POPULAR GOVERNMENT

October 1965

Published by the Institute of Government
The University of North Carolina at Chapel Hill

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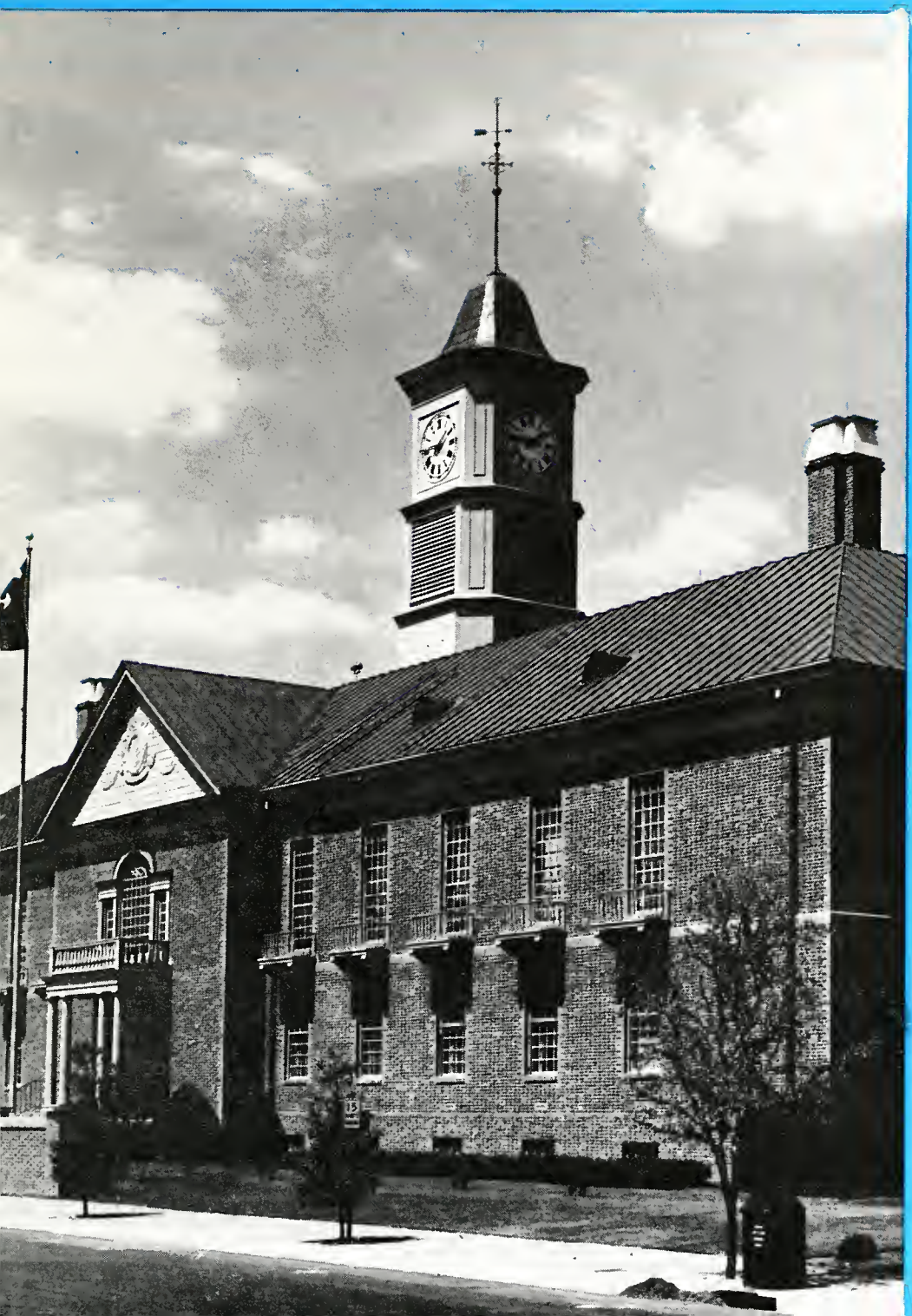

In This Issue:

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Published by the Institute of Government

Featured on this month's cover is the handsome new Williamsburg style Edgecombe County Courthouse at Tarboro.

Contents

Volume 32 October 1965 Number 2

POPULAR GOVERNMENT is published monthly except January, July and August by the Institute of Government, the University of North Carolina, Chapel Hill. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: per year, $3.00; single copy, 35 cents. Advertising rates furnished on request. Second class postage paid at Chapel Hill, N. C. The material printed herein may be quoted provided proper credit is given to POPULAR GOVERNMENT.

By L. Poindexter Watts

CRIMINAL LAW and PROCEDURE

Chapter numbers refer to the 1965 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. When an act is effective upon ratification, the ratification date is included in parentheses following the citation of the act; when there is a different effective date, this is denoted by the use of the abbreviation "eff." All dates are in 1965 unless otherwise noted.

The 1965 General Assembly made numerous changes in our common law criminal code and the code of criminal procedure. Most changes were designed to close loopholes in existing statutes or to meet new needs in governing the behavior of persons in a changing society. Illustrations are easy to pick:

- Two more acts were passed plugging additional loopholes in the article on arson and unlawful burnings.
- Several additions were made in the misdemeanor laws governing injury to or running off with hired vehicles and other personal property.
- The article on credit card theft was revised to include among the various misdemeanors relating to fraudulent theft of goods or services (with or without credit cards) several new offenses to cover sophisticated ways of getting telephone or telegraph service without paying for it.
- A new section was added to the article on search warrants to authorize searches for things used in the commission of or which constitute evidence of felonies.
- A resolution was adopted requiring a study commission to report in 1967 concerning recommended treatment of certain sex offenders. The commission's mandate did not include sex offenders in general but only those covered under the statutes relating to crime against nature and taking indecent liberties with children.

All of the legislation described above is analyzed and discussed in more detail under the appropriate topic below.

Changes in the motor vehicle law are discussed in the article MOTOR VEHICLES AND HIGHWAY SAFETY in the September Legislative Issue of *Popular Government*. Other articles commenting on various criminal law and procedure enactments either not covered or not covered fully here are GAME, FISH, AND BOAT LAW ENFORCEMENT, PENAL-CORRECTIONAL ADMINISTRATION, and PUBLIC WELFARE AND DOMESTIC RELATIONS. The first article is to be in this year's December issue. The latter two are in the September issue. Additional specific cross references will be made under individual topics below as appropriate.

Public-Defender Study

A 1963 Senate Resolution (SR 660) directed the Legislative Council to make a study with respect to the advisability of establishing a public-defender system in North Carolina, and to report to the 1965 General Assembly. The Council reported favorably on the idea of public defenders and flatly recommended that *if* the system were adopted it should apply uniformly across the state. In most states up to now the opposition of members of the bar has been strong enough to keep the public defender system limited to a local option basis. In the usual instance this has resulted in having the defender only in metropolitan areas where the economy of the defender system in taking care of large caseloads was significant in overcoming the opposition.

Most of the Legislature's time in the court area was spent in consideration of the Judicial Department Act of 1965 and the public defender report of the Council was not formally considered. Thus, the General Assembly made no changes in the assigned counsel system adopted in 1963 following the decision of *Gideon v. Wainwright*, 372 U.S. 335 (1963). This system, as implemented by the regulations of the North Carolina State Bar, is clearly vulnerable in one important respect in the event of future liberal interpretations of *Escobedo v. Illinois*, 378 U.S. 478 (1964), and other cases requiring early appointment of counsel. Under the North Carolina system the Superior Court judge makes the appointment of counsel after holding a hearing on the question of indigency. If very early assignment of counsel becomes an inescapable constitutional necessity for all or for large categories of cases, the State Bar may consider that it has enough statutory leeway to amend its regulations and provide for tentative advance assignment of counsel to be confirmed later by the judge.

Bills That Failed

Capital Punishment

The attempt to abolish capital punishment met its usual opposition, though, as will be noted below, abolitionists did manage to delete the rarely-committed crime of killing an adversary in a duel from the list of those for which capital punishment is possible. An attempt, however, to abolish capital punishment across the board for minors under the age of eighteen (HB 351), received an unfavorable report in the House.

HB 103 would have changed the punishent for first degree murder, first degree burglary, and arson from death or life imprisonment at the jury's option to life imprisonment. It would have retained capital punishment

for rape. The bill failed to pass when it came up for second reading on the floor of the House.

As a reverse twist in the continuing argument between those who favor capital punishment and those who do not, SB 53 would have taken away the discretion of the jury to recommend mercy in capital cases. It also failed to pass when put to its first vote on the Senate floor.

Miscellaneous

A few of the other more important or interesting bills which failed, and which are not otherwise mentioned in the discussions below, are:

SB 86: prohibiting vulgar, obscene, or indecent language within the hearing of two or more persons in any public place.

SB 212: eliminating the authority of a trial judge to compel a clergyman to disclose confidential communications received from communicants.

SB 218, SB 219, SB 220, SB 221: making a series of changes in the procedure governing hospitalization of mentally ill and inebriate persons.

SB 489: establishing a civil procedure for restraining a male from molesting or annoying a female over eighteen years old.

HB 69: submitting a proposed constitutional amendment to the voters to safeguard against diversion of LEOB&RF funds.

HB 170: prohibiting surgery or drug experiments on the body of a living animal except when done by doctors, by veterinarians, in hospitals, in schools of medicine or veterinary medicine, or by livestock owners or handlers treating or castrating their own animals.

Burning of Buildings

Public Buildings

Following a major fire on the campus of North Carolina State University, the General Assembly hastily enacted Chapter 14 (SB 41) (February 26) to add a new category of buildings to G.S. 14-59. Of course, the rule against ex post facto criminal laws would keep the new act from applying to the building already burned, but at the time there was a likelihood of more fires on the campus.

The problem which led to passage of the act was that the patchwork of various unlawful burning laws kept it from being entirely clear whether certain state institutional buildings would be covered. Before the 1965 amendment, G. S. 14-59 covered only:

> the Statehouse, or any of the public offices of the State, or any courthouse, jail, arsenal, clerk's office, register's office, or any house belonging to any county or incorporated town in the State or to any incorporated company whatever, in which are kept the archives, documents, or public papers of such country, town or corporation . . . .

G.S. 14-60 at the time punished setting fire to "any schoolhouse," but there must have been some fear that this law originally passed in 1901 might not apply to college buildings. G. S. 14-62 punished the burning of, among other buildings, any:

> warehouse, office, shop, mill, barn or granary, or . . . any building, structure or erection used or intended to be used in carrying on any trade or manufacture, or any branch thereof . . . .

A liberal construction given either to "schoolhouse" or "office" would probably cover any of the campus buildings thought to be in jeopardy, but the Supreme Court of North Carolina has strictly consttued the highly detailed arson and unlawful burning statutes. See *State v. Long*, 243 N. C. 393, 90 S.E.2d 739 (1956); *State v. Cuthrell*, 235 N. C. 173, 69 S.E.2d 233 (1952). Moreover, the event pointed up the lack of a specific statute to cover public buildings generally. Thus, Chapter 14 amended G. S. 14-59 to add "any building owned by the State or any of its agencies, institutions, or subdivisions" under the coverage of the section. The omnibus attempt section, G.S. 14-67, was not amended to include attempts to burn these public buildings.

