operation, due to the fact that the lending institutions, which will coöperate with the government in making the program possible, were restricted by state laws in a great many states. These laws are having to be changed by action of state legislatures. This I am happy to say, is being done very rapidly. There are a great number of institutions in this state which have already qualified to the satisfaction of the Federal Government, and are only waiting for certain restrictions to be removed by our legislature.

The Procedure for Borrowing

I shall take up first the procedure that should be followed by the individual who wishes to borrow money under this plan. At the outset, let me say that this money will be made available for new construction purposes, refinancing of existing mortgages, and making loans on property on which there is not an existing mortgage. The individual wishing to secure a loan of this character applies to the nearest approved mortgagee. I mean by approved mortgagee—a lending institution which has made an application to the Federal Housing Administration and has been approved by it.

The approved institution will require the prospective borrower to fill out certain application forms, in which will be stated the amount of money to be borrowed the terms on which the money is to be paid back, and other pertinent facts. This application then is referred to the state office of the Federal Housing Administration. After checking the statements made in the application the state office will notify the lending agency that it will, or will not, insure this particular mortgage. The Federal Housing Administration may insure payment of the mortgage up to 100%, but no mortgage can exceed 80% of the value of the property against which the mortgage will apply. Such mortgages will therefore be insured on the merits of each individual case. The general rules governing the approval of these mortgages stipulate that the Federal Housing Administration will not insure a mortgage the amount of which is more than 80% of the appraised value of the property on which the mortgage is to be taken; and the Federal Housing Administration will have to be completely satisfied that the applicant assuming these obligations is competent to meet the payments on the basis agreed upon.

These payments must be made in monthly installments and will include interest installments on principal, taxes and insurance. They must be arranged so that the borrower will slowly but surely pay off the entire principal without being forced to refinance every five, ten or fifteen years and to pay the attendant refinancing charges. The entire schedule of payments must be covered by the original mortgage. The basic interest rate is 5% and in no event is it to exceed 5½% to the borrower.

It has been found that it is a great deal easier for a borrower who makes monthly payments to keep his property in times of economic distress than it is for a borrower paying on a semi-annual plan. The lending institutions which have in the past made loans on a monthly payment plan have not been forced to foreclose nearly so many properties as those institutions which demanded annual or semi-annual curtailment of principal. There has never been in the past to my knowledge, a plan devised whereby the borrower could meet all of his payments, including taxes, insurance, interest and amortization of principal on a monthly payment plan at such a low interest rate.

Problems of Our Banks

Now, approaching the matter from the standpoint of the lending institution, we find that most of the banks in North Carolina are in a very peculiar position. They have tremendous amounts of money on hand, which they must loan safely to make their institutions profitable. They cannot loan this money and yet protect their depositors and stockholders unless they can loan on a type of security which not only yields a fair interest rate, but which also can be converted into cash as their depositors need it. In the past a bank which invested in long-term real estate mortgages found itself in time of distress with paper on its hands which could not be quickly converted into cash.

Under the National Housing Act there will be formed National Mortgage Associations. These Associations will be to some extent under government regulation, although financed and operated by private capital. They will be allowed to issue bonds or debentures, which will be sold to the public. The underlying collateral of these debentures will be government bonds, or real estate mortgages which have been insured by the Federal Housing Administration. The primary function of these Associations will be to provide an outlet for the banks and other lending institutions who wish to dispose of insured real estate mortgages which they have acquired.

As you may readily see the success of this whole plan depends upon the ability of the Federal Housing Administration, in coöperation with the lending institutions, to make safe and conservative loans. We cannot make loans just upon the value of the property but must take into consideration the ability of the borrower to meet his obligations. This

(Continued on page seventeen)

Homicide Rate Brings Suggestions for Revising Criminal Procedure

By JAMES H. POU
Member of the Raleigh Bar
As Told to a Staff Member of the Institute of Government

POINTING out that North Carolina stands second among the 48 states in number of homicides, James H. Pou, veteran member of the Raleigh bar, declares that "Our criminal procedure is as much in need of revision and bringing up to date as our civil procedure was in 1868," and has recommended, in a letter to the Attorney General's office, a series of sweeping changes which appear worthy of serious consideration by public officials and lawyers of the State.

Beginning with the suggestion that the personnel and facilities of the solicitor's office be increased and the criminal taxed with the added cost, Mr. Pou has analyzed our criminal procedure step by step and recommended far-reaching changes all along the line. Some of these could be accomplished by action of the Governor and the Judges, others would require legislative action, and still others constitutional amendments.

One of the most drastic steps proposed is to remove the constitutional provision that the defendant cannot be required to give evidence against himself, which Mr. Pou says has led to some extent to the abominable practice known as the "Third Degree," and supplant it with the Continental System of examination by a "Judge of the First Instance."

Mr. Pou, who believes in shorter sentences and less pardons, would "relieve the Governor of the terrible duty of administering the pardoning power," setting up a Board of Pardons instead. Another recommendation of particular interest is his suggestion to employ markedly different punishment in the case of occasional and habitual and first offenders, even to the point of enacting a Baumes Law and reviving the whipping post, as Delaware has done, if all else fails.

Mr. Pou, who incidentally is one of the State's best-known criminal lawyers, certainly has the figures on his side. North Carolina's homicidal rate for last year, according to the figures in the new *World Almanac,* was 23 and a fraction per hundred thousand. This was surpassed by only one State, Alabama. The rate for Illinois, noted for its gang wars and killings, was 8.4. A comparison of figures for the United States and other leading nations is equally unfavorable. Our readers may find it hard to believe, but one North Carolina city had more homicides during the first nine months of 1934 than the four most populous provinces of Canada. Police officials say the difference lies in the certainty of detection and punishment under a modern and sensible law and system.

THE State's new Attorney General, Hon. A. A. F. Seawell, is deeply interested in the suggestions that Mr. Pou and others before him have made for the revision of our criminal procedure, and has promised to comment on some of Mr. Pou's proposals in our next issue.

Those familiar with the situation will grant the need for action, and prompt action, of some kind. The question is what? Mr. Pou suggests the following.

Improvements by Legislative Action

1. Permission of solicitor to comment on failure of defendant to take the stand.

2. Permission to the State to prove the bad character of defendant, whether he went on the stand or not.

3. Permit the State to introduce record evidence of the defendant's previous convictions of crime.

4. Equal number of peremptory challenges to the State and defendant.

5. Forbidding the introduction of evidence for defendant to establish alibi or insanity, unless notice of purpose be given the solicitor long enough before the trial to permit examination of those defenses.

6. Better equipment of the office of the solicitor, preferably making him a whole time officer with adequate salary, a competent clerk, and an outside man, who should have police powers and be selected by the solicitor. The increased cost of the solicitor's office would be taken care of by an increase in the fees taxed against defendants for the solicitor. These fees now range from $4.00 to $20.00. Raise them as much as the traffic will bear. All misdemeanors should be $10.00, except violations of the whiskey laws, which should be $20.00. All felonies should be $20.00. This would make crime pay at least part of the cost of its detection and punishment.

7. Marked difference in the punishment of occasional and habitual criminals—first offenders to be punished charitably and sympathetically, with suspended judgments, etc.; but repeated offenders to be punished with constantly increasing sentences; and habitual felons to be punished, like they are under the New York Baumes Law, by perpetual imprisonment.

8. Finger printing and photographing all felons, and finger printing all misdemeanors whose crimes savor of social wickedness.

9. Change the laws relative to the principle of indictment, and adopt something like the plan Great Britain and New York have adopted since the World War—that is, make indictments more comprehensive. For instance, if the crime belongs to the category of *animo furandi,* prosecute various counts to cover larceny, larceny after trust, larceny by trick, embezzlement, or any other means

(*Continued on page sixteen*)

Chart Showing Average Yearly Requests, Recommendations, Appropriations And Expenditures For Certain State Functions.

Legend:
- Departmental Requests.
- Budget Bureau Recommendations.
- Appropriations.
- Actual Expenditures.

For The Biennium - 1929-31.

Legislative Judicial Administrative $3,312,167 | Educational Institutions $3,882,701 | Charity & Correctional Institutions $2,455,933 | Pensions $1,122,000 | Public Schools $5,705,088

Legislative Judicial Administrative $2,676,532 | Educational Institutions $2,837,032 | Charity & Correct. Institutions $2,125,697 | Pensions $1,121,000 | Public Schools $5,375,290

Legislative Judicial Administ. $2,650,917 | Educational Institutions $2,854,032 | Charity & Correct. Institutions $2,280,697 | Pensions $1,115,320 | Public Schools $6,703,645

Legislative Judicial Admin. $2,325,096 | Educational Institutions $2,355,418 | Charity Correct. Insts. $1,881,792 | Pensions $1,064,046 | Public Schools $6,300,978

For The Biennium - 1931-33.

Legislative Judicial Administrative $3,131,731 | Educational Institutions $3,300,288 | Charity & Correction Institutions $2,405,079 | Pensions $965,730 | Public Schools $8,071,500

Legislative Judicial Admin. $2,348,697 | Education Institutions $2,067,075 | Charity Correct. Insts. $1,872,750 | Pensions $824,7? | Public Schools $6,769,700

Legislative Judicial Admin. $2,171,679 | Education Institutions $2,352,350 | Charity & Correct. Institutions $2,582,380 | Pensions $874,073 | Public Schools $17,350,000

Legis. Judicial Adm. $1,687,570 | Ed Insts. $1,576,021 | Charity Correct. Insts. $1,730,616 | Pensions $824,122 | Public Schools $16,891,692

For The Biennium - 1933-35.