SBI Jurisdiction as to State Property

The campus fires must also have raised some questions as to the jurisdiction of the SBI. Later in the session Chapter 772 (SB 461) (June 2) amended G.S. 114-15 to add the following sentence:

> The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson, or arson, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property.

If this were a criminal statute, there would be a serious question whether the word "arson" should be restricted to its common law meaning, wilfully and maliciously burning the dwelling house of another. But since this statute merely governs investigative jurisdiction, it will undoubtedly be given a broad construction.

Educational Institutions

The final act spawned by the campus fires was Chapter 870 (HB 1043) (June 8). This act rewrote G.S. 14-60 to cover not only "any schoolhouse" but also any "building owned, leased or used by any public or private school, college or educational institution . . . ." No conforming change was made in G.S. 14-67 here either.

Theft, Fraud, and Offenses Against Property

Hired Property

The three basic theft crimes in our law are the common law crime of larceny (punishable as specified in G. S. 14-70 and -72) and the statutory crimes of embezzlement (G.S. 14-90) and false pretenses (G.S. 14-100). There are numerous cases ancient and modern addressed to the technical differences between these three crimes — and often a prosecutor has difficulty knowing under which one to bring an indictment. Moreover, the courts have been strict in their interpretations and there are dozens of supplementary statutes to cover various activities which the three basic crimes either do not covet or do not cover squarely enough.

A very ancient English case held that a person who rented a horse with the intent to steal the horse from the very beginning was guilty of larceny. But if the person renting the horse later decided to make off with it after having rented it in good faith, he was guilty only of a civil conversion. This may have been changed in North Carolina by a 1941 amendment adding "bailees" to the persons who can commit embezzlement under G.S. 14-90, but it is still necessary to prove the sometimes difficult element of fraudulent intent — as opposed to mere wilful failure to return the property.

In 1927 the General Assembly enacted a series of misdemeanor offenses now codified in G.S. 14-165 to -169 to prevent abuses of the following rented or hired property: "horse, mule or like animal, or any buggy, wagon, truck, automobile, or other like vehicle, for temporary use . . . ."

Chapter 1073 (SB 378) (June 16) amended those sections. It struck out the provision that the property be rented or hired for temporary use and added "aircraft, motor, trailer, appliance, equipment, tool, or other thing of value" to the list of property in question. This left the set of statutes as follows:

G.S. 14-165: prohibits maliciously or wilfully injuring or damaging the listed rented or hired property by using or driving the same in violation of any statute of North Carolina — or permitting anyone else to do so.

G.S. 14-166: prohibits subletting or renting to another the listed rented or hired property without permission.

G.S. 14-167: prohibits wilful failure to return the listed rented or hired property at the expiration of the time for which it was rented or hired.

G.S. 14-168: prohibits hiring or renting the listed property with the intent to cheat and defraud the owner of the rental price, or obtaining possession of such property by false and fraudulent statements made with intent to deceive, which are calculated to deceive, and which do deceive.

For good measure, Chapter 1073 set out definitions of "rent," "hire," and "lease" in new G.S. 14-168.2 and added a new offense:

G.S. 14-168.1: prohibits a person entrusted with any property (not just the listed property) as bailee, lessee, tenant or lodger, or with any power of attorney for the sale or transfer thereof, from either (1) fradulently converting the property, or the proceeds thereof, to his own use or (2) secreting it with a fraudulent intent to convert it to his own use. This offense, as are all the other offenses in question, is punished under G.S. 14-169 as a misdemeanor punishable at the discretion of the court.

A companion bill to the above was enacted as Chapter 1118 (SB 377) (June 16). It added new G.S. 14-168.3 to make it prima facie evidence of intent to commit a crime under G.S. 14-167, -168, and -168.1 either (1) to fail or refuse to return the property under certain circumstances or (2) to obtain the property by presentation of identification which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification. The circumstances under (1) above apply when the property has not been returned within ten days following expiration of the rental period and when more than 48 hours have elapsed after a written demand for the property has been served either personally or by delivery to the last known address provided in the lease or rental agreement.

Telecommunications Fraud

In 1961 Article 19A was added to Chapter 14 of the General Statutes containing former §§ 14-113.1 to -113.6. The 1965 General Assembly in Chapter 1147 (HB 1064) (June 17) amended one section, added another, and rearranged several others:

1965	1961
G.S. 14-113.1	No change.
G.S. 14-113.2	Former § 14-113.3.
G.S. 14-113.3	Former § 14-113.4.
G.S. 14-113.4	Revision of former § 14-113.2.
G.S. 14-113.5	New.
G.S. 14-113.6	Former § 14-113.5.
G.S. 14-113.7	Former § 14-113.6.

The new arrangement consolidates in G.S. 14-113.1 ro -113.3 without any change the provisions relating to obtaining credit, goods, property, or service by any fraud connected with the use of a credit card, telephone number, credit number, or other credit device. Former § 14-113.2 which made it unlawful to obtain telephone or telegraph service with intent to avoid payment has been reworked in new G.S. 14-113.4 to make it unlawful:

> to avoid or attempt to avoid, or to cause another to avoid, the lawful charges, in whole or in part, for any telephone or telegraph service or for the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities by the use of any fraudulent scheme, device, means or method.

The effect is to broaden the coverage of the section by deleting the requirement that service be obtained and to add the provision relating to causing another to avoid service. This revision apparently was made necessary by schemes such as those where persons with wide area telephone service are signaled to return a call toll free as the result of a deliberately abortive person-to-person call. It may also better cover the device of placing a collect call to a person waiting at a coin telephone without telling the operator of its status.

New G.S. 14-113.5 appears to be directed toward a sophisticated mechanical or electronic form of cheating the telephone company. It prohibits knowingly making or possessing any equipment designed, adapted, or used either for theft of telecommunication service or to conceal (or assist another to conceal) the existence or place of origin or destination of any telecommunication. The section further prohibits knowingly selling, giving, transporting, transferring to another, or offering or advertising for sale any such telecommunication-theft equipment or plans or instructions for making or assembling such equipment — under circumstances evincing an intent to use or allow such equipment to be used in telecommunication fraud, or with knowledge or reason to believe that such plans or instructions are intended to be used for making or assembling such equipment.

Insurance Frauds

Chapter 950 (SB 525) (eff. July 1) purports to add a new section 14-113.1 in Article 19 of Chapter 14 of the General Statutes. Article 19 is the one covering various false pretenses and cheats. Since there was already a G.S. 14-113.1 in Article 19A, the codifiers have changed the new section to G.S. 14-112.1. The section provides that any agent, physician, claimant, or other person who wilfully and knowingly presents or causes to be presented any false or fraudulent insurance claim or proof of loss is guilty of a misdemeanor punishable by a fine of from $100 to $500, imprisonment from 30 days to one year, or by both fine and imprisonment, at the discretion of the court. The section similarly punishes those who prepare or

assist in preparing supporting documents for such claims. The provisions of the section are specifically made applicable to contracts and certificates issued pursuant to Chapters 57 and 58 of the General Statutes.

A companion bill was enacted as Chapter 911 (SB 524) (eff. July 1). It amended G.S. 58-49 to make it plain that it covered false statements in the insurance application by the applicant himself as well as by the agent and examining physician. It also specified that the misdemeanor in question — punished the same as above — was applicable to contracts and certificates issued pursuant to Chapters 57 and 58 of the General Statutes.

A civil remedy designed to strike at false advertising by out-of-state insurance companies was contained in Chapter 910 (SB 517) (June 10). It provides for substituted service of process upon insurers not authorized to do business in North Carolina who place or send in advertising designed to induce North Carolina residents to purchase insurance from them. These provisions are contained in a new G.S. 58-54.14 to -54.20.

A somewhat different act was aimed at plugging a loophole in the penalty portion of the 1963 act regulating insurance premium financing. G.S. 58-61 was amended to make its punishment provisions apply to persons wilfully and knowingly entering false information on an insurance premium finance agreement — as well as engaging in the premium-finance business without a license, failing to give required information to the Commissioner of Insurance, or failing to abide by the Commissioner's regulations.

Raising and Lowering Punishments

Crime Against Nature; Morals Study

Chapter 621 (HB 799) (May 19) amended six miscellaneous criminal statutes with regard to level of punishment. As its major change it amended G.S. 14-177 by deleting the characterization "abominable and detestable" with reference to crime against nature and by making it a felony punishable by fine or imprisonment in the discretion of the court. Under *State v. Blackmon*, 260 N.C. 352, 132 S.E. 2d 880 (1963), the latter phrase was interpreted as authorizing up to ten years in prison — which is quite a reduction from the former maximum of 60 years. The most important effect of the new legislation, however, is the elimination of the former five-year minimum sentence.

One solicitor has raised the question whether deletion of the phrase "abominable and detestable" will now make it necessary to set out the facts of offenses in indictments and warrants rather than just charging in the language of the statute as in the past. Since the change does not appear to be a material one, this result seems somewhat unlikely.

Resolution 75 (HR 1098) (June 10) creates a "Commission to Study and Recommend Legislation on Certain Criminal Laws Relating to Public Morality." The nine members include the Director of Prisons, the Commissioner of Mental Health, a physician to be named by the Dean of the School of Medicine of the University of North Carolina, a physician to be named by the Medical Society of the State of North Carolina, an attorney to be named by the North Carolina State Bar, Inc., one Senator to be named by the President of the Senate, one Representative to be named by the Speaker of the House, and two members at large to be named by the Governor. The Governor is to name the chairman of the Commission.

The commission is directed to study the laws and procedures in other states relating to crime against nature (G.S. 14-177), taking indecent liberties with children (G.S. 14-202.1), and related problems, and to report to the Governor and the General Assembly of 1967 not later than February 10, 1967, making findings and recommendations, including recommendations for legislation. The resolution specifically directs the commission to consider and recommend as to: preconviction and postconviction psychiatric and medical examination; legislation looking to the early detection of potential dangerous offenders and their necessary detention, care, and treatment; and legislation concerning the detention, treatment, and rehabilitation of those committed to any prison or institution.

Other Offenses in Omnibus Punishments Act

Other offenses covered in Chapter 621 are as follows:

G.S. 14-72 (misdemeanor larceny): deletes exemption of horse stealing from the provisions of the section — so that larceny of a horse worth not more than two hundred dollars would be a misdemeanor and not a felony.

G.S. 14-81 (larceny of horses and mules): provides that the generally applicable larceny punishments apply to stealing any horse, mare, gelding, or mule (originally, imprisonment from one to 20 years).

G.S. 20-107 (injuring or tampering with vehicle): makes the misdemeanors in this section punishable in the discretion of the court (originally, up to fine of $100, imprisonment for 60 days, or both, under the catch-all clause in G.S. 20-176).

G.S. 20-108 (dealing with vehicles without manufacturers' numbers): same change as noted for G.S. 20-107.

G.S. 20-109 (altering or changing engine or other numbers on vehicle): same change as noted for G.S. 20-107.

Temporary Larceny of a Vehicle

The need for one increase in punishment noted above for G.S. 20-107 to -109 was undoubtedly brought to light by an act that passed fairly early in the session: Chapter 193 (HB 119) (April 7). This act raised the punishment for temporary larceny of a vehicle to what many lawyers and judges thought it had been all along: fine, imprisonment not exceeding two years, or both, in the discretion of the court. G.S. 20-105 formerly made the offense a "misdemeanor" but did not specify the punishment. Following the general rule that G.S. 14-3 applies when there is no punishment specified in misdemeanor cases, a number of judges have sentenced persons for terms up to two years for temporary larceny. Unfortunately, though, G.S. 14-3 cannot apply to this section because it is an integral part of Article 3 of Chapter 20, the Motor Vehicle Act of 1937. G.S. 20-176(b) states the catch-all punishment for violations of the article where no specific punishment is stated: fine up to $100 or imprisonment up to 60 days, one or both.

It is noteworthy that following the adjournment of the General Assembly a number of prisoners serving sentences in excess of 60 days for temporary larceny committed before April 7 gained their release.

Dueling

The offense of killing an adversary in a duel was formerly a capital crime under G.S. 14-20, though the jury

had a right to recommend mercy and thus insure a judgment of life imprisonment. Chapter 649 (HB 855) (May 20) reduces the punishment for this crime to life imprisonment in the State's prison.

Broadening Scope of Existing Offenses

A number of the offenses discussed above could easily have been placed under this heading, but it was more convenient to group them by subject matter. The enactments here treated are a miscellaneous collection of substantive criminal offenses for the most part with little in common.

Uniform Narcotic Drug Act Amendments

Two 1965 acts strengthened the North Carolina laws governing drugs capable of wide abuse in use. The act relating to narcotic drugs is treated here. That relating to barbiturate and stimulant drugs is covered in the following section.

Chapter 619 (HB 617) (May 19) contained several amendments to the Uniform Narcotic Drug Act. The first was a technical amendment which clarified the definition of "official written order" in G.S. 90-87(10).

The next amendment added limitations on possession of hypodermic syringes or needles by nurses intending to administer habit-forming drugs. This was done by adding for the first time a definition of "nurse," as G.S. 90-87 (9a), limiting the term to nurses with a certificate as either a registered or practical nurse from the North Carolina Board of Nurse Registration and Nursing Education. G.S. 90-108 already provided that a nurse may not possess a hypodermic syringe or needle or other like instrument for the purpose of subcutaneous injection of habit-forming drugs without a certificate from a physician issued within the past year. This section was amended to further limit such nurses to those giving their injections under the supervision or direction of a physician or dentist.

The final amendment added a proviso to G.S. 90-111.2 (b) to authorize the presiding judge ordering a forfeiture of a vehicle, vessel, or aircraft in connection with a narcotics offense to turn the conveyance over to the State Bureau of Investigation for use in official investigations of narcotics violations. The judge would have the discretion to do this rather than follow regular forfeiture procedure upon application of the Bureau.

There is some problem as to the constitutionality of this new forfeiture provision. G.S. 90-111.2(b) previously provided simply for disposition of forfeited conveyances in accordance with the procedure applicable in the case of conveyances unlawfully used to conceal, convey, or transport intoxicating beverages. G.S. 18-6 provides in the ordinary case for sale of forfeited liquor conveyances — with the clear proceeds to be turned over to the school fund of the county. The only exception occurs when a vehicle has been specially equipped or modified to increase its speed. In this case the vehicle is still to be sold if the vehicle may feasibly be restored to its original condition. Only if the restoration would be so extensive as to be impractical may the vehicle be turned over to a governmental agency. In this case it could well be said that there would be no "clear proceeds" of a sale because it would cost more than the vehicle is worth to restore it to saleable condition. The new provision authorizing the vehicle to be turned over to the State Bureau of Investigation contains no such restrictive feature and rests solely in the discretion of the presiding judge. The new provision thus may be in conflict with Article IX, Section 5, of the Constitution of North Carolina:

> [T]he clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State . . . shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several countries of this State . . . .

Barbiturate and Stimulant Drug Amendments

The amendments to the article on barbiturate and stimulant drugs are contained in Chapter 620 (HB 618) (May 19). The sections affected are:

G.S. 90-113.2(5): added to make it unlawful to possess barbiturate or stimulant drugs for the purpose of unlawful sale or dispostion and to state that possession of 100 or more tablets, capsules, or other dosage forms of either drug or a combination of them is prima facie evidence of such unlawful possession.

G.S. 90-113.2(6): added to make it unlawful to possess a hypodermic syringe, needle, or like instrument for the purpose of administering barbiturate or stimulant drugs without a certificate of a physician issued within the past year.

G.S. 90-113.3(a): amended to include a cross reference to the two subdivisions added above.

G.S. 90-113.5: amended to broaden the requirement that all persons other than carriers keep records relating to barbiturate or stimulant drugs dealt with for at least two years. The section previously applied only to invoices; as amended it applies to prescriptions, orders, and other relevant records. It additionally requires that all records and stocks of the drugs in question be open for inspection to federal and state officers under a duty to enforce the drug laws. Prohibits any investigating officer from divulging information as to such records gained by virtue of his office "except in connection with a prosecution or proceeding in court, or before a licensing board or officer to which prosecution or proceeding the person to whom such . . . records relate is a party."

G.S. 90-113.7: added to govern seizure and forfeiture of conveyances (with former section 90-113.7 setting out penalties amended and renumbered as G.S. 90-113.8). The section prohibitis using any vehicle, vessel, or aircraft to transport, possess, or conceal, or to facilitate any unlawful dealings in, barbiturates or stimulants. Any conveyance used in violation of the section must be seized, except those having an empty gross weight of more than 7,000 pounds and operated by a person other than the registered owner. Forfeiture of seized conveyances is to be under the same procedure as provided in the case of unlawful transportation of intoxicating liquor, except that the presiding judge is granted discretion to transfer the conveyance to the State Bureau of Investigation for use in official drug investigations upon application of the Bureau. The same constitutional problem arises here as that discussed in connection with the similar provision added to the Uniform Narcotic Drug Act.

G.S. 90-113.8: amends penalty provisions of former section 90-113.7 and renumbers it as noted. The previous penalty for all violations under the act was a misdemeanor for first offenses and a felony for second offenses. The

revised penalty section retains this basic punishment scheme, but provides that anyone violating new G.S. 90-113.2(5) is guilty of a felony punishable by imprisonment for not less than six months nor more than five years. Second and subsequent convictions of G.S. 90-113.2(5) are punishable by imprisonment for not less than one nor more than ten years. As before, drug offenses under the federal law and the laws of other states are to be counted in determining whether an offense is a second or subsequent one.

Election Felony

Some recent election investigations in Madison County highlighted the fact that the felony provisions of G.S. 163-197(9) applied only to false returns of a primary or election and to fraudulent erasures or alterations in registration and poll books. Chapter 899 (SB 269) (June 10) amended that statute to make it a felony to alter, conceal, or destroy "any election ballot, book, record, return or process with intent to commit a fraud . . . ." (For a fuller discussion of this chapter, see ELECTION LAWS, September 1965 *Popular Government.)*

Telephone Harassment

A pair of acts makes similar amendments to G.S. 14-196.1 and -196.2 to forbid persons from making repeated telephone calls for the purpose of annoying, molesting, or harassing another. Chapter 836 (SB 391) (June 8) amends G.S. 14-196.2 to prohibit unidentified persons from calling anyone repeatedly for the above purpose. Chapter 837 (SB 392) (June 8) amends G.S. 14-196.1 to prohibit any person from making such harassing calls to a female. This section is applicable whether or not the caller identifies himself or herself.

Obscene Films, Broadcasts, and Television Performances

In connection with obscene and undesirable motion pictures, HB 73 should be mentioned. It would have made it unlawful to show motion pictures (1) portraying mayhem or extreme violence as the principal attraction or dominant theme or (2) portraying drug addiction in an attractive manner so as to encourage unlawful use of narcotic drugs and barbiturates. This bill obviously posed constitutional problems and was not reported by the House committee to which it was referred.

The act which passed merely added a technical amendment to G.S. 14-189.1(a). This section was copied from a draft of the Model Penal Code to prohibit dissemination of obscenity. Dissemination of obscenity was broadly defined in general terms to include almost every imaginable kind of dissemination. Chapter 164 (SB 71) (April 5), though, adds a new subdivision (4) to G.S. 14-189.1(a) to cover various activities in relation to exhibiting, televising, broadcasting, or presenting "any obscene still or motion picture, film, film strip, or projection slide, or sound recording, sound tape, or sound track, which is a representation, embodiment, performance, or publication of the obscene."

The added section may have the unintended effect of narrowing the scope of the statute. So long as it was in general terms obviously meant to be all-inclusive, there was good reason to argue that unusual or newly-developed methods of disseminating obscenity would be covered. Now, since there is a specific listing of items, the courts will have a much stronger tendency to hold anything not explicitly mentioned — at least in the area of telecommunications and visual and sound recordings — as outside the coverage of the statute. One item, for example, not included in the above list is the widely-used technique of tape recording television images; the new act only includes sound recordings. It is conceivable that a performance might be visually obscene without any accompanying obscene sounds or words.

Dumping on the Lands of Another

Chapter 300 (HB 419) (April 22) deletes the reference in G.S. 14-128 to wilful deposit of trash, debris, garbage, or litter on the lands of another without consent. As revised, the section applies merely to injury or removal of plants and trees on the lands of another without consent.

The chapter next adds new G.S. 14-134.1 to make it unlawful either temporarily or permanently to deposit "any trash, refuse, garbage, debris, litter, plastic materials, scrapped vehicle or equipment, or waste materials of any kind" upon the lands of another without *written* consent. The new section additionally prohibits depositing any such materials in any river or stream. The section does not apply to public dumps maintained by municipalities.

The punishment for G.S. 14-134.1 — in form at least — varies from that applicable under G.S. 14-128. The new punishment is stated as being "punishable by a fine of fifty dollars ($50) or thirty (30) days in jail." G.S. 14-128, as is more usual, provides that the punishment *should not exceed* those limits.

Laws Relating to Weapons

Furnishing Weapons to Children

Chapter 813 (HB 152) (June 4) started out as a bill which would have prevented a parent or other person responsible for a child under 12 from knowingly permitting the child to have or use an air rifle, an air pistol, or a BB gun. The form of the bill was to add these weapons to the list of dangerous weapons forbidden children under G.S. 14-316. Before final passage, however, the bill had been turned inside out and positively excluded air rifles, air pistols, and BB guns from the dangerous weapon category under G.S. 14-316 in all but 16 counties: *Anson, Caldwell, Caswell, Chowan, Cleveland, Durham, Forsyth, Gaston, Harnett, Haywood, Mecklenburg, Stanly, Stokes, Surry, Union,* and *Vance.*

G.S. 14-316 was in the course of passage also amended in a way applicable to all counties of North Carolina. The act permits a child to use a gun, pistol, or other dangerous weapon when under the supervision of his parent, guardian, or a person standing in loco parentis.