Legis. Judicial Adm. $2,199,157 | Education Institutions $2,226,102 | Charity & Correctional Institutions $2,427,103 | Pensions $740,000 | Public Schools $17,500,000

Legis. Jud. Adm. $1,492,715 | Ed. Insts. $1,277,22 | Charity Correct. Insts. $1,753,890 | Pensions $677,710 | Public Schools $14,050,000

Legis. Jud. Adm. $1,520,7 | Ed. Insts. $1,187,000 | Charity Corr. Insts. $1,273,5 | Pensions $677,195 | Public Schools $16,000,000

Legis. Jud. Adm. $1,386,980 | Ed Insts. $1,188,16 | Charity Corr. Insts. $1,224,73 | Pensions $714,916 | Public Schools $15,443,549

For The Biennium - 1935-37.

Legis. Judicial Adm. $2,288,576 | Education Insts. $2,257,282 | Charity Correct. Insts. $1,738,896 | Pensions $664,297 | Public Schools $20,200,000

Legis. Judicial Adm. $1,935,709 | Ed. Insts. $1,745,510 | Charity Correct. Insts. $1,538,862 | Pensions $664,547 | Public Schools $18,500,000

Source: Biennial Reports of the Budget Bureau.

Who Holds the State's Purse Strings?

By T. N. GRICE
Associate Director, The Institute of Government
See Chart on Opposite Page

EACH biennium the elected representatives of the people come to Raleigh for a session of the General Assembly. While in session the General Assembly passes numerous laws, both local and public, which arouse some little ripple of interest, but the tidal wave of interest is furnished when fiscal matters are taken up. On all sides, one hears discussions as to what new taxes will be added, what old ones discontinued, how much salaries will be raised and what appropriations will be made for the various state departments and functions.

The average citizen follows, fairly closely, the progress of the revenue and appropriations bills, and when these bills are finally passed most of us know, in general, what they provide. We read that so many millions have been appropriated for schools, educational institutions, charity and other functions. The members of the General Assembly go home and we take it for granted that the amounts appropriated by them will be spent—that the fiscal picture for the next two years is fixed and that there is no way to change the wishes of those one hundred seventy honorable gentlemen who have spent so much time and work in Raleigh during the session. We get such an impression because of the tremendous publicity given the public hearings and persuasive arguments concerning appropriations. However, such an impression is false.

The appropriations made by the General Assembly represent the maximum that can be spent, but do not represent the minimum that will be spent. The amount that will be spent is governed largely by the amount of revenue that becomes available. The Legislature passed what is known as the "Executive Budget Act" in 1925 and amended it in 1929 so as to give the Governor and the Advisory Budget Commission the power to hold expenditures within income so far as practicable. Few people realize the importance of this piece of legislation or the savings which it has brought to the State.

On the opposite page we have a chart showing the average yearly amounts requested by certain departments, amounts recommended therefor by the Budget Bureau, amounts appropriated by the General Assembly and actual expenditures during the bienniums 1929-31, 1931-33 and 1933-35. The most striking fact revealed by the chart is that apparently the Legislature has been relatively more generous in its appropriations to public schools than the other functions shown. This is due to the fact that the State has constantly broadened the character of its participation in the school system.

Turning to our chart let us see just what effect this control of expenditures has had upon the fiscal status of the State. During the two years July 1, 1929, to June 30, 1931, the average yearly deficit in the General Fund of the State amounted to $2,173,476, and had we spent the amount requested by the various departments noted in the chart our yearly deficit would have amounted to $4,734,000, or an increase of $2,560,000. Had we spent the amount recommended by the Budget Bureau our yearly deficit would have been some $2,390,000, or only $227,000 more than it actually was. The Legislature, being elected by the people, is more sensitive to public demands than the appointed Budget Bureau, and had we spent the amounts it appropriated our yearly deficit would have been some $1,685,000 greater. Thus, we see that by attempting to hold expenditures within income the Budget Commission shaved over $1,600,000 yearly from our deficits for the fiscal years ending June 30, 1930 and 1931. This means that our State debt would have increased over $3,000,000 had the total appropriations been expended.

Turning our attention to the biennium 1931-33, we see the appropriation for public schools grow from $6,703,645 in the previous biennium to $17,350,000. This increase was brought about when the State took over the constitutional six months school term. Because the original request as well as the recommendation of the Budget Bureau did not anticipate such action on the part of the General Assembly, total comparisons for these years will be restricted to appropriations and expenditures. Our average yearly deficit in the State's General Fund for the two years amounted to $6,365,500, but had we expended the total appropriated these deficits would have been increased by some $2,571,000 yearly. Thus, we see that the Budget Commission, by exercising its power, kept our State debt from increasing another $5,140,000.

One may well question why the Legislature appropriates such amounts. The answer is two-fold—political expediency and the fact that the Legislature making appropriations for two years in advance can hardly accurately estimate what revenue will be forthcoming so far in advance. Changing economic conditions cause material fluctuations in the flow of revenue, and such fluctuations materially affect the balancing of our State budget. When estimates made by the members of the Budget Bureau, who are constantly in touch with economic conditions as they affect the collections of revenues, often go askew, isn't it too much to expect that the General Assembly, which meets once every two years, will accurately forecast such revenues?

Going back to our chart we see that the various departments, institutions and schools shown there requested an average total of $25,092,362 for each year of the biennium 1933-35. The Budget Bureau, however, recommended a total average expenditure of $19,251,600 or nearly $5,000,000 less than the amount requested. The Legislature appropriated $20,792,250 of which $19,858,261 was spent. Now, let's consider these amounts further. The General Fund of the State ended the fiscal year 1933-34 with a surplus of some $74,000. Had we expended the amount requested that surplus would have been a deficit of over $5,000,000. Had he spent only the amount recommended by the Budget Bureau the surplus would have been some $600,000; however, in making its estimates the Bureau did not

(*Continued on page seventeen*)

Evangel of Democracy
Dennis G. Brummitt

1881—1935

By JOHN A. LIVINGSTONE
Librarian of The Supreme Court of North Carolina

NORTH CAROLINA has demanded fine character and exceptional ability of its Attorney Generals. The only two lawyers from this State to sit on the United States Supreme Court bench—James Iredell and Alfred Moore—served first as Attorney Generals. More recently Thomas W. Bickett went from the office of Attorney General to that of Governor of the State. Many notable public men of the State have held the office. While it is yet too early to appraise the place of Dennis G. Brummitt in the light of history, his record during the ten years that he held the office is believed by competent observers to equal in excellence that of any of his predecessors.

Attorney General Brummitt had the distinction of having served longer continuously in this office than any of his 36 predecessors since the establishment of the State or even during the previous century of the colony. William Little held office for eight years as Attorney General of the colony from 1716 to 1724, being succeeded by Thomas Boyd, but the latter served for only two years, and Little then took over the office for another six years. His service of 14 years exceeds in length that of Attorney General Brummitt, but it was not continuous. Alfred Moore, of Brunswick County, William Drew, of Halifax, and Thomas S. Kenan, of Wilson, each served for nearly nine years, but since the setting up of the State in 1777 none had served for as long a period as did Attorney General Brummitt.

The office of Attorney General of North Carolina makes larger demands today than ever before. Functions of the State have been expanded far beyond anything dreamed of in the days prior to the development of a complex industrial and commercial society. He is the State's chief law officer. His office is the clearinghouse for innumerable State and local problems. He aids local officers in the performance of their duties, he rules on statutes and constitutional questions for officers of the State government, and he supervises the presentation of appeals by the State before the Supreme Court. Not only that but when appeals are taken to the Supreme Court of the United States, he must represent the State before that tribunal. Only a lawyer of the first rank can cope with the numerous problems of law presented to the Attorney General. Measured by purely legal standards, Dennis G. Brummitt came up to the highest standards set by his predecessors. Indeed, he may be said to have set a standard for his successors. None ever questioned his ability as a lawyer.

DENNIS GARFIELD BRUMMITT

Born, Granville County, February 8, 1881. LL.B. Wake Forest College, 1907. Practicing attorney, Oxford. Secretary, Granville County Democratic Executive Committee, 1908-10, Chairman, 1910-14. Mayor, Oxford, 1909-13. Member of the House from Granville, 1915, 1917. Speaker of the House, 1919. Chairman, State Democratic Executive Committee, 1928. Attorney General of North Carolina, 1925-35. Died, January 12, 1935.

The Mind of a Statesman

Able as was Dennis G. Brummitt as a lawyer when tested by accepted standards of his profession, he had more of the mind of a statesman than that of a lawyer. His intelligence was too keen, his feelings too intense, for him to be satisfied with the narrow confines of legal reasoning. He was interested in government in all its phases. He had made a careful study of the history of America. He refreshed his mind by reading the best literature. He was more interested in people than in statutes. To be sure he was a craftsman in his profession who took pride in doing a good job, but he did not stop there. His interests were as broad as humanity itself.

The distinguishing characteristic of Dennis G. Brummitt was his passion for democracy. He did not merely believe in democracy, he sought with all his heart to make it a reality. He was a follower of Jefferson and a zealous supporter of the political doctrine that "the will of the people is the only legitimate foundation of any government." Jefferson evolved the distinctively American doctrine that "the people are the safest depository of power in the last resort" and that there should be left in the people "all the powers to the exercise of which they are competent." Jefferson believed that only such powers should be delegated to the government as are absolutely necessary for the performance of its necessary functions for the maintenance of social well being.