Deadly Weapon Disposition

In 1959 a bill was introduced to give the sheriff the duty of handling pistol permits under G.S. 14-402, *et seq.*, and of disposing of confiscated concealed weapons under G. S. 14-269. Forty counties, however, exempted themselves from the 1959 act — thus leaving these duties in the hands of the clerks in those counties. This session Chapter 954 (HB 201) (June 11) amended the procedure for disposing of confiscated concealed weapons

(Continued on page 22)

Traffic Cases and the New District Court System

By C. E. Hinsdale

[*Editor's Note. This article, slightly modified, is the text of an address by the author before the Standing Committee on the Traffic Court Program of the American Bar Association at its annual convention, Miami, Florida, in August, 1965.*]

In April of this year, the North Carolina General Assembly enacted the "Judicial Department Act of 1965." This is the second step in a 10-year campaign to modernize and reform the State's lower court system. The first step was achieved in 1962, when the people by popular vote overwhelmingly adopted an amendment to the Constitution which entirely rewrote the Judicial Article. These two steps, taken together, over the next few years will bring North Carolina's court system into the 20th century.

Old Court System

Following is a very brief outline of the present North Carolina court system, the inadequacies of which gave rise in the mid-50's to the reform movement. North Carolina has the fairly standard three-level arrangement of courts: the appellate level, consisting of the Supreme Court; the general trial jurisdiction level, consisting of the Superior Court, characterized by unlimited civil and criminal jurisdiction, with indictment by grand jury, trial by a constitutional twelve-man petit jury, and concurrent jurisdiction (in most counties) over misdemeanors; and, on the lowest level, a hodgepodge of local courts of limited jurisdiction, including, at the very bottom, the fee-compensated Justice of the Peace.

Under the new court system, the Supreme Court will remain unchanged. Unchanged also will be the general trial jurisdiction court (Superior Court), save for the loss in some counties of its concurrent jurisdiction over misdemeanors, and loss on the civil side of cases involving $5,000 or less in money value.

It is on the third, or lowest, level of courts that the change is most noticeable. Here the entire level is swept away — lock, stock, and barrel. North Carolina's present system of lower courts — and I use the word "system" loosely — consists of about 180 city and county courts of every conceivable description. These courts have been created over the decades since the Constitution of 1868 by special acts of the legislature, and by general acts with so many local exceptions as to amount to special acts, each amended again and again over the years, so that it is literally true that no two of these 180-odd courts are alike. They vary in jurisdiction, (both territorial and subject matter), in procedure, in practices, in organization, and in costs, from county to county and city to city, so that not even lawyers, in moving from one court to another, know exactly what to expect. Some counties have six to nine of these courts; other counties have none.

These recorders' courts (to use the most common name for them) are characterized, except in five or six of the largest cities, by part-time judges and part-time solicitors. One-fourth of the judges have no legal training. They are locally paid, and subject to local political influences. Costs of court vary from a low of about $9 to a high of about $27 for the same type of case, giving rise to the suspicion that sometimes the court exists more to earn a profit for the local treasury rather than to dispense justice.

At the bottom of this so-called system are the Justices of the Peace — about 900 of them — still compensated in criminal cases entirely by fees levied against the convicted defendant. (If the Justice acquits the defendant, he receives no fee for his services). The blatant injustice of an arangement such as this, plus the Justice's unsupervised conduct and generally undignified surroundings, were the most frequently cited examples of the need for court reform in North Carolina during the entire court reform campaign.

District Court Division

In place of this jungle of confusing and inefficient lower courts, North Carolina will have a District Court Division, which will be the lowest level of a three-level, single, unified General Court of Justice. The two top levels of the General Court of Justice are the Appellate Division (the present Supreme Court), and the Superior Court Division. The two top levels are already in existence, and, as noted earlier, will continue substantially unchanged.

The District Court Division will sit, as a district court, in each county of the state, and will be exactly the same in each county — no variations in jurisdiction, procedures, organization, or costs. The district court will have exclusive misdemeanor jurisdiction, and $5,000 money - value civil jurisdiction, plus authority in domestic relations and juvenile matters. The State is divided into 30 district court districts, the boundaries of which, for reasons of simplicity and practicality, are the same as the 30 superior court judicial districts. Districts will thereby be composed of from one to seven counties, the average being three. Each district court district will be allotted from two to six district court judges, depending on the population of the district. Judges will be elected by the people of the district for four-year terms. This is a constitutional provision. While the national trend seems to be away from popular election of judges, this issue was thoroughly debated in North Carolina in 1959 and 1961, and the reform group which urged appointment or nonpartisan election of judges was defeated in the General Assembly. For the next few years at least, and probably for longer than that, judges in North Carolina are going to be elected in the regular old-fashioned way.

District court judges must devote their full time to the duties of the office — no more part-time judges, holding court on Monday morning and practicing law or running a store the remainder of the week. Judges will be paid $15,000 annual salary, and required to give up the practice of law or other gainful occupation.

Since there will be, in most dis-

(Continued on page 37)

By Taylor McMillan

AGRICULTURAL LEGISLATION

Chapter numbers given refer to the 1965 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate, respectively. GS numbers refer to sections in the General Statutes of North Carolina.

Every significant piece of agricultural legislation introduced at the 1965 Session of the North Carolina General Assembly was enacted into law. The new laws range from those that strengthen or clarify existing regulatory programs to those that provide for research in improving existing production and encouraging further agricultural diversification.

Regulation

Milk Law

G.S. 106-266.21 prohibits the retail sale of milk below cost for the purpose of injuring, harassing or destroying competition. "Cost" was defined as the price paid for milk in the market area where the sale was made plus a reasonable allocation of processing and marketing expenses. Evidence of sale below cost is prima facie evidence of violation of the section, and the burden of rebuttal is upon the alleged violator. Pursuant to this section, the North Carolina Milk Commission obtained an injunction against a Winston-Salem groceryman who had sold milk to consumers at his wholesale price. In *Milk Commission v. Dagenhardt*, 261 N.C. 281 (1964) the injunction was vacated on the grounds that although the sale was below cost as defined above, there was no evidence that it was for the purpose of injuring, harassing or destroying competition among retail grocers. There was evidence to the effect that the sales were damaging to wholesalers who make home deliveries to the retail trade, but the complaint had only alleged that other retail grocers were damaged.

While similar price cutting might successfully be stopped if it were alleged and proved that it was damaging wholesalers selling to the retail trade, in light of this experience, it was felt that retailers needed clearer guidelines as to what constitutes sales below cost. Accordingly, Chapter 936 (HB 1045) redefines cost to the retailer as "the invoice price paid or incurred for the purchase of milk, plus a minimum of seven per cent (7%) of the invoice price computed to the nearest half cent per sales unit." Where a retailer processes its own milk, or purchases its milk from a subsidiary, "cost" is defined as the prevailing wholesale price to retailers in that market area plus a mark-up of seven per cent computed to the nearest half cent.

The new amendments give some tolerance to retailers with special accounting procedures or who must sell milk under unique circumstances. Sales may be permitted at less than the seven per cent minimum if the retailer is able to prove a reduced cost in accord with a reasonable standard or method of accounting regularly em ployed by him. Also, the presumption of violation of the law, made by proof of sale below cost, may be rebutted by proof of any of the following facts: (1) the merchandise was damaged, or (2) the milk was sold upon the final liquidation of a business, or (3) the milk was sold to an organized charity or to a relief agency, or (4) the milk was sold by an officer acting under the direction of the court.

This legislation is expected to halt the retail practice of using milk as a "loss leader."

With respect to the authority of the Milk Commission to fix prices to be paid producers of milk by distributors, Chapter 936 amends G.S. 106-266.8 to make it clear that the resale of milk outside of the state shall not affect the right of the Commission to set the minimum price to be paid to the producers. In setting such prices the Commission is to consider the prevailing producer prices established by state or federal milk control agencies operating in such other states.

Egg Law

The North Carolina Egg Law (G.S. Chapter 106, Article 25), last amended in 1955, is completely rewritten by Chapter 1138 (HB 264). These amendments are designed to bring the North Carolina law into more general conformity with those of other states and to place the state's industry in a more competitive position. Under the act, the Board of Agriculture continues to have general authority over the processing and marketing of eggs with respect to sanitation, quality, size or weight class, labeling and advertising.

The new law differs significantly from the old provisions in the following respects:

(1) Formerly, distributors were charged for the support of the egg program by payment of an inspection fee not exceeding one-fifteenth of a cent per dozen eggs sold or distributed. Now, the expense of the program will be borne by the state. Chapter 1138 repeals the inspection fee and appropriates from the general fund $58,014 for the 1965-66 fiscal year and $60,051 for the 1966-67 fiscal year.

(2) "Egg" is redefined to include "processed egg products." Formerly, the Board's authority only extended to shell eggs; now, control is extended to cover such items as dried, powdered and liquid frozen eggs.

(3) Only producers marketing eggs of their own production on the premises where produced or when their sales do not exceed 60 dozen per week are exempt from coverage. As originally introduced, the bill provided that such producers would not have

been exempt if they advertised and the bill would have limited the exemption to those not selling over 30 dozen per week. The 1955 amendment exempted all producers selling eggs only from their own flock.

(4) The Department of Agriculture is given the specific authority to issue "stop sale orders" on lots of eggs in violation of the law. Such an order "shall prohibit the further marketing of the eggs subject to it until such eggs are released by the state agency."

The Commissioner is also authorized to seek injunctions restraining the violation of the Article.

Commercial Feeding Stuffs

G.S.Ch. 106, Article 9 provides for the regulation of commercial feeding stuffs by the Department of Agriculture. Such feeds are to be registered with the Commissioner of Agriculture and an analysis furnished him. Feed packages must be properly labeled, carry a guarantee, and be sold in required weights. Penalties for violation of the law are prescribed. The Department enforces the program by means of an inspection program. Chapter 799 (HB 387) reduces the inspection tax to a fee of 12 cents per ton. (Hitherto the program was financed by an inspection tax of 25 cents per ton imposed on manufacturers, importers, jobbers, agents, or sellers of concentrated commercial feeding stuff.) Revenues from the tax have exceeded the cost of administering the program, and the Department has used the excess for the support of allied programs.

G.S. 106-96 exempts "custom-mixed feeds" as defined in G.S. 106-95.1 from registration requirements. Chapter 799 amends G.S. 106-95.1 by changing the designation "custom-mixed feeds" to "customer formula feed" and redefining it as a feed "each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent, not to be stocked or displayed in sales areas and not to be sold commercially by any person, firm or corporation in the course of his or its regular business."

With respect to customer formula feed, Chapter 799 amends G.S. 106-99 to make it clear that only concentrates and so-called mineral feeds used in manufacturing such feed shall be subject to the inspection fee. The new act provides for additional control over the sale of customer formula feeds. An invoice must be supplied the customer at the time of delivery of such feed and must contain the following information: name and address of manufacturer and customer; date of sale; product name brand, if any; and number of pounds of each registered commercial feed used in the mixture and name and number of pounds of each other feed ingredient added, unless the invoice carries a code which identifies a formula on file with the manufacturer. If the feed includes any medications, the invoice must show the amount present, directions for use and warning against misuse of the feed. Detection procedures for invoice misrepresentations are not specified, but under G.S. 106-106 any violation of the article is made a misdemeanor.

G.S. 106-99 is also amended to permit manufacturers of registered feeds to apply for numbered permits authorizing them to purchase concentrated commercial feeding stuffs. The permit may be issued in the discretion of the Commissioner, and the responsibility for the payment of the inspection fee will then be assumed by the purchaser to whom the permit was issued. The Commissioner may cancel any such permit without notice.

The amendments to Article 9 do not change the result of the North Carolina Supreme Court's decision in the case of *Graham, Commissioner of Agriculture v. Farms, Inc.*, 263 N.C. 66 (1964). The facts of that case are as follows: the defendant corporation was engaged in a large poultry operation producing about eight and one-half million chickens per year; feed was supplied by the defendant's own mill adjacent to its hatcheries; feed stuffs were purchased from various suppliers, stored at the mill, and mixed according to formula as needed. Almost all of this feed was hauled to the broiler houses of independent farmers who were engaged in "growing out" defendant's chickens. Under the arrangement the owners of the houses furnished the water, fuel, electricity, and labor necessary to raise the birds. The corporation furnished the chicks, feed, medication, litter, and feed bins and supervised the entire operation. The defendant paid the farmer six and one-quarter cents for every bird "grown out." The Department of Agriculture sought to apply the inspection tax to this feed pursuant to G. S 106-99 which states that the tax "shall apply to all commercial feeding stuff furnished, supplied, or used, for the growing or feeding *under contract or agreement* (emphasis supplied), of . . . poultry." The court held that the farmers engaged in the "growing out" process, since they were under the direct supervision and control of the defendant, were not independent contractors but employees. The court also pointed out that the purpose of the article is to protect farmer-buyers from manufacturer-sellers of concenrated, commercial feeds who might sell substandard or mislabeled feed stuff. The court noted that as a custom-mixer of feed for its own uses, the defendant fell within not the regulated but the protected class.

Chapter 799 adopts the language of the court decision as follows:

> G.S 106-93. *Purpose.* The purpose of this article is to protect a farmer-buyer from the manufacturer-seller of concentrated, commercial feeds who might sell substandard or mislabeled feed stuff, and not to protect from himself a farmer who mixes his own feed.

Agricultural Warehouse Act

G.S. Ch. 106, Article 38 which provides for a state warehouse system for cotton and other agricultural products, is amended by Chapter 1029 (HB 959) and re-entitled "North Carolina Agricultural Warehouse Act." Chapter 1038 (HB1003) adds a new section to the article with respect to bonding procedures pursuant to the United States Warehouse Act.

GS 106-440 provides that the State Warehouse Superintendent "shall have the power to sue, or to be sued, in the courts of this state in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond." Apparently, there has been some question as to the nature and extent of tort liability both with respect to the State and the officials and employees of the warehouse system on their bonds. There have apparently also been questions as to the adequacy and scope of bonding procedures and as to the status of State-licensed warehouses in relation to the United States Warehouse Act.

To clear up these questions Chap-

ters 1029 and 1038 do the following:

(1) The status of warehouses operated under direct state management and those which are privately owned, but licensed and supervised by the State, is clarified. GS 106-439 is amended to make it clear that the State Warehouse Superintendent may lease warehouses for State operation by State employees, *and* that he may also "lease from and . . . license private or corporate warehouse property for the warehousing of . . . agricultural commodities under State license, general supervision and control." "The terms and conditions of the State license shall prevail over the stated terms and conditions of the lease."

The Board of Agriculture and the State Warehouse Superintendent are authorized to make rules and regulations as to the licensing and operation of privately owned warehouses and their individual officials and employees. Such warehouses are to be considered "component units of the State Warehouse System" and may be required or permitted to comply with the United States Warehouse law in the same manner as State owned or leased warehouses operated directly by the State. Licenses of these warehouses and their officials and employees may be revoked at any time, with or without cause, in the "unfettered" discretion of the Board or the Superintendent.

(2) Clearly drawn is the distinction between officials and employees of the State engaged in the administration of the warehouse system and officials and employees of privately owned warehouses licensed pursuant to the Act. A new section defines in detail what constitutes an employer-employee relationship; it also provides that no person acting pursuant to the Article shall be deemed an employee, agent, or officer of the State, the Board of Agriculture, the Warehouse Superintendent, or the State Warehouse System unless all of the following is true:

(a) he is specifically made an employee by the Article, by pertinent regulations, and by express contract,

(b) he is actually engaged in and within the scope of his duties as an employee,

(c) he is compensated in whole or in part by State funds or funds within the control of the State,

(d) he is subject to the right of the State to hire and fire and to prescribe the terms and conditions of his employment, and

(e) in the performance of his duties, he is under the direct supervision and control of the State.

The new law provides that officials and employees (whether licensed or not) of privately owned and licensed warehouses shall not be deemed employees of the state.

(3) It is provided that the State warehouse system shall assume no responsibility for fluctuation in weight or grade or quality of stored commodities due to natural causes; formerly, state responsibility was denied only in the instance of weight fluctuations.

(4) Chapter 1029 permits the State Warehouse Superintendent to require bonds with corporate surety from privately owned and licensed warehouse facilities and from their officials and employees. The Superintendent, his officials and employees are already required to give bond.

Chapter 1038 provides that any bond required by the United States Warehouse Act shall be procured in the name of the State and shall show the State of North Carolina as the principal obligor thereon. Obligations arising under the bond shall be primarily directed against and encumber the State Warehouse Indemnifying or Guaranty Fund as provided in the Article. Causes of action under such bonds shall constitute claims and suits against the State, whether designated as a party defendant or not, and not claims against any officer, employee, agency or instrumentality of the State in administering the Article. These individuals are not individually responsible except as specifically provided in the Article.

In summary, these amendments have brought privately owned warehouses clearly within the regulatory powers of the State, but have carefully avoided the possibility of State liability for the negligence of private management. Bonding procedures have been clarified; privately licensed warehouses may be required to comply with the requirements of the United States Warehouse Act as do State-operated warehouses; and the soundness of the privately licensed warehouses has been strengthened by authorizing the Superintendent to require their officials and employees to make bond in the same manner as those operating state warehouses. The State has avoided the possibility of damage suits when the grade or quality of stored commodities is reduced due to natural causes.

Excise Tax on Certain Oleomargarines

G.S. 106-239 imposes an excise tax of ten cents per pound on all oleomargarines sold or exchanged within the State which contain oil and fat ingredients other than those enumerated. Chapter 697 (SB 211) adds to the list of ingredients (the inclusion of which cause oleomargarines to be exempt from the tax) any vegetable fats or oils produced in the United States from agricultural commodities grown or produced in the United States.

Research

A number of research programs affecting agriculture was authorized by the 1965 General Assembly.

Tobacco Biodynamics Research Laboratory

Chapter 918 (HB 167) provides funds for the establishment and support of a Tobacco Biodynamics Research Laboratory at facilities made available by North Carolina State University at Raleigh. Money is appropriated from the General Fund to North Carolina State in the amount of $150,000 for the 1965-66 fiscal year and $300,000 for the 1966-67 fiscal year. The bill recites that "all phases of tobacco technology — its breeding, its nutrition, its growth and physiology, its disease reaction, its susceptibility to insect attack, its curability, its quality assessment, its engineering of operations — are affected by complex and interrelated biodynamic forces that are extremely difficult to evaluate." The bill notes that research in these areas is of vital interest to those engaged in the growing, processing and manufacturing of tobacco and that such research activities would "contribute to the production of a raw commodity of high usability which will make a satisfying end product for the consumer."

Cucumbers, Peanuts and Grapes

In a further effort to promote agriculture diversification within the State, several bills were enacted which are designed to foster the production and marketing of non-traditional agricultural commodities.

(Continued on page 26)

1965 CHANGES in NORTH CAROLINA FIRE LAWS

By Ben F. Loeb, Jr.

Chapter numbers given refer to the 1965 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate, respectively. GS numbers refer to sections in the General Statutes of North Carolina.

The 1965 General Assembly enacted five statutes, statewide in application, which make substantial changes in North Carolina's fire laws. These acts were introduced by Representative Emmett W. Burden of Bertie County, and were warmly supported by the North Carolina State Firemen's Association.

County Fire Prevention Codes

Chapter 626 (HB 842), probably the most significant of the five acts, adds a new subsection (39b) to GS 153-9, authorizing boards of county commissioners to adopt regulations for the safeguarding of life and property from the hazards of fire and explosion. Such regulations, when approved by the North Carolina State Building Code Council, will constitute a county fire prevention code and will have the force and effect of law in all areas of the county outside the corporate limits of cities and towns.

The fire prevention code will be enforced by county fire prevention inspectors appointed by the respective boards of county commissioners. Terms of employment, compensation, and duties of inspectors will be determined by the county commissioners. However, inspectors may be assigned only those duties approved by the State Building Code Council. The appointment of inspectors will not necessarily require the hiring of additional personnel because Chapter 626 specifically provides that the county fire marshal, building inspector, electrical inspector, or other official or employee may be utilized to perform an inspector's duties. Also, two or more counties may designate the same person to make inspections and perform other functions required by the Act.

The appointment of all inspectors is subject to confirmation by the North Carolina Commissioner of Insurance, who is authorized to establish qualifications for inspectors. Approval by the Insurance Commissioner will probably necessitate, as a minimum requirement, that prospective inspectors pass a written examination.

Chapter 626 does not prescribe the contents for county fire prevention codes. Full authority in this respect is vested in the boards of county commissioners. But it is anticipated that a code similar to the one recommended by the American Insurance Association (successor to the National Board of Fire Underwriters) will be adopted in whole or in part by most counties.

Mutual Aid and Immunities

A long-standing problem for fire departments has been related to their authority, or lack of authority, to answer calls and render assistance outside the political subdivision or other area they normally serve. In the past the General Assembly has attacked this problem on a piece-meal basis. For instance, in 1919 governing bodies of municipal corporations were authorized to provide fire protection outside the corporate limits for a distance not exceeding two miles; and in 1941 the law was amended to permit furnishing of such protection within an area of up to 12 miles from the city limits. A State Volunteer Fire Department was created in 1939 for the express purpose of allowing counties to contract with municipalities for fire protection, and no limit whatsoever was placed on the distance that city firemen and apparatus could be sent from the corporate limits. The establishment of rural fire protection districts was authorized by the 1951 General Assembly with no specific authority given to answer calls outside the district. Such is also the case with county fire departments whose statutory base dates from 1945.

Chapter 707 (HB 838) ends much of the confusion and uncertainty in this area by providing that counties, municipal corporations, fire protection districts, sanitary districts, and incorporated fire departments shall have full authority to send, or to decline to send firemen and apparatus beyond the territorial limits they normally serve. No limitation is placed on the area within which assistance may be rendered. One remaining problem, hopefully not of major importance, is the effect of the phrase "or to decline to send firemen and apparatus" on a provision of GS 113-55 which authorizes forest rangers to summon male residents between the ages of 18 and 45 years to assist in extinguishing fires. Evidently the practice in some counties has been for rangers to summon firemen to help in fighting forest fires. The question presented, of course, is whether fire departments, pursuant to Chapter 707, may now decline to send firemen and apparatus when they are requested by rangers. The answer to this question may very well have to await either an administrative agreement or judicial determination.