A Leader

Undoubtedly Dennis G. Brummitt was born with the urge that marked him out from his fellows as a leader We get a clue to his Jeffersonian slant of mind from the fact that his father bore the name of Thomas Jefferson Brummitt. If Thomas Jefferson Brummitt had been born during the time that Jefferson was living, we would know that the name was only a compliment, such as is the case of a child born today that is named Franklin Roosevelt. But he was born after Jefferson had passed from the scene of public action. Dennis Brummitt's Jeffersonian slant came from the fact that his family was indoctrinated with Jeffersonian thought.

Growing up on a Granville County farm during the hard days of depression, Dennis G. Brummitt must have brooded much over the meaning of life. His mind was fired with the idealism of an Aycock, preaching the doctrine of equality of educational opportunity. He went to Wake Forest College, which was not far away, to equip himself for a position of leadership. After getting his law degree and his law license in 1907, he returned to Granville County to teach school for a year and then set himself up as a lawyer in Oxford, the county seat.

Plunging into the field of politics, he became secretary of the Granville County Democratic executive committee, and then its chairman, serving meanwhile for four years as mayor of the town. The young man rapidly won his spurs as a local political leader, and then, seeking for more worlds to conquer, went to the Legislature in 1915. He quickly won a place as a leader, adding to his political prestige at the subsequent session, and by the time that his third session was reached his election as speaker was a foregone conclusion. While his election was not unanimous, the opposition was only a formality, his opponent being desirous of accomplishing no more than winning a good committee assignment. Calmly he set about the task of securing election to the post of Attorney General, winning this position in 1924. By that time his place as a State political leader was assured, and he had no difficulty in winning also election as chairman of the State Democratic executive committee.

Desired to be Governor

Thomas W. Bickett had gone from the office of Attorney General to the Governor's mansion, and there is little doubt that Dennis G. Brummitt from the first had his eyes on the Governorship. But not with sacrifice of any of the idealism that he had inherited and that he had seen incarnated in the immortal Aycock. No doubt he intended to undertake, from a position of eminence, to make himself a leader of democracy as Aycock and Bickett had done. A highly successful political career gave him confidence. But the constant tension under which he labored weakened his health to the point that his physicians would not consent for him to enter the contest.

Denied the opportunity of running for Governor, Dennis Brummitt continued to carry on as Attorney General until a few days before his death. Frustration of political ambition did not cause him to desert either his professional standards of craftsmanship or his democratic ideals of government. With renewed energy, he set about carrying a double load. He labored with his cases in courts, looked after the routine of his office, and constantly opposed the present day tendency toward centralization of government, which he felt was leading directly away from the Jeffersonian principle of government by the people.

To many his role of dissenter in the State government appeared uncalled for and out of place. However, he was only carrying out the urge that was in him to preach the doctrines of Jeffersonian democracy. He was a crusader, an evangel, and feeling the necessity of discussion to keep the waters pure, he carried on in the spirit of Jefferson, who declared that "unless the mass retains sufficient control over those entrusted with the powers of their government, these will be perverted to their own oppression, and to the perpetuation of wealth and power in the individuals and their families selected for the trust."

With vigorous zeal, Dennis Brummitt turned again to a study of the origin of the bill of rights which had stipulated freedom of religion, freedom of the press, freedom of commerce against monopolies, trial by juries in all cases, etc., which Jefferson held "are fetters against doing evil which no honest government should decline."

He Kept the Common Touch

Dennis Brummitt had traveled far since starting life on a Granville County farm. He had learned much of history, absorbed much of literature, wrestled with many a complex legal problem, mixed with men ond women of high position in all walks of life, but he never lost the common touch. His was not the comradeship that slaps a man on the back, but a sympathy that sought to make it possible for every man and woman to share in the abundant life. Not only that, but he sought also to make it possible for every boy and girl to secure an education that would make him or her a worthy member of a democratic society.

This is the aim and purpose of democracy, to make possible the abundant life not only for the children but as far as possible for all men and women. For him democracy was not merely a creed to be learned, but a reality to be lived. He did not merely argue that it was a good thing, but with passionate zeal urged that it must be realized. His clarity of expression, combined with his passionate presentation, enabled him to focus attention upon his presentation of views.

It is easy enough to give lip service to the tenets of liberty, equality and fraternity, but one who tries to make them realities in an imperfect world must suffer many heartaches. Certainly Dennis Brummitt suffered much. But Dennis Brummitt carried on. He never deserted his colors. He was a fighter who would not quit. He died as he had lived on the field of battle. The State is not the same as it would have been had he lived. He provoked thought and discussion because he had himself pondered deeply the meaning of life about him and had the courage to express the thought that was in him.

Dennis Brummitt was more than a lawyer and a follower of Jefferson. He was a statesman in his viewpoint. He believed passionately in placing human rights above property rights. He was a supporter of the State and National Constitutions, but understood well that interpretations of

(Continued on page seventeen)

THE LADDER

LEAS FINALLY ENTER NORTH CAROLINA PENITENTIARY MAY 10, 1934

SUPREME COURT OF THE UNITED STATES REFUSES TO GRANT PETITION APRIL 30, 1934

PETITION TO SUPREME COURT OF THE UNITED STATES DECEMBER 9, 1933
Counsel was allowed three months to prepare petition. Brief was filed April 12, 1934

DECISION OF SUPREME COURT OF TENNESSEE DECEMBER 9, 1933
Rendition permitted by the Court.

APPEAL TO SUPREME COURT OF TENNESSEE APRIL 11, 1933
Chief claim of Leas: they were not fugitives from justice because they were not in North Carolina when alleged crime was committed.

HEARING TO DETERMINE WHETHER WRIT SHALL BE GRANTED APRIL 11, 1933
Motion of North Carolina authorities to quash writ upheld.

PETITION FOR WRIT OF HABEAS CORPUS MARCH 14, 1933

ARREST OF LEAS MARCH 14, 1933
North Carolina officers convinced of fairness of this judge.

LEAS MOVE TO MONTGOMERY COUNTY TO SECURE A RESIDENT JUDGE FEBRUARY 19, 1933

PETITION FOR WRIT OF HABEAS CORPUS IN CUMBERLAND COUNTY FEBRUARY 13, 1933
Writ issued, but ability of judge to issue writ doubted since the Leas had never been arrested.

LEAS PETITION FOR WRIT OF HABEAS CORPUS IN FENTRESS COUNTY FEBRUARY 7, 1933
Judge declines to issue writ claiming lack of jurisdiction.

WARRANTS ISSUED FOR ARREST OF LEAS FEBRUARY 7, 1933
No attempt made to arrest them.

HEARING BEFORE GOVERNOR OF TENNESSEE TO DECIDE ON RENDITION OF LEAS
February 2, 1933 Rendition granted.

GOVERNOR OF NORTH CAROLINA MAKES REQUISITION OF GOVERNOR OF TENNESSEE
January 25, 1933 Governor Horton of Tennessee friendly to Leas. Request delayed until after inauguration of Hill McAllister as Governor.

LEAS FAIL TO APPEAR
Bond is forfeited but in the meantime bonding company had failed. Leas located in Tennessee

ORDER ISSUED FOR ARREST OF LEAS DECEMBER 22, 1932

By ROBERT S. RANKIN
Professor of Political Science, Duke University

In many an ancient fable we find that after the story reaches a climax the hero immediately wins his bride and fortune, while the villain just as quickly receives his just desserts. If we should give the fable a modern setting and the settlement of the whole affair should happen to be thrown into the courts, there probably would be a long lapse of time between the climax and the final settlement, and it would require many years to determine just who was the hero and who was the villain. This length of time that is necessary to "fight a case through the courts" has occasioned much criticism of our legal procedure, and much has been written concerning "the delays of the law," "the defects peculiar to criminal procedure," and many similar subjects. On the other hand, the defense of our criminal procedure is based on the fact that the utmost consideration is given to the person before the bar to prevent his being punished for a crime that he never committed. The purpose of this article is to show graphically by the Luke Lea case the different legal remedies open to a person accused of a crime who desires to fight his case through the courts.

The Lea case is one of exceptional interest, not only because of the parties before the bar, but also because it is a case in which practically all legal processes were exhaused. The accompanying chart called "The Ladder of the Law" shows the different steps taken by the Leas in their fight for freedom. It will be noticed at once that, while the Central Bank and Trust Company of Asheville failed in November, 1930, it was not until May, 1934, that the Leas were finally placed in the North Carolina penitentiary. Infrequently in modern court annals has a case been carried to the last ditch as was true of this case and it affords us a graphic picture of "The Ladder of the Law."

The question arises as to whether an undue amount of time was consumed in handling the case. In the eyes of the public, from November, 1930, until May, 1934, is a long time for a case to be pending and yet it is claimed by the counsel

OF THE LAW

WRIT OF CERTIORARI AGAIN DENIED BY SUPREME COURT OF UNITED STATES
December 19, 1932.

STAY OF EXECUTION
Granted October 25, 1932.

PETITION TO SUPREME COURT OF THE UNITED STATES OCTOBER 25, 1932
Counsel given until November 3, 1932 to prepare their case

SUPREME COURT OF NORTH CAROLINA DENIES NEW TRIAL OCTOBER 19, 1932

APPEAL TO SUPREME COURT OF NORTH CAROLINA JULY 27, 1932

PETITION TO SUPERIOR COURT OF NORTH CAROLINA FOR A NEW TRIAL
July 25, 1932. Grounds for petition: new evidence, misconduct of jury. Petition denied.

DENIAL OF WRIT OF CERTIORARI BY SUPREME COURT OF THE UNITED STATES
October 24, 1932.