Some doubt has also existed with regard to privileges and immunities of firemen rendering assistance outside the city, county, district or other area customarily served. GS 160-238, which appears to afford some protection to municipal firemen, states in part:

> "Any employee of a municipal fire department, while engaged in any duty or activity in connection with the provisions of this section, or pursuant to orders or instructions from his officers or superiors, shall have the same rights under the Workmen's Compensation Law, and

shall be entitled to all such other rights, privileges, exemptions, and immunities, as if such duty or activity were performed within the corporate limits of the municipality by which he was employed; and all such employees shall be entitled to all such rights, privileges, immunities and exemptions, irrespective of where such duties or activities are performed."

Somewhat similar provisions concerning members of fire protection district fire departments are set out in GS 69-25.8 as follows:

"Members of any . . . fire protection district fire department shall have all of the immunities, privileges, and rights, including coverage by workmen's compensation insurance, when performing any of the functions authorized by this Article, as members of a county fire department would have in performing their duties in and for a county, or as members of a municipal fire department would have in performing their duties for and within the corporate limits of the municipal corporation."

However, an opinion of the North Carolina Attorney General cast serious doubt as to the scope and meaning of GS 69-25.8. In a letter dated April 9, 1964, the Attorney General stated in substance that GS 69-25.8 was not sufficiently broad to provide privileges and immunities for fire district personnel answering calls outside the district.

Chapter 707 has now eliminated these ambiguities by providing that members and employees of county, municipal, fire protection district, sanitary district, and incorporated fire departments, when responding to a call outside the territorial limits normally served, shall have all authority, rights, privileges, and immunities (including workmen's compensation coverage) as they enjoy while working at a fire or other emergency inside the political subdivision or other territory normally served. Chapter 707 also contains a provision guaranteeing political subdivisions, districts, and incorporated fire departments extra-territorial privileges and immunities in attending an emergency outside their territorial limits.

Authority at Fire

There are no relevant North Carolina Supreme Court cases concerning the authority of firemen at the scene of a fire, and only one statute deals with the subject. A 1961 act, GS 20-114.1, permits uniformed regular and volunteer firemen to direct traffic and enforce traffic laws in connection with their duties as firemen. The lack of specific authority hampers fire fighting in general and occasionally even results in firemen being ordered off the premises by the owner of property which is burning.

To remedy abuses resulting from this void in the law, the General Assembly enacted Chapter 648 (HB 839) authorizing members and employees of county, municipal corporation, fire protection district, sanitary district, and privately incorporated fire departments to do all acts reasonably necessary to extinguish fires and protect life and property from fire. Persons wilfully interfering in any manner with firemen engaged in the performance of their duties will henceforth be guilty of a misdemeanor, punishable in the discretion of the court.

Enlargement of Fire Protection Districts

Chapter 625 (HB 841) amends GS 69-25.11 (1) to simplify the process for increasing the area of rural fire protection districts. In the past fire protection district boundaries could be extended to take in adjoining territory only upon: (1) application of *all* owners of the territory to be included; and (2) unanimous written recommendation of the fire protection district commissioners; and (3) approval of a majority of the board of directors of the corporation furnishing fire protection to the district; and (4) approval of the board or boards of county commissioners of the county or counties in which the fire protection district was located. The difficulty with this procedure has been in securing the unanimous consent of property owners in the area to be added. Theoretically at least one dissenting land-owner could prevent a large area from having fire protection.

As amended by Chapter 625, GS 69-25.11 (1) permits fire protection districts to be enlarged upon application of a *two-thirds majority* of the owners of the new territory to be included. Approval of boundary extensions by the fire protection district commissioners, the directors of the corporation furnishing the fire protection, and the board or boards of county commissioners is still required; and only territory directly adjacent to existing districts may be so annexed.

A provision was also added to insure that property owners who did not sign the application would have notice of the proposed extension of district boundaries. Before an extension is approved by a board of county commissioners notice must be given inviting interested citizens to appear at a designated meeting of the commissioners. This notice is to be: (1) published once a week for two successive calendar weeks in a newspaper having general circulation in the district; and (2) posted at the courthouse door in each county affected; and (3) posted at three public places in the area to be included. It is required that the notices be posted and published for the first time not less than 15 days prior to the date fixed for hearings before the board of county commissioners.

Firemen's Association Delegates

Chapter 624 (HB 840) amends GS 118-10 to eliminate the requirement that fire departments send at least one accredited delegate to annual meetings of the North Carolina State Firemen's Association. Prior to passage of this amendment any city, town or village whose fire department failed to send a delegate forfeited its right to the next annual payment from the North Carolina Insurance Commissioner to the local firemen's relief fund. Chapter 624 also struck, as surplusage, a proviso of GS 118-10 which authorized the executive committee of the Firemen's Association to excuse delegates from attendance at annual meetings. GS 118-10 still requires, as a prerequisite to receiving payments from the Insurance Commissioner, that fire departments be members of the State Firemen's Association and comply with the Association's constitution and by-laws. It would appear that even now attendance of delegates at annual meetings could be required by the insertion of appropriate provisions in the Association's constitution or by-laws.

(Continued on page 27)

The Administrative Office of the Courts

By C. E. Hinsdale

The Judicial Article of the North Carolina Constitution, rewritten in 1962, creates a single, unified, three-level General Court of Justice for the entire State, and provides for creation of an "administrative office of the courts" to "carry out" the provisions of the Article. The "Judicial Department Act of 1965," enacted by the General Assembly last April, actually created this office. Thus North Carolina joins some 30 other states which, since the late 1930's, have established such an office.

Typically, an administrative office of the courts (as they are nearly always called) is established on the level of the highest court of a state, and is charged, as the name implies, with handling a large variety of *administrative* functions peculiar to the judicial department of the government. In doing so, the administrative office relieves the judges of a great number of time-consuming nonjudicial chores which might otherwise interfere with the efficient performance of their primary judicial functions. The North Carolina Administrative Office is no exception to the general rule.

The 1965 Act provides that the Chief Justice of the State Supreme Court shall appoint the Director of the Administrative Office of the Courts, who shall serve at his pleasure. On July 1, the Chief Justice appointed the Honorable J. Frank Huskins, Resident Superior Court Judge of the 24th Judicial District, to the office of Director. The appointment is a particularly fortunate one, for Judge Huskins brings a wide background of experience in the legislative, executive and judicial branches of state government to this important new office. The judge, who was born in Toledo, North Carolina, attended the University of North Carolina (A.B., 1930). He also studied law at Chapel Hill, and practiced law in Burnsville for a number of years prior to serving in the General Assembly as the representative from Yancey County in 1947 and 1949. He was appointed to the Industrial Commission in 1949, and served as its chairman for several years. For the past ten years he has seen service as a regular superior court judge, and has held court in nearly half of the counties of the State. Few peoples in North Carolina are as well equipped as Judge Huskins for shouldering the many difficult new responsibilities which are his as Director of the Administrrative Office.

Judge Huskins

Article 29 of the Judicial Department Act is devoted to the organization and functions of the Administrative Office, and Sec. 7A-343 lists ten major duties of the Director. But so interrelated are the functions of the office with all levels of the General Court of Justice, with various agencies of the executive branch, and with the General Assembly, that the Office is mentioned in no less than 19 other sections of the Act. It will be the objective of this article to classify and discuss these duties and functions.

Functions Within the Judicial Department

Appellate Division

The primary, overall function of the Director, or Administrative Officer, as he is also called in the Act, is to supervise the nonjudicial business operations of the three levels of the General Court of Justice —the Appellate Division (Supreme Court), the Superior Court Division, and the District Court Division. Since there is only one Supreme Court, and it has its own marshal, clerk, librarian and reporter, the Director will have few time-consuming duties involving this Division. Under the new law he is charged with preparing its portion of the departmental budget, procuring equipment, books and supplies, and assisting the Chief Justice in the transfer of district court judges for temporary or specialized duties. (This last function is, properly speaking, a District Court Division function, with responsibility for its discharge extending to the highest level, but in any event, transfers of district court judges are not likely to occur on an extensive scale.) He must also submit an annual report on the work of the Department to the Chief Justice (sending a copy to each member of the General Assembly), and perform such additional duties as may be assigned by the Chief Justice.

The Assistant Director (also statutory) of the Administrative Office, to which post the Chief Justice has appointed his former administrative assistant, Bert Montague, is specifically charged with responsibility for assisting the Chief Justice in the assignment of superior court judges, and in assisting the Supreme Court in the preparation of calendars of superior court trial sessions. These latter two functions were formerly performed by Mr. Montague as administrative assistant; but this position has been absorbed and superseded by the Administrative Office of the Courts, which now has administrative responsibility for the entire Judicial Department.

Superior Court Division

The establishment of the Administrative Office should require no major adjustments in the day to day operations of the *superior court judges,* or in the relation of the judges to the State. Assignments of judges and calendaring of superior court sessions will

be carried on as in the past, the key official, Mr. Montague, merely having changed titles while continuing to perform these chores. The judges and the State, however, will have new responsibilities with respect to *court reporters* and *magistrates*.

If the senior regular resident superior court judge finds that human court reporters are unavailable, he may request the Administrative Office to supply electronic recording equipment. Should he continue to utilize live reporters, he appoints the reporters (for the superior court), and determines their compensation and allowances, within limits set by the Director of the Administrative Office. Compensation and allowances of reporters thus need not necessarily be uniform statewide, but may vary from district to district.

The senior regular resident superior court judge is required to appoint the number of magistrates prescribed by law for each county in his district, from nominations submitted by the clerk of superior court in each county. Before this procedure can be intelligently carried out, the salary of each magisterial office must be known; and the setting of individual magisterial salaries is the responsibility of the Administrative Officer. Close collaboration between the judge and the Administrator concerning the proposed location and duties of each magistrate will be necessary prior to arriving at an equitable salary figure. Once a chief district judge is appointed, he will replace the superior court judge in the collaboration process (but not in the appointment process). The responsibility of the Administrator over salaries continues, however, as to magistrates in both the minimum and maximum quotas for each county. Initially, at least, this is likely to be a time-consuming task, a matter of trial and error requiring adjustments from time to time, especially in counties allotted several magistrates. It is further complicated by the possibility that the initial minimum quota of magistrates may turn out to be inadequate for the peculiar needs of an individual county, in which event, on recommendation of the chief district judge, the Administrator may authorize an additional magistrate or magistrates from that county's maximum quota. Close attention to the workings of the judicial process on the lowest level in each county will thus be necessary, in the interests both of fair distribution of magisterial manpower among counties in comparable situations, and the most efficient use of State funds.

Under the terms of the 1965 Act, *superior court assistant solicitors* become a State responsibility in all districts on the first Monday in December, 1966. A solicitor will no longer be dependent upon the counties of his district for assistants, but in each case will have to justify the need for an assistant (or assistants) to the Administrative Officer, whose duty under the Act it is to authorize assistant solicitors. Assistants may be designated either on a district wide or an individual county basis, presumably upon the recommendation of the district solicitor, who will choose them. Assistant solicitors will receive $35 per day for each authorized day's work in court. Since none of the counties being activated as district court counties in 1966 now regularly authorize the district solicitor to employ an assistant solicitor, this is not likely to be a major problem for the Director in the next biennium, but there is a probability that the General Assembly in 1967 will make some substantial changes in the present solicitorial organization. In any event, this is another facet of superior court administration on which the Administrator must keep a watchful eye.