STAY OF EXECUTION
Granted July 5, 1932.

PETITION TO SUPREME COURT OF THE UNITED STATES
Notice given June 29, 1932.
Writ of certiorari asked.

PETITION TO SUPREME COURT OF NORTH CAROLINA JUNE 15, 1932
Court asked to reconsider case. Request made before decision was certified to lower court. Petition denied.

DECISION OF SUPREME COURT OF NORTH CAROLINA JUNE 15, 1932
Judgment of lower court affirmed.

APPEAL TO SUPREME COURT OF NORTH CAROLINA AUGUST 25, 1931
Some of the different grounds of appeal: change of venue necessary; only hearsay evidence before Grand Jury; many technical objections. Ninety days to perfect appeal.

PETITION FOR A NEW TRIAL AUGUST 25, 1931
Petition denied.

TRIAL BY SUPERIOR COURT OF NORTH CAROLINA JULY 13-AUGUST 25, 1931
Result of trial: Luke Lea—6-10 years in North Carolina penitentiary.
Luke Lea, Jr.—2-6 years in North Carolina penitentiary or $25,000 fine.

MOTION TO CONTINUE JULY 13, 1931
Postponement of trial asked to enable Leas to appear in Federal District Court at Knoxville.
Motion to continue not granted.

THE INDICTMENT
First indictment, March, 1931; second indictment, July, 1931. Charged with conspiracy and other crimes growing out of the failure of the Central Bank and Trust Company of Asheville November 19, 1930.

that, with the exception of the delay in asking for the return of the Leas from Tennessee, every step was taken as rapidly as correct legal procedure permitted. The journeys by the Leas from county to county in Tennessee were due to the fact that they were attempting to secure a judge who would be willing to consider the granting of a writ of habeas corpus. It was also necessary that the judge be available at a minute's notice. The writ could not be issued until after the arrest of the Leas, so their counsel was making every effort to prevent the Leas being transported to Raleigh without receiving an opportunity to apply for a writ of habeas corpus. The North Carolina authorities were wary and would not arrest the Leas before they were fully convinced of the fairness of the judge before whom would be placed the petition for a writ. It will be noticed that the Supreme Court of Tennessee waited a long time before giving its opinion, but even then the case was handled in its proper order It is indeed another case that clearly shows the intricacies of the law and the too long time that a case can be in the courts.

In conclusion, the question might be asked, "What did North Carolina gain from the prosecution of this case?" Particularly is this true since Luke Lea, Jr., has already been paroled; Wallace Davis, former president of the Asheville bank, has had action taken in his behalf in order that he might secure a parole, and people are already wondering just how long Luke Lea himself will remain in prison. Should the State of North Carolina have spent the large amount of effort and money to secure the custody of these prisoners only to turn them loose after a few months spent in the penitentiary? The answer is that the respect for law is rapidly diminishing. Failure to convict accused persons who openly state their criminal actions is frequent, the importance that money plays in winning a case is common knowledge, and the intricacies and technicalities of the law have all engendered this disrespect. In addition to being a most interesting case, the Luke Lea case has bolstered our confidence in the law and the average citizen feels that, in spite of all the obstacles placed in the way, there was one state at least that climbed the ladder along with the accused in order that justice might be received.

$hortcuts and $avings

By the Purchasing Agents and Auditors
of North Carolina

as told to

M. R. ALEXANDER
Associate Director, Institute of Government

DURHAM'S purchasing agent, A. T. Crutchfield, has been able, by securing a wide circle of bidders and exciting a high degree of competition, to effect a neat saving for his city on gasoline.

To be exact, Durham is buying gasoline through a local distributor, in truck-load lots, shipped to Wilmington by ocean and transported to Durham by truck, at a cent and a half less a gallon than it formerly paid when it bought in tank car lots.

The product is tested at regular intervals by the city chemist and is said to come up in every way to the exacting specifications which the city has always laid down. Durham uses an average of 100,000 gallons of gasoline a year, which makes a saving of $1,500.00.

All of which goes to prove the truth of the old adage: "Nothing is made or sold but that somebody else can make and sell it cheaper."

The following suggestions on how to make one's expenditures for printing do double duty are contributed by Harry Weatherly, Guilford County's industrious and enthusiastic young purchasing agent:

"Watch the size of your forms so the sheets of paper will cut out even and there will be no waste. Avoid red numbers and other devices which will necessitate two runs. Give the printer two forms, same quantity, where possible. It cuts the cost of labor if he can run two at the same time.

"Check the stock of paper, using as cheap a grade as possible. Figure the amount of copy and the size of the type so as to get forms on one page. Anticipate your needs and buy from one to three years' supply of forms where there is little likelihood of change. Have the printer keep your regular forms in type, avoiding charges for re-setting.

"Above all, ask your printer's advice. He is always glad to coöperate in helping hold down his cost and your price."

Every public official knows that his department spends a larger part of its appropriation during the first few months of a new fiscal year than it does during the last. Call it what you will—an accumulation of needs or an opportunity to save by buying in quantity—but many an official also comes up to the last few months to meet emergencies which pinch his department severely and which often force it to do without necessities.

To meet this situation, George D. Bradshaw, auditor for Mecklenburg County, has suggested to his Board a system which would set a specific per cent of the total appropriation that a department could spend for each item during each of the 12 months. His proposed scale is 10 per cent for July and August, 9 per cent for September through December, 8 per cent for January and February, and 7 per cent for the remaining four months. Provision is made to meet emergencies and cases where savings could be effected by buying ahead, but not without the check of having such purchases depend for approval on the Chairman of the Board, who happens in Mecklenburg's case to be the County Purchasing Agent.

Mr. Bradshaw argues in support of his suggestion that such a system would enable the county to pay as it goes, avoid having any floating debt, and do away with paying interest on temporary loans. This is a part of his guiding creed, another principle tenet of which is to take all discounts no matter how small, and all officials will agree that it is a fine creed for any public auditor.

Although Mr. Bradshaw's scale might have to be revised to fit local conditions elsewhere, the idea appears to have its merits, and we pass it on to the officials in the other counties for their consideration.

Mr. Crutchfield in Durham is another purchasing agent who takes every discount that is offered. "Maybe it is because I received my training," he jokes, "under a man who would have fired me if I failed to take a 1 per cent discount on a $1.00 bill."

Some of the savings Mr. Crutchfield has been able to make for Durham in this way run into large sums. On one purchase of fire equipment recently, for instance, he secured a 2 per cent quantity discount and a 5 per cent

"Popular Government" begins herewith a new feature which will appear regularly in the future. "$hortcuts and $avings" is intended to serve as an idea box for the purchasing agents and auditors, who are doing a great piece of work in North Carolina. If you have been able to effect some saving for your city or county, sit down and write us how you did it. The other officials would like to know about it because it may be the means of saving a similar sum to their taxpayers.

Above all, don't be bashful or backward. This column will neither brag nor pat backs; it will merely pass on facts and methods by which one city or county has profited and which it is hoped will benefit others similarly. Each official, therefore, is urged to be a regular contributor. If everybody waits for John to do it, the result generally is that no one does it, which, of course, would nullify our efforts to build up here a valuable clearing house of information, ideas, and methods.

cash discount which amounted to $1,803.38. The savings on all items come to a large figure, much larger, Durham officials say, than the cost of operation of the Purchasing Agent's office.

"The NRA codes have cut out discounts on some items," Mr. Crutchfield says. "However, we estimate that we still get a discount on 75 per cent of our bills."

One of the biggest aids and money-savers to the Purchasing Agent is, of course, his record of purchases in the past. These serve at once as a gauge of the needs of the different departments and agencies and as an index on vendors and prices. Here, too, the Purchasing Agent can note his experience with different products and can list any firms or articles which have proven unreliable.

Harry Weatherly in Guilford County has a particularly complete record of his purchases over the three and a half years that he has been Purchasing Agent. A. T. Crutchfield's experience and records in Durham are of even greater value to him, as they date back over the 12 years that he has filled this office.

It will be interesting as the members of our staff make their rounds of the various purchasing agent's offices to note the differences in their indivdual systems of records and to report the good points and advantages of each.

THE CHEROKEE COUNTY COURTHOSE

(Continued from page four)

cuting attorney for the Courts in this jurisdiction. He afterwards represented North Carolina in the United States Senate and subsequently became Chief Justice of the Supreme Court of North Carolina. In later years, Honorable Walter Clark and Honorable William A. Hoke, both of whom became Chief Justices of the Supreme Court, and Honorable George H. Brown, Judge William R. Allen, Judge W. J. Adams and Judge Michael Schenck presided as Superior Court Judges, before becoming members of the Supreme Court.

The courts in Murphy have experienced the trial of some noted criminal cases. The most noted, on account of the question involved, was that of State against Hall and Dockery, reported in 114th North Carolina Report at page 910. The question involved was this: One Bryson was killed by a shot from a rifle. The State charged Hall and Dockery with murder. It developed in the trial of the case that Bryson, when shot, was just over the State line in the State of Tennessee when Hall and Dockery were in North Carolina. The case was tried by Honorable Jesse F. Graves, of Mount Airy. The defendants took the position that if the deceased was in the State of Tennessee and they were in North Carolina when the bullet struck and killed Bryson the Courts of the State of North Carolina were without jurisdiction and requested the Court to so instruct the jury. The Court refused to so charge the jury. The defendants were convicted and on appeal to the Supreme Court were granted a new trial, the Supreme Court sustaining the position taken by defendants. Later on habeas corpus proceedings Hall and Dockery were discharged. Hall was tried in Tennessee and acquitted. I am informed that Dockery died.

I am indebted to Mr. M. W. Bell attorney here, Honorable J. B. Gray, Mayor of Murphy, and Mr. Donald Witherspoon, attorney here for courtesies in furnishing me data for this article.

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SUGGEST REVISING CRIMINAL PROCEDURE

(*Continued from page seven*)

by which a person fraudulently and wrongfully obtains the money or property of another with the purpose of converting it to his own use. The same way with other crimes, the only limit being that an indictment shall be limited to offenses committed by defendant against the person named in the indictment as the injured party. In this State, we say that every larceny is predicated upon trespass, either actual or implied; but some of the worst frauds which amount to larceny are committed without any actual trespass.

Improvements by Judges and the Governor

1. Judges should exercise larger discrimination in the selection of juries. A juror excused by a Judge need not be charged to either side; and the Judge should excuse every juror about whom he has a doubt. He should be allowed to examine the jury before either plaintiff or defendant takes the jury. Sentences by the Judge should be for the term he thinks defendant should serve, less what the latter gets off by good behavior. A long sentence to frighten criminals has no effect; except in a short time to arouse sympathy and constitute grounds for pardon. It should be understood that a sentence imposed by a Judge stands, excepting allowances for good behavior, unless it should be determined that the Court has made a mistake and convicted an innocent man, or unless some other cogent reason should be developed. Sentences by Judges in criminal cases should be regarded as the end of the trial, and not as way stations towards pardons.

2. I think the Governors should be chary of pardons and grant a pardon only where they think a mistake in justice has been made, or for some other cogent reason. In short, I think there should be a general shortening of sentences and a great diminution in pardons.

Changes Requiring Constitutional Amendment

1. The Constitutional prohibition against requiring defendant to give evidence against himself is outmoded and is no longer needed. To some extent, it has been supplanted by the abominable practice known as the "Third Degree." I am very much opposed to that in any form, but do favor the Continental System. That provides that as soon as a man is arrested for a crime, he is taken before a Judge of the "First Instance," who examines the man, but without any pressure like the "Third Degree." The prisoner is asked a great many questions, is given the privilege of answering, and his answers are taken down. If he refuses to answer, that is stated; and if he remains silent, neither answering nor refusing to answer, that is stated. After this examination, the prosecution has time to examine; and the officer before whom examination is made can not serve in any other way during the prosecution. It is said that in at least half the instances, this is the end of the trial, as the answers of the accused, when tested, show that he was innocent. But, if he is guilty, it gives the prosecution an opportunity for further investigation. This has never been the law in the United States or in Great Britain; but it is the law in France and most of the Continental countries. It is a powerful method of ascertaining innocence or guilt. It is a power for protection to the innocent against needless prosecution and a powerful means of convicting the guilty; but it can not be used in this country, unless we have a Constitutional amendment. The benefits of this system are seen in the prosecution of such men as Capone. These men are not convicted of the high crimes of which they are guilty; but they are convicted of defrauding the Government in making income tax returns, and the basis of prosecution and the means of convicting them are the income tax returns which they make. If we could adopt something like the Continental System, we would have a powerful means of separating the guilty from the innocent, and of punishing the first and protecting the latter.

Other Suggestions

The Governor should be relieved of the terrible duty of administering the pardoning power. A Board of Pardons should be constituted, consisting of the Governor and the Council of State. The Commissioner of Pardons should be heard in favor of a pardon, when he thinks one ought to be granted; or against it, when he thinks one should be refused. The Attorney General should supervise the application and the proceedings as representing the State at large. Applications for pardon should be discouraged, except under exceptional circumstances.

If all other means of suppressing crime shall fail, it may be necessary for us to go back to corporal punishment. Great Britain, Canada and Delaware find it necessary to use the lash on confirmed criminals. It does work. Periodically, I am told they are careful not to leave the train while it is in New Jersey. While passing through Delaware, they scarcely look out of the windows, and only feel comfortable when they reach Pennsylvania or Maryland. Corporal punishment is abhorrent to us and should never be inflicted on criminals for first offenses. The confirmed criminal presents a problem that we may have to treat differently, though I hope very much we will not have to go that far.

There are a number of statutes which should be passed to meet various phases of the crime wave. It should be unlawful for any person to own or have in his possession a smoke screen, such as criminals use to hide their course while traveling, sawed-off shotguns, machine guns, burglary tools, or anything of that sort. The sale of such articles should be forbidden. High-powered explosives should be sold only upon licenses issued by the Clerk of the Court; and the possession of such without license should subject a person to heavy punishment. There are a number of other things which should not be permitted to be sold and others which should be sold only under license.

Then, there should be a number of statutes creating presumptions of crime, and requiring the accused, after a presumption is raised, to assume the burden of disproving his guilt. Illustrative of this is the present law, stating that where a person has paid the Government license for selling spurious liquors, he raises the presumption that he is guilty of selling same in violation of the State law. If a trustee, after receiving money, fails upon proper demand to account for the same, his failure should be presumptive evidence of guilt of embezzlement and should require evidence from him. If bank officers, including directors, permit a bank to remain open and receive deposits and then close the bank, it should be presumed they knew of the insolvency of the bank for at least thirty days prior to its closure. There are a number of other circumstances which should put upon the accused the burden of exonerating himself when the facts show he has done something which, if unexplained, makes him guilty.

THE FEDERAL HOUSING ADMINISTRATION

(Continued from page six)

does not mean that a man with a modest income will not receive these benefits, but it may require that he stretch his payments out over a period of twenty years in place of trying to pay his obligation back in a shorter period.

There will be an insurance premium charged which will be payable to the Federal Housing Administration for guaranteeing these mortgages. This insurance premium will vary from ½% to 1% depending upon the classification of the loan. The borrower should not feel that this money is an additional charge, inasmuch as it will be handled in the same manner as mutual insurance. All net profits accruing from mutual mortgage insurance charges will be used to accomplish earlier amortization of principal.

It requires only the active participation of all localities in one great coördinated effort to make the work of the Federal Housing Administration a complete success and the result will mean General Business Recovery.

WHO HOLDS THE STATE'S PURSE STRINGS?

(Continued from page nine)

anticipate the $500,000 the State received from the National Government to help carry the schools. Had we spent the total appropriated by the General Assembly our surplus would have been in the "red" to the tune of some $850,000.

We see from our chart that the departments, institutions and schools included therein have requested an average yearly appropriation of some $27,000,000 for the biennium 1935-37. The Budget Bureau recommends some $24,000,000, and the Legislature will probably fix the appropriations at some figure between these two. However, when the General Assembly ends its session, the various departments cannot blindly expend what the Legislature has appropriated, but will be held within the bounds of income by the Budget Commission. It all boils down to the fact that the Legislature may fix the maximum, but the Budget Commission holds the purse strings.

EVANGEL OF DEMOCRACY

(Continued from page eleven)

their meaning must be flexible. Otherwise they become bulwarks for protection of purely materialistic interests. Chief Justice Taney first promulgated the doctrine of expanding police power of the nation to make the Federal Constitution flexible. It is the principle that must be applied in every age of rapid social change. Such was the belief of Attorney General Brummitt. Even as death overtook him, he was engaged in again examining the history of our Federal Constitution.

UNEMPLOYMENT INSURANCE

(Continued from page three)

with the problem of unemployment, pointing out that he already has sufficient incentive in his constant costs and loss of profits to regularize employment, were it possible for him to do so. Granting the desirability of regularizing employment, in so far as possible, they insist that their plan of a merit rating system, under which the rate of an employer's contributions is decreased as he succeeds in reducing his unemployment, offers as great, or even greater incentive than is offered under the Wisconsin plan.

Their chief point of attack, however, is directed at the lack of security for unemployed workers under the system of individual reserves. To illustrate this point, suppose that Employer A, through good management, or good luck, or because his business is one that lends itself to regularization, is able to bring about a high degree of regularization of employment. Any unemployment suffered by his employees could be compensated at the full rate of benefit contemplated because his account would be able to pay it. But consider Employer B. Either because of bad management, or bad luck, or because his business does not lend itself to regularization, his contributions are paid out in the form of benefits as fast as they are paid in. Under such conditions his unemployed workers would not receive the full benefits to which they would be entitled simply

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because his account could not pay them. Such a situation clearly amounts to discrimination as between the employees of the one employer as over against the other, and would defeat the purpose of unemployment compensation and result in unsatisfactory conditions generally. The insurance principle of pooling all funds, it is argued, not only is a more economical and efficient method of handling reserves, but would result in equitable treatment for all employees.

Virginia's Compromise

The Virginia plan, which proposes to establish a state pool in addition to the individual reserve accounts, and which can be used to supplement an individual account should it become depleted, is a distinct improvement over the Wisconsin plan. The North Carolina Commission on Unemployment Insurance reached the conclusion, however, that the weakness of the individual company reserve could be best overcome, and employees guaranteed greater security by the adoption of the insurance plan of pooling all reserves into a single fund. This feature, accordingly, is a part of the recommended bill for North Carolina.

In the matter of contributions, the North Carolina Commission also followed the Ohio plan of requiring employees to contribute, rather than the Wisconsin plan of requiring contributions from employers alone. The arguments offered as to why employees should not contribute are several: they will necessarily bear a large part of the burden of unemployment under any system because of the waiting period, and the limitations on benefits, both as to amount and duration, and should not be required to contribute further; they are not in a position to pass the cost on to the consumer, as is the employer; they can do nothing to prevent unemployment, as can the employer; finally, wages are already so low that they should not be reduced still further, even by so small amount as employee contributions would require.