With no other official in the entire Judicial Department will the Administrator have a closer and more detailed working relationship than with the *clerk of superior court*. Although the clerk continues to be elected by the people of his county under the 1965 Act, he will in fact become far more an official of the State than of his county, and in most nonjudicial matters the Director will become his administrative superior. In many ways, the routine of the clerk's office is conducted differently from county to county, and the coming uniformity requirement is undoubtedly highly desirable. However, it is no exaggeration to say that the duties imposed upon the Director with respect to the office of the clerk of superior court compose the most difficult, time-consuming, and in some respects, the most sensitive responsibilities of the Administrative Office.

Under the 1965 Act the clerk and all of his office personnel become State officials. The number of clerical employees, their classification (assistants, deputies, etc.), and their salaries become the responsibility of the Administrator. Under the new law, prior to setting salaries in any county, the Administrator is to consult with the clerk and with the board of county commissioners (or its designee), and also must take into account the "salary levels and the economic situation in the county." It remains to be seen whether the guidance afforded by these consultations and considerations will be a genuine aid to the Administrator. It is true that the situation in no two counties with respect to caseload, seats of court, adequacy of present personnel, economic status, etc., will be the same, and the statutory guidelines offer abundant authority and reason for varying numbers and salaries of clerical personnel from county to county. But they also make it much more difficult to arrive at general rules which can be applied to groups of counties, and make countless individualized decisions practically mandatory. Fortunately for the Administrator, few of the 22 counties being activated in 1966 have more than one or two employees in addition to the clerk himself.

Personnel problems beyond doubt will be a major difficulty facing the Administrator, but dwarfing these in complexity are his duties concerning the general administration of the clerk's office. Three separate sections of the new law deal with this:

> "The Administrative Office of the Courts and the Department of Administration, subject to the approval of the State Auditor, shall establish procedures for the receipt, deposit, protection, investment, and disbursement of all funds coming into the hands of the clerk of superior court .. ." (Sec. 7A-103.)

> [The clerk of superior court] ". . . maintains, under the supervision of the Administrative Office of the Court, an office of consolidated records of all judicial proceedings in the Superior Court Division and the District Court Division of the General Court of Justice in his county. Such records shall include all those books, records and indexes required to be maintained by G.S. 2-42, adapted in a form and style prescribed

by the Administrative Office of the Courts, for the purpose of maintaining uniform consolidated records of both trial divisions of the General Court of Justice;" (Sec. 7A-180 (c).)

[The Administrative Officer shall] "Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court." (Sec. 7A-343 (c).)

The broad sweep of these provisions makes it clear that local variations in practically any aspect of the clerk's duties, other than those functions involving his judicial discretion, are henceforth to be subordinated to the Administrator's uniform regulations; and that literally a monumental effort, extending perhaps over several years, will be necessary for the Administrator to comply with the law. Undoubtedly the active and sympathetic cooperation of the clerks themselves, as well as the State officials mentioned in the statute, will be eagerly sought and carefully considered.

The Director of the Administrative Office and the clerks of superior court will have yet additional business relations. The former must prescribe bonds (faithful performance of duty) for clerks, and for all assistants and deputies; prescribe accounts and records to be kept by the magistrate, under the general supervision of the clerk of superior court; approve the budget for each clerk's office; with other state officials, prescribe procedures for the payment of witnesses and jurors, and the procurement of small supplies locally; procure and distribute equipment, books, forms, and supplies for the clerks' offices; biennially in September notify each clerk of the salary schedule for the magistrates to be appointed in his county; and require of each clerk pertinent financial and judicial statistics on the basis of which an accurate picture of the operations of the Judicial Department can be made. The clerk of superior court is the key figure in the judicial system on the local level, just as the Administrator is the key figure for the State as a whole, and a close mutual understanding and cooperation between these officials is absolutely essential to an efficient court system.

District Court Division

Unlike the Appellate and Superior Court Divisions of the General Court of Justice, the District Court Division is entirely new, existing only on paper, and it must look to the Administrative Officer for midwifery services, nursing care, adolescent guidance, and leadership in its eventual maturity.

On this level the key local *judicial* official is the *chief district judge,* with whom the Administrative Officer will work in several areas. One significant function involves approval of courtroom facilities at additional (non-county seat) sites of court. Even though such sites have been authorized by the General Assembly, actual sessions of court are not required unless these two officials concur that the physical facilities are adequate. This joint approval is likely to require, in some instances, a significant improvement in current physical accommodations and in the concomitant judicial atmosphere.

In districts embracing counties with over 100,000 population (Durham, and Cumberland-Hoke, in 1966) the chief district judge and the Administrator may jointly determine that "special counselor services" should be made available to the district judge hearing domestic relations and juvenile cases. In this event, the Administrator may authorize a chief counselor and a number of assistant counselors, and set their salaries, after giving due regard (again) to the salary levels and the economic situation in the district. (Actual appointment of counselors is by the chief district judge, and they serve at his pleasure.)

As noted earlier, the Director sets the salaries of all magistrates and clerical employees. He also has final authority over the increased salary of a holdover judge in those districts in which the chief district judge assigns a holdover judge to duties in excess of those which he was formerly performing as a lower court judge.

With respect to the appointment of district court reporters, or to the procurement of electronic court reporting equipment, the functions of the chief district judge and the Administrator parallel those of the senior resident superior court judge and the Administrator at the superior court level. This arrangement makes it possible, even probable in the long run, that both live and mechanical court reporting will be utilized in the same district. This potential competition of man v. machine is all to the good; whichever wins out, if indeed, either does, the end result can only be greatly increased (and greatly needed) efficiency in court reporting.

District judges are subject to transfer by the Chief Justice from one district to another for temporary or specialized duty. Under the new Act it is the duty of the Administrative Officer to assist the Chief Justice in this task. While this function may be exercised but rarely, it is likely that the Administrative Officer, prior to effecting such transfers (in the name of the Chief Justice) will consult with the chief district judge(s) concerned.

On the district court level the most important *administrative* official is, of course, the *superior court clerk.* This terminology is unfortunate and confusing, but nevertheless accurate. The superior court clerk by law is charged with performing all the clerical duties connected with the district court, and he in fact presides over one unified clerk's office for *both trial divisions* of the General Court of Justice. His title is frozen in the Constitution, else he might well be called simply "clerk of court" or some similar less restrictive title. The detailed relationships of the Administrator to the clerk of superior court have already been enumerated. These relationships apply to matters on the district court level, and they are no less important because not repeated here. As a matter of fact, they may be more important, because the clerk in some instances will be performing functions (especially in the criminal law field) entirely new to him; and he will need maximum guidance from the Administrator in the clerical details associated exclusively with this trial level.

Prosecution of criminal offenders in the district courts will be by full time *prosecutors,* aided, in the larger districts, by full time *assistant prosecutors,* all paid by the State. Some districts will need assistant prosecutors, but not on a full-time basis. Prosecutors of districts who need part-time assistants will make an appropriate request to the Administrative Officer, whose duty it will be to allocate per diem assistant prosecutors to the various districts, and to determine the number of days for which they will

be authorized. Since no two districts are comparable in terms of caseload, size, travel time between courthouses, numbers of sites of court, and other pertinent factors, general rules for allocation of part-time assistant prosecutors, as in the case of assistant solicitors, will be difficult to formulate; and the Director will probably have to proceed on an *ad hoc* basis for the indefinite future in approving part-time assistants for district prosecutors.

The *magistrate* is an entirely new judicial official. As an officer of the district court, he will work under the supervision of the chief district judge, or the superior court clerk, depending on the nature of the particular function. But, as noted earlier, the Administrative Officer, after consultation with the chief district judge, sets the magistrate's pay in *each* case, authorizes appointments, when needed, of additional magistrates per county from the county's maximum quota, provides for their bonding, and prescribes what records they shall keep. Initially, these duties of the Administrator will take considerable time, but once the system is worked out for each county, minor annual or biennial adjustments should serve to reduce these functions to routine, with the sole exception of adjusting salary demands with the funds available and the duties performed.

All courts below the superior court level cease to exist in each county upon the establishment of the district court therein. There are 180-odd courts (not including Justices of the Peace) to be so replaced. Many of these present seats of court will continue as seats of district court; others will be eliminated. In either case, the records of these superseded courts are to be transferred to the clerk of superior court in each county, pursuant to rule of the Supreme Court. In some instances, difficult problems of actual physical control, security, and availability of records, active and inactive, will arise. The Supreme Court will undoubtedly request the Administrative Officer to recommend rules to minimize these problems.

Relations with the Executive and Legislative Branches

As chief administrative officer of the Judicial Department, the Director of the Administrative Office will be the principal agency of contact with the executive and legislative branches of the State government. The 1965 Act specifically requires the Director to work with the Department of Administration to establish procedures for the receipt, deposit, protection, investment, and disbursement of all funds coming into the hands of the clerk, and to establish procedures on the local level for the prompt payment of jurors, witnesses, and small expense items. In each case the procedures are to be approved by the State Auditor. Undoubtedly the advice and assistance of budgetary, finance, personnel and procurement employees of the State will also be solicited.

With the *legislative* branch the Director will have contact on both the local and State levels. He must consult with the *county commissioners* prior to setting salary scales in the clerk's office, and he and the chief district judge will probably consult on occasions with the *city governing bodies* concerning the adequacy of proposed courtroom facilities in cities which are authorized to have seats of court. And when any county, or city having a seat of court, desires to use "excess" facilities fees (G.S. 7A-304) to retire outstanding indebtedness incurred in the construction of the facilities, or to supplement the operations of the General Court of Justice in the county, the Administrator must first approve the expenditure. Facilities fees are intended to be used primarily for direct support of courtroom and closely related functions, and not for support of local government operations in general, and it will be the duty, undoubtedly difficult at times, of the Administrator to assess the adequacy of these facilities before permitting the use of these locally-accumulated funds for secondary purposes.

The Administrator's relationship with the *members of the General Assembly* will unquestionably be of critical importance, especially in the early years of the Administrative Office and of the unified General Court of Justice. Not surprisingly, this relationship is not set forth in the law in so many words, but is rather to be inferred from certain other language, and from a common sense study of the 1965 Act as a whole. Only one sentence in the entire Act ties the Administrator directly and specifically to the legislature: Sec. 7A-343 requires him to prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and "transmit a copy to each member of the General Assembly."

Other powers and duties of the Administrator are likely to be of more interest to the legislature than the frequently unread pages of the all-too-common annual report. For example, the Administrative Officer must prepare the budget for the Judicial Department. Presumably, if he prepares it, he must also justify it before not only the Advisory Budget Commission, but the appropriate committees of the General Assembly as well. Under a State-supported General Court of Justice, the budget will be a multi-million dollar affair, and in the transitional years, to 1971, with little or no relevant statistical data on which to base reliable estimates, preparation and justification of accurate figures may be extremely difficult.

Two final duties of the Administrator, quoted here from Sec. 7A-343, are extremely important:

> "(b) Determine the state of the dockets and evaluate the practices and procedures of the courts, and *make recommendations* concerning the number of judges, solicitors, prosecutors and magistrates required for the efficient administration of justice; . . .
> (g) *Make recommendations* for the improvement of the operations of the Judicial Department; . . ." (emphasis supplied).