Despite the weight of these arguments, the North Carolina Commission was convinced that employees should make some contribution, and made such provision in the recommended bill. The chief reason for doing so was the firm belief that every American should pay his own way, in so far as possible. The required contribution of 1 per cent of his average weekly earnings will not place an intolerable burden on the employee. If his average weekly earnings are ten dollars per week, it means that he will pay only 10 cents per week. In a year of full-time work he will pay $5.20, or 20 cents more than one week of benefits at that wage. By contributing, the employee becomes a partner in the enterprise; he will have a voice in its administration. In receiving benefits he is receiving something for which he has paid, and to which no taint of charity, or suggestion of the "dole," can be attached. The Commission felt that the social principle involved could not be disregarded, and that employees should make some contribution.

The above points represent the more highly controversial issues among the advocates of the two plans discussed. With respect to such other provisions as the length of the waiting period, the amount of benefits, the length of the benefit period, etc., there is less controversy. It is clear that a longer waiting period will permit a higher rate of benefits, or a longer period over which benefits can be paid, and that a shorter one requires the opposite; that a lower rate of benefits will permit a longer period of payments, etc. These points are inextricably bound together, and a change in one requires an adjustment in another. On these several points the North Carolina Commission endeavored to establish a reasonable balance. A more perfect adjustment must await more precise data than that which the Commission had at its disposal. Attention may now be turned to a more detailed consideration of the provision of the proposed plan for North Carolina.

The Proposed Plan for North Carolina

The scope of the bill recommended for North Carolina can best be indicated by first pointing out those employees who will not be included. All governmental employees, federal, state, and local, are excluded. So also are agricultural workers, domestic servants, employees of educational, religious, medical, and charitable institutions not operated for profit, and employees for whom provision is made by special act of Congress. Practically all other workers will be included, provided they work for an employer who regularly employs five or more employees. While the proposed bill for North Carolina follows most of the other bills which have been introduced in this country with respect to coverage, the exclusion of certain of these groups, particularly agricultural workers, domestic servants, and certain classes of governmental employees, on grounds of political expediency and administrative practicability, seems open to question. The proposed federal act is not very definite on the matter of inclusion. The recommendation that "The tax should be imposed upon all employers who have employed four or more employees for a reasonable period of time" might reasonably be construed to mean that in addition to lowering the numerical exemp-

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tion for employers from five to four, certain of the above exempted classes may be required to be included.

Eligibility Requirements

To be eligible for unemployment benefits, an employee must have fulfilled certain requirements. He must be engaged in an employment other than the ones mentioned above. He must have been employed for not less than thirty weeks in the preceding twenty-four months. He must be genuinely unemployed; that is, he must be able and willing to work, but unable to find work suitable to his capacities. His unemployment must not be the result of an industrial dispute which is still in progress. Finally, he must undergo a waiting period of three weeks during which he receives no benefits. With respect to eligibility requirements, as well as the amount and duration of benefits, the recommendations for the federal act would permit the states to exercise their own judgment.

Length and Amount of Benefits

An unemployed worker who has fulfilled the above eligibility requirements will be entitled to benefits amounting to fifty per cent of his average weekly earnings, but not to exceed $20.00 per week. The number of weeks in a twelve-month period that he may receive such benfits shall be in the ratio of one week of benefits for each four weeks of employment, and shall not exceed seventeen, except that an employee may receive one extra week of benefits for each 26 weeks over the preceding five years that he has not drawn benefits. Provision is made whereby employees experiencing part-time employment, or unemployment in seasonal industries, shall receive benefits which bear the same ratio to full-time benefits that their partial unemployment bears to complete unemployment. In case of unemployment caused by the discharge of an employee for proved misconduct in connection with or affecting his employment, or in case of unemployment caused by an employee's voluntarily leaving his employment without reasonable cause, the regular waiting period shall be extended not less than two and not more than four weeks, with a corresponding reduction in the period over which an employee may be eligible to receive benefits, and the amount of benefits payable may, in the discretion of the administrative authority, be further reduced by an amount not exceeding twenty-five per cent of total weekly benefits otherwise payable. An employee who has received the maximum benefits in a twelve-month period shall not be entitled to further benefits until he has subsequently worked for an aggregate of not less than ten weeks after having received such maximum benefits.

Despite the fact that it is recommended in the proposed federal act that the states be permitted to exercise their own judgment as to the amount and duration of benefits, as stated above, the President's Committee on Economic Security offers the warning that on the basis of the calculations of its actuaries, assuming maximum benefits of $15.00 per week and a four week waiting period, the benefit period cannot safely exceed sixteen weeks in one year. In as much, however, as the proposed bill for North Carolina provides for total contributions amounting to four per cent of the pay-roll, (three from the employer and one from employees), it would appear that the slightly more liberal provisions of the North Carolina bill are still well within the bounds of safety.

As has already been indicated, the proposed bill for North Carolina provides for contributions from both employers and employees. The former are required to contribute at the rate of three per cent of their pay-rolls, for the first three years, and the latter at the rate of one per cent of average weekly earnings. It is further provided that after three years from the effective date of the act a merit rating system will go into operation, under which an employer's contributions will vary directly with the amount of unemployment in his plant, but may not exceed 3½ per cent of his pay-roll, nor be less than 1½ per cent.

The proposed federal act permits the states to decide who shall be required to contribute, and the amount of the contributions. With respect to the operation of a merit rating system, however, it is recommended that no reductions in contributions shall be allowed until after the state law has been in operation for five years instead of three.

As this point has been discussed at some length in connection with the controversy between individual reserves and pooled funds, it may be dismissed briefly here. As indicated above, the proposed bill for North Carolina provides for a pooled fund. This meets the requirement of the recommendations for the federal act. Instead of this fund being administered by the treasurer of the State, however, it must be deposited with, and administered by the Secretary of the Treasury of the United States, as was explained above. Provision is made in the North Carolina bill for such an arrangement, should it prove necessary, as is the case.

Most of the actual work of administering the plan is left to the properly designated authorities in the several

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states. As was explained above, the costs of administration will be met by ten per cent of the amount of the federal tax, which will be returned to the states for this purpose. Further federal participation will consist of the management of all reserves, and the utilization of the services of the public employment service established under the Wagner-Peyser Act. It becomes mandatory upon the states, therefore, if they desire the coöperation of the federal government in connection with their systems of unemployment compensation to accept the Wagner-Peyser Act, and to make the necessary appropriations to match the federal grants under that act.

The North Carolina Department of Labor is designated as the State authority to administer the proposed system for this State. The Commissioner of Labor is empowered to make all rules and regulations which may be deemed necessary and suitable for the proper administration of the plan; to make all necessary investigations and to collect such information and data as may be needed, and to require such reports as may be necessary and suitable for the accomplishment of the purposes set forth in the bill. He is also required to establish state and local advisory councils representative of employers, employees, and the public, with whom to advise and confer.

The proposed federal act recommends that January 1, 1936, be made the effective date for the state laws, and that benefits become payable two years later. It is also recommended that by 1938 the amount of the federal tax should be three per cent of pay-rolls, but that during the first two years it should be one, two, or three per cent, depending upon the degree of industrial recovery, as measured by the index of the Federal Reserve Board.

It may safely be said that had a system of unemployment compensation, such as is recommended by the North Carolina Commission, been in operation over the period covered by its study, namely, from 1920 down to the present, the unemployment situation, not only since 1929, but over the entire period, could have been met far more promptly, adequately, and humanely than has been the case. From the calculations made on the basis of the available data, it would appear that contributions amounting to only 3 per cent of pay-rolls of manufacturing industries in the State would have yielded approximately $58,000,000. Considering only industrial unemployment, this fund could have paid out $54,000,000 in the form of benefits, which the experience indicates would have been required, leaving a balance of $4,000,000, or $7,000,000 if the surplus funds had drawn 2 per cent interest compounded annually. This, moreover, could have been accomplished without having placed an intolerable burden on industry, as the added cost, in terms of value added by manufacture, would have amounted to approximately eight-tenths of one per cent.

It should be kept in mind, however, that unemployment compensation is not a cure-all, and that it cannot accomplish the impossible. Its successful operation will depend, on the one hand, on greater emphasis on the prevention of unemployment than has been the case in the past; and, on the other, a rounded-out program for greater economic security. The recommendation of the President's Committee on Economic Security, that advance planning of public works be made a part of the national program, and that workers who have exhausted their benefit rights under unemployment compensation be assured of work, is deserving of the highest commendation.

Bulletin Service

(Material for this issue contained in Departmental Letters from December 15 to January 15. All rulings in this issue are by the Attorney General)

Prepared by

Malcolm Seawell

Key to Abbreviations

(A.G.) Attorney General.
(D.Ed.) Department of Education.
(L.G.C.) Local Government Commission.

I. Ad valorem taxes.

A. Matters relating to tax listing and assessing.

30. Situs of personal property.

To R. L. Hefner. January 3, 1935.

Inquiry: "Is merchandise stored in a warehouse in the city limits April 1, owned by a corporation which is not resident in the city, subject to tax in the city?"

While this depends somewhat upon the nature of the storage and whether or not the property is only temporarily within the warehouse in transit, I should say that if the property is stored in the warehouse merely for safekeeping or for convenience in distribution, its taxable situs is in the city and it is, therefore, subject to taxation.

You further inquire as to the situs of merchandise stored on "Rental basis," when the owner is out of the county and State. I see no distinction here. The property would be subject to taxation in the city. In this connection you should refer to the Machinery Act, Chapter 204, Public Laws of 1933, Section 516, subsection (1). You will find as a modification to the above general rule that "farm products owned by the producer shall be listed where produced."

B. Matters affecting tax collection.

5. Collector's commissions.

To O. L. Williams. January 4, 1935.

The question as to whether the sheriff shall be allowed fees for land tax sales in a settlement with the commissioners has been affirmatively settled in *Braswell v. Richmond County*, 206 N. C., 74.

8. Commisisoner's Fees.

To J. B. McMullan. January 4, 1935.

Commissioner's fees or commission upon sale in tax foreclosure suits, are not costs. They come out of the total purchase price and when the lands are bid off this should be taken care of in order that the county might get its full tax. In other words, the purchase price should be sufficient to include the commission due the commissioner on the sale.

29. Payment of tax by mortgagee.

To J. H. Coward. December 28, 1934.

Property taxes, that is the ad valorem taxes assessed on account of property, both real and personal, have a lien upon the real property of the taxpayer. There is no distinction such as "personal property taxes" and "real estate taxes," in so far as this lien is concerned, and such taxes are not separable. A mortgagee or trustee in order to exonerate the land in which he has an interest, that is to say free it from the lien of the taxes, must pay the proportional part of the whole property taxes, including those taxes which arise from assessment of personal property.

31. Tax foreclosure—procedural aspects.

To F. W. McKowen. December 31, 1934.

It is necessary under C. S. 7990 to make a man's wife party to suit for foreclosure under the lien of the statute?

This statute provides that suits brought under this Section shall be in the nature of an action to foreclose a mortgage. We, therefore think that it is very necessary that the wife be made a party defendant.

66. Tax collection—acceptance of bonds for taxes.

To C. B. Boysworth. December 27, 1934.

This office has formerly ruled that in the absence of a special act authorizing the town to accept bonds for taxes it would have no authority to do so.

II. Poll taxes and dog taxes.

A. Levy of poll taxes.

1. Exemptions—veterans.

To J. W. Watts, Jr. January 4, 1935.

For a number of years the successive "Machinery Acts" enacted by the Legislature have given the Board of County Commissioners the power to exempt persons from poll tax on account of indigency, in practically the same form as now appears in C. S. 7971.51.

Chapter 193, Public Laws 1931, provides for an exemption of veterans who have received injuries in the line of duty in the military service and have been honorably discharged. Those now receiving compensation from the Federal Government for disability are "conclusively presumed to have physical infirmities sufficient to warrant exemptions from the payment of capitation of poll tax." The act applies to those who had not less than ninety days service between April 6, 1917 and November 11, 1918, or those who served in Russia between April 6, 1917 and April 1, 1920.

The Act provides the method of establishing the right to the exemption before the Board of County Commissioners.

III. County and city license or privilege taxes.

A. Levy of such taxes.

40. License tax on peddlers—Rev. Act, sec. 121.

To Miss Ruby Wood. December 21, 1934.

Is a person temporarily engaged in selling fruits and vegetables occasionally on vacant lots within the city liable for peddlers tax? What classification?

We think that such a person should be classified under C. S. 7880 (51) subsection (c), which prescribes a tax of $25.00.

IV. Public schools.

E. Status of former school districts and funds of those districts.

5. Use of funds of the old districts where the district has outstanding debts.

To Emery B. Denny. December 31, 1934.

The School Machinery Act of 1933, Section 4, abolished special tax districts for all purposes, except the collection of taxes therein to be applied to the debts of the district. Where a district has no indebtedness, the proceeds of taxes levied and collected for maintenance may still be used in that way; but where there is an indebtedness, the School Machinery Act referred to specifically requires that it be applied to such indebtedness. Amounts due teachers on salaries incurred before the 1933 school law constitute an indebtedness of the district and may be taken account of in the budget under which taxes are levied and collected.

F. School officials.

2. Use of funds from sale of school property.

To P. G. Gallop. December 27, 1934.

Inquiry: Where the County Board of Education sells school property, would it be possible to turn over a part of the funds received to a church?

No. The property belongs to the county. The County Board of Education would not have the right to donate or give away any of the money to some individual or private organization.

33. County superintendent—payment of telegram tax.

To A. H. Hatsell. December 19, 1934.

In our opinion the Federal tax on telegrams sent by a Superintendent of Schools on official business should not be paid. In our opinion the Federal tax law did not anticipate the levying of such a tax on the State or on any of its political subdivisions.

41. School attendance.

To Clyde A. Erwin, State Superintendent. January 10, 1935.

It is not my understanding that the provisions of C. S. 5758, permitting the State Board of Education to make rules for the enforcement of the compulsory attendance law, go so far as to permit that body to suspend the law. It does permit the Board to prescribe what shall constitute truancy and what causes may constitute legitimate excuses for temporary non-attendance due to physical or mental inability to attend. Section 5757 permits the principal, Superintendent, or teacher in charge of a school to excuse a child from temporary attendance on account of distance of residence from the school, or other unavoidable cause not constituting truancy as defined by the State Board of Education.

53. Teachers—Workmen's Compensation Act.

To R. G. Anders.

Inquiry: "We are considering the matter of group life insurance for teachers and the question has come up as to whether the State is the employer of the teachers?"

I understand that the holding of the Court in the case of *Perdue v. Board of Equalization*, 205 N. C. 730, is to the effect that teachers in the public schools are not employees of the State. In passing upon that question, connected with the application of the administrator of Perdue for compensation under the Workmen's Compensation Act on the ground that he was an employee of the State, the Court said: "The deceased was not an employee of the State of North Carolina nor of the State Board of Equalization."

The decision in this case denied the applicant compensation under the Workmen's Compensation Act on the ground that Perdue was not an employee of the State; and the Court called attention to the fact that no portion of the appropriation for public schools could be used for insurance of this character.

V. Matters affecting county and city finance.

P. Securing local funds.

5. Extent of the present Deposit Insurance.

To Junius D. Grimes. January 11, 1935.

I think that the Local Government Act of 1931, Chapter 60, Public Laws of 1931, Sections 29 and 32, taken together, render eligible the bonds of the county as security for deposit of the funds of said county. Under section 32 securities in which sinking funds may be invested are rendered eligible for depository security. Under Section 29, such sinking funds may be invested in bonds or notes of such unit. The condition that the sinking funds must be applicable to the particular bonds in which the investment is made was removed by the 1933 amendment—Chapter 143, Public Laws of 1933, Section 1.

The 1933 Act relating to the guarantee of deposits, Chapter 461, Public Laws of 1933, as can be readily seen on perusal, was anticipatory. As Section 1 probably contemplated a guarantee of deposits "in full," some doubt has arisen as to whether this statute is applicable to the present situation at all. However, we have construed it to mean that the coverage under the Federal Act may be taken into consideration and therefore, I have to advise that it would be proper to deduct that amount from the total security required.

T. Fire insurance purchased by local units.

10. Policies in mutual companies.

To H. T. Highfill. December 31, 1934.

This Department was held that it is not permissible for a county or city to buy insurance in a mutual fire insurance company. While this opinion was originally predicated, no doubt, upon the principle that the county or city had no right to subject itself to stock assessment, nevertheless the question has been presented here under some form of policy limiting or prohibiting such assessment, and the Department has not seen fit to change the opinion. There may be other liability involved affecting the matter.

VII. Miscellaneous matters affecting cities.

Q. Town property.

10. Sale of town property.

To J. Shepard Bryan.

There does not seem to be any way by which a town may dispose a real estate owned by it except by auction—C. S. 2688.

VIII. Matters affecting chiefly particular local officials.

A. County Commisisoners.

5. Trading with member of board.

To W. E. Breese. December 28, 1934.

Inquiry: Where Board of Commissioners of county has designated one of its members as purchasing agent for the board, and as such he is expected to purchase coal for the board, may he make such purchase from a company in which he holds stock?

It would be a violation of C. S. 4388 for him to purchase coal from any concern in which he is at all interested. It would not, however, be a violation of this statute for him to buy supplies from wholesalers and jobbers in whose business he is not interested but from whom he also buys goods for his own business.

30. Legislative power.

To F. R. Leagans. December 31, 1934.

I am quite sure that no special in-

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ferior court for Davie County can be created or established by the Legislature, and that any attempt to do so would be in violation of Article II. Section 29 of the Constitution of North Carolina.

To R. C. Johnson. January 3, 1935.

Section 1608 (21) of the C. S. by excepting Randolph, along with other counties, from the County Criminal Court Act makes it impossible to establish a court in Randolph County under said Act. A simple amendment striking out the word Randolph would be effectual in making the Act apply to Randolph County, and a court might then be established under this authority.

31. Appointive power.

To Wade H. Lefler. January 10, 1935.

C. S. 1576 permits the Board of County Commissioners to appoint a special "deputy clerk" who shall assist the Clerk of Superior Court, and shall have all the powers and authority in reference to the County Recorder's Court herein conferred upon the Clerk of Superior Court, and shall do all things in reference to said Recorder's Court, under direction of the Clerk of the Superior Court of the County, as fully as the Clerk of the Superior Court is authorized to do.

In my judgment the Board of Commissioners may appoint such assistant Clerk without regard to the will or desire of the Clerk of the Superior Court. This special deputy Clerk, however, may function only with regard to the Recorder's Court, unless desired by the Clerk of the Superior Court.

I think that the law contemplated that there should be coördination and cooperation between the officers of the county, both the clerk and the county commissioners; and it was probably not within the contemplation of those who enacted the law that a situation like this could arise. However, I do know how to interpret the law any other way.

B. Clerks of the Superior Court.

45. Certification of Justices of the Peace.

To J. E. Swain, January 9, 1935.

C. S. 954 is a law of long standing, and it is difficult to interpret as applying to the present situation in which justices of the peace are elected in every county of the State. However, I think that we must construe the statute now as requiring the Clerk of the Superior Court to report to the Secretary of State all non-elected justices of the peace, as well as those elected or appointed who fall to qualify.

80. Descendants' estates.

Final Accounting. To J. E. Swain. January 3, 1935.

You state that you have some three or four hundred guardians and quite as many administrators have been appointed in your county within the last ten years

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50 PACKING PLANTS and abattoirs of average capacity are wanted to supply the fresh and preserved meats and meat products now imported into the Carolinas at a freight cost of over $5,000,000 annually. A few packing plants are in successful operation here now.

32 SHIRT FACTORIES of average size are needed here to make the $8,000,000 worth of shirts that are now brought into the Carolinas each year. At present, several manufacturers of shirts are operating factories successfully in this territory.

20 LEATHER GOODS PLANTS of average size would not be able, with their entire output, to meet today's demand for such goods in the Carolinas.

100 CANNERIES could thrive here supplying present Carolina demand for canned fruits and vegetables. We now pay $2,000,000 per year for freight on such goods shipped in from other states. Meanwhile we ship away canning crops in carload lots.

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who have failed to file their reports or make settlement as required by law. You also state that where you can reach them, you are serving citations and requiring reports and settlements, but that a large percentage of this list cannot be found; that they have either died or moved away and the sureties on most of these bonds have disappeared. You inquire what dispositions can be made of such cases.

There is no authority in the law for you to serve these persons who have disappeared by publication and obtain judgment against them; however, it would be your duty to have citations issued to all of them and let the sheriff make the proper return. These citations would, of course, be filed with the estate papers in your office. Where you have ascertained that there may be estates or wards of some guardian who has disappeared, who or which may be entitled to some property, it would then be your duty, if there be no public administrator, to have someone qualify as administrator *de bonis non.*

In the case of a ward whose guardian may have disappeared it would be your duty to appoint a guardian to look into and care for the estate.

We think that it would be to your advantage to make a special report of the conditions of the accounts of your guardians and administrators to the Judge of your district and to the Solicitor to the end that in proper cases indictments may be drawn.

100. Escheats.

To A. Wayland Cooke. December 19, 1934.

Under the provisions of Chapter 546, Public Laws of 1933, does the Clerk of Superior Court have the authority to pay out to persons making demand for same, sums of money which have been deposited with him, by virtue of the above law, by the liquidating agent of a closed bank?

This law provides that dividends so paid by the liquidating agent into your office "shall be held for a period of three months after the liquidation is completed and shall then be paid to the escheator of the University of North Carolina."

C. Sheriffs.

20. Bond for tax collections.

To Julius Banzet. January 8, 1935.

Where the sheriff has no duties to perform in connection with the collection and settlement of the State taxes, he is not required to give a bond in connection therewith. This is a clear case of *cessat ratio cessat lex.*

30. Use of toll bridges.

To D. V. Meekins. January 10, 1935.

We think that any proper peace officer would have the right to cross any toll bridge without payment of the toll charged by the owners thereof, provided such officer was on official business at the time.

L. Local law enforcement officers.

4. Prohibition law—manufacture.

To W. M. Clayton. December 17, 1934.

The laws of this State, and particularly Chapter 1, Public Laws of 1923, very stringently prohibit the manufacture, sale, purchase, importation or otherwise handling or dealing in intoxicating liquors. That Act was modified by Chapter 319, Public Laws of 1933, so as to permit the manufacture, etc., of fruit juices, beers, wines and the like of not more than 3.2 per cent alcohol content by weight. Except as so modified, that act of 1923 is still inforce.

41. Operating motor vehicle while intoxicated.

To Joe Dawson. December 19, 1934.

C. S. 2621 (44) provides that it shall be unlawful and punishable, as provided in Section 2621 (101), for any person who is a habitual user of narcotic drugs or who is under the influence of intoxicating liquors or narcotic drugs to drive any vehicle upon the highways of the State. C. S. 2621 (101) of course is a penalty section and provides a $100.00 fine, road sentence as stated with mandatory provisions for revoking driver's license for ninety days.

If a person is indicted and found guilty under the provisions of Consolidated Statutes 2621 (44), the punishment would, of course, be governed by the penalty prescribed in C. S. 2621 (101).

C. S. 4506 provides in part that any person who shall, while intoxicated or under the influence of intoxicating liquors or bitters, morphine or other opiates, operate any motor vehicle upon any public highway or cart way or other road over which the public has the right to travel, in any county or on the streets of any city or town in this State, shall be guilty of a misdemeanor. The punishment there prescribed is a fine of $50.00, road sentence as stated with mandatory provision for revoking driver's license for ninety days. If the defendant has been indicted under this section, the punishment there prescribed would be applicable.

75. Harboring Escaped Convict.

To Garland S. Garriss. January 4, 1935.

I find no direct statute on the subject of harboring an escaped convict or rendering aid to him. I am of the opinion, however, that in case the person is convicted of a felony and another person aids and assists him by harboring him and furnishing clothing, such person would, under the common law, be guilty of an offense as an accessory either to the crime committed by the convict or guilty of aiding in his escape.

N. School Superintendents.

10. Rental of School Buildings.

To A. W. Honeycutt. January 5, 1935.

Where a city unit takes in another district and does not have sufficient buildings to accommodate these school children so taken in, and is forced to rent buildings, it is the responsibility of the County to provide the buildings, under the new organization of county and city administrative units. We are, therefore, of the opinion that it would be the duty of the County either to build sufficient buildings to accommodate these children or to pay any rentals on such school buildings so occupied.

S. Mayors.

5. Mayor's processes.

To J. H. Ledbetter. December 18, 1934.

You inquire if as Mayor of your town you would be permitted to issue warrant for violation of the criminal law within the limits of your town, and make the same returnable before the County Recorder's Court without having a hearing in your court. We think so. You have, as Mayor, concurrent jurisdiction with the Recorder's Court of offenses within the jurisdiction of a justice of the peace. You could either have a preliminary hearing and bind over or else make the warrant returnable directly to the Recorder's Court. This is in regard only to crimes committed within the town limits.

T. Justices of the Peace.

12. Jurisdiction over bastardy.

To F. R. Leagans. December 31, 1934.

Inquiry: Where woman brings action for non-support of a bastard child, such child having been born before the passage of the 1933 Act, would a Justice of the Peace have jurisdiction to hear and determine the action?

We do not think that a Justice of the Peace would have jurisdiction except, perhaps, to bind the case over to the Superior or Recorder's Court since the action was not taken by the mother of the illegitimate child until after the passage of the act above referred to.

IX. Double office holding.

16. Town Attorney.

To Z. V. Morgan. January 4, 1935.

State Senator is an office, but Town Attorney is not an office. It is an employment, and a person holding both positions would not violate the Constitutional provisions against double office holding.

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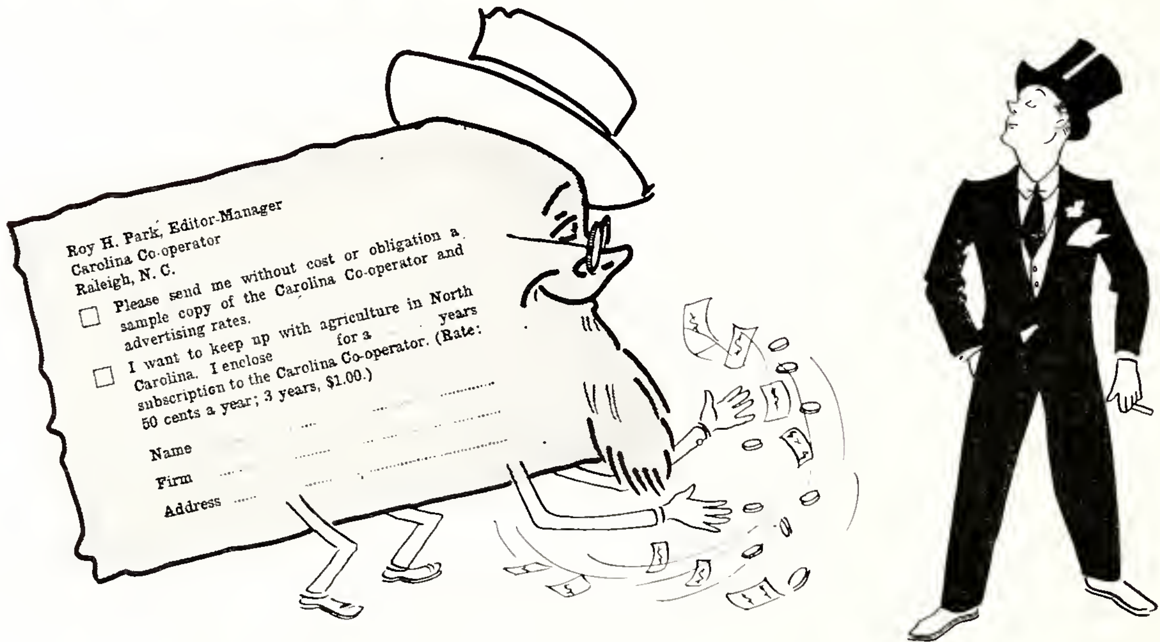

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