These provisions are extremely broad in scope. The Administrator is charged with making a continuous study of all phases, administrative and judicial, of the operations of the Judicial Department. When in his opinion, efficient operation of the Department requires change, it is his duty to formulate recommendations. While perhaps some changes can be placed in effect on his own authority, or on approval of the Chief Justice, ordinarily the action agency will be the General Assembly itself. *Making recommendations* in existing law in the long run may be the most significant function of the Administrative Office. Certainly the nature and extent of these recommendations will play a vital part in the administration of justice in North Carolina. While this function under the law is currently shared with the Courts Commission and with the Judicial Council, the former is a

(Continued on page 29)

CHILD ABUSE CASES: A Complex Problem

By Mason P. Thomas, Jr.

Physical abuse of children is not a new problem. It dates back hundreds of years to eras when a father had the power of life and death over his children. In ancient Greece, infant boys were brought to the father to decide whether the child would become a good warrior within a week after birth. If the father felt him to be a weakling, the child was thrown down from a mountain named Taygetus. Girl infants were not so valuable — they were often thrown away. In other eras, children were sold into slavery or maimed and mutilated to make them effective beggers.

We now live in a more enlightened age. Our civilization is essentially family-oriented. We often speak of our conviction that the best interests of our children must come first.

In the early 1960's, professional literature began to abound with references to the "battered child syndrome." There was a speaker on this subject at every child welfare or juvenile court conference. There were demands in many parts of the United States for legislation to deal with the problem.

My own reaction has been skepticism. In my experience as a juvenile court judge, I have not encountered a large number of such cases. Perhaps this problem was being exaggerated in its relative importance — there were certainly many other pressing problems in the field.

While much has been written about the battered child syndrome, there has been little objective research concerning the problem. Society is reluctant to accept the fact that parents may physically abuse their children. Parents are supposed to love and protect their children. Cases of physical abuse to children by parents tend to be sensationalized in the press. When society is forced to look at the problem through a sensationalized press report of child abuse, the public reacts emotionally through demands that such parents be punished through criminal prosecution or punitive legislation. We have rarely attempted to understand the motivations for such parental behavior.

Complications Galore

Child abuse cases are complicated, difficult to diagnose and raise serious problems for physicians. The physician may not recognize the case as one involving a "battered child" if he accepts the story of the abusing parent that the injury was accidental. It might be difficult or impossible for the physician to determine who was really at fault. Further, the doctor who recognizes a battered child is reluctant to make a report to law enforcement authorities for several reasons. Historically, communications between doctor and patient are privileged — confidential. Further, if a parent is prosecuted for child abuse on the basis of a physician's report and acquitted, the physician may be sued for slander. Doctors are favorite defendants in law suits; they have good incomes and judgments are usually collectible.

If and when child abuse cases come into criminal court, there are other problems. Proof of the offense is difficult since such offenses usually occur in the privacy of the home. The child victim is often an infant under two years of age who cannot speak concerning the facts. If the victim is an older child, he may be afraid to speak. Also, family loyalty may prevent a child from "telling on" either of his parents. The criminal law requires that an offense be proved beyond a reasonable doubt for conviction. Thus, this type of case may be dismissed in court for lack of competent evidence.

Extent of the Problem

We should know how many battered children there are to evaluate the problem. We must admit that we don't know. Educated estimates place the number of abused children in the thousands per year — some estimates run as high as 10,000 per year in the U. S.[1] Most knowledgeable people agree that it is a growing problem without an easy solution.

The American Humane Association found 662 cases of child abuse involving 557 families were reported in newspapers in the U. S. during 1962. One out of every four such children died from their injuries. Fifty-six per cent of these abused children were under four years of age. Most injuries resulted from beatings with various types of instruments — hairbrushes, fists, straps, electric cords, T.V aerials, ropes, rubber hose, fan belts, sticks, wooden spoons, pool cues, bottles, broom handles, baseball bats, chair legs, etc. Children were burned with lighted cigarettes, electric irons, hot pokers, hot liquids. Some were strangled with pillows or plastic bags. Some were drowned in bathtubs; one child was buried alive. Children were stabbed, bitten, shot, subjected to electric shock, thrown against the floor or a wall, stamped on and kicked with heavy shoes. One child had pepper forced down his throat.[2]

Causes of Parental Child Abuse

Most experts who have studied the "battered child syndrome" feel that this type of child abuse is rarely willful or deliberate cruelty by parents. This parental behavior is usually symptomatic of their deep emotional problems. Child abuse may be

1. De Francis, *Child Abuse—Preview of a Nationwide Survey*, Children's Division, The American Humane Association, p. 3 (1963).
2. *Id.* at pp. 5-6.

due to parental inadequacy, immaturity or lack of capacity for coping with the pressures of parenthood. Such parents often have personality defects; they are neurotic, emotionally disturbed, mentally ill or mentally retarded. They may have a low level of frustration; thus, small irritants set off emotionally violent behavior. Such parents are not usually sadists.

Recently, we have heard much about the repeating cycle of poverty. When one studies the family backgrounds of parents who abuse their children, he finds that these parents were often abused themselves as children.[3] *The crucial question is how to break the cycle in which the parent who was once an abused or neglected child tends to become an abusing parent to his own children?*

We notice that it is often the abusing parent who brings his battered child into the hospital for treatment. One wonders why they run this high risk of punishment? This fact underscores that such parental behavior is not usually rational or willful. Such parents are acting out their parental incapacities — in behaving as they do, they are begging to be stopped. Some are unconsciously afraid to be allowed to continue to care for their children.

I recall vividly a serious abuse case which I heard in juvenile court involving a couple with four young children. As I observed the mother in the courtroom, I felt she had psychiatric problems. After the evidence of neglect had been heard, I asked this mother what she felt should be done. She became quite emotionally upset and begged the court to remove the children from her; she said she was afraid she would hurt one of them. Medical evaluation revealed this mother needed psychiatric treatment in a hospital setting. Temporary placements were arranged for the children with relatives. After treatment, the mother was able to have the children returned to her care.

Implications for Community Planning

Punishment of abusing parents through criminal prosecution may be appropriate in some cases. However, this traditional approach is not enough. Society must go further to study some of the deeper issues. We need objective research to evaluate the extent of the problem and to better understand the causes of such parental behavior. Pending more adequate research, we need to utilize our present level of understanding in appropriate community planning.

The crucial issue is *protection of children from parental abuse,* rather than punishment of abusing parents who presumably need psychiatric help to behave more rationally. Such protection implies early recognition of child abuse cases to prevent further abuse and the availability of community resources which can move protectively when needed.

Most child abuse cases are diagnosed at a hospital or in a doctor's office. We know that many such cases involve physical abuse over a period of time prior to the child being seen by a doctor or in a hospital. Thus we cannot wait until the child's injuries are serious enough for hospitalization. We must therefore rely on existing community services which are traditionally available in most areas to achieve early recognition — public welfare departments, police, juvenile courts, doctors, public health nurses, teachers, etc. This approach implies a community-wide education program to alert these community agencies to the symptoms of child abuse.

Early recognition is not enough. In serious cases, a child may need immediate removal from his family for his protection. This requires a juvenile court which is able to move quickly, yet carefully and appropriately, to assume custody of the abused child from parents who may further abuse.

Removal by juvenile court order is not practical unless there are placement resources available for such children in the community — shelter care, foster homes, group care facilities, perhaps relatives. Thus the community must have adequate child welfare programs and child placement resources.

There is one further requirement. The community agencies — police, juvenile court, public welfare, etc.— must be able to work effectively together toward protection of an abused child from further abuse.

We therefore have several requirements — early recognition — appropriate juvenile court protection — existing community agencies with placement resources — and the capacity of various community agencies to work effectively together.

Legislation

Most knowledgeable people agree that state legislation is needed to protect the physically abused child. There are differences of opinion concerning the specifics of the needed legislation.

The U. S. Children's Bureau has developed a model act for state legislation on reporting of child abuse cases.[4] It requires any physician to report to the appropriate police authority the case of any child brought to him for examination or treatment of physical injuries where the physician has reasonable cause to suspect the injuries were inflicted by a parent or other person responsible for his care and were not accidental. Any physician who makes such a report in good faith is given immunity from liability, civil or criminal. The law of evidence is modified so that neither the physician-patient privilege nor the husband-wife privilege is a ground for excluding evidence of a child's injuries in any judicial proceeding resulting from a report of child abuse. Any physician who fails to report such a case is guilty of a misdemeanor.

Thus far, 45 states have adopted abused child reporting laws; the majority of these state laws require mandatory reporting of child abuse cases by physicians.

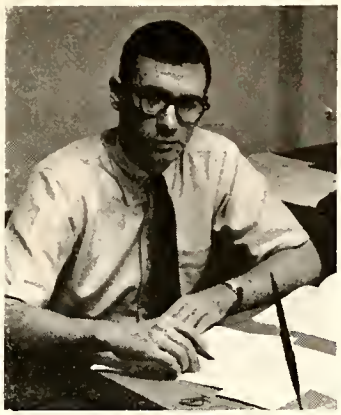
What About North Carolina?

The 1965 General Assembly adopted a modified form of the model act in passing Chapter 472 (Senate Bill 44) amending Article 39 (Protection of Minors) of Chapter 14 (Criminal Law) by adding two sections — GS 14-318.2 and 14-318.3. The North Carolina act differs from the model act in three significant respects: (1) mandatory reporting by physicians is not required; the act states that a doctor, nurse, teacher, principal, superintendent or welfare department employee *may report* cases of abuse to a child under 16 years of age by parents or others standing in loco parentis; (2) child abuse cases are to be reported to the County Director of public welfare in the county where the child resides, rather than the appropriate police authority; the Director *must* investigate to determine

3. Morris, Gould, Matthews, *Toward Prevention of Child Abuse*—CHILDREN, March-April 1964, p. 55.

4. U. S. Department of Health, Education and Welfare, *The Abused Child, Principle and Suggested Language for Legislation on Reporting of the Physically Abused Child,* 1963.

Six Join Institute Staff



Campbell

Phay

Kenneth Howard joins the Institute staff as Assistant Director and Assistant Professor of Public Law and Government. A graduate of Northwestern University, he received his degree with highest distinction and honors in political science and was a member of Phi Beta Kappa. He holds the degrees of Master in Public Administration and a Ph.D. in Business and Public Administration from Cornell University. At Cornell he was a Woodrow Wilson Fellow (1957-58) and a Ford Foundation Doctoral Fellow (1959-61). For the past two years, Howard has been an assistant professor of government and coordinator of the Public Administration Service at the University of New Hampshire. He has also taught at the University of Washington and at Rutgers University. Howard has had research experience in governmental administration in New Jersey and New York.

Norman Pomrenke studied at Western Michigan University, Compton College (A.A. in Public Administration), Michigan State University (B.S. in Business and Public Service), San Jose State, and Florida State University (M.S. in Criminology). He joins the Institute as Assistant Director and Instructor in Public Law and Government. An Air Force veteran, Pomrenke has had wide experience in the field of police administration and law enforcement. He has worked with the police departments of Oakland and Fremont, California, and with the law enforcement section of the Criminology Department at Florida State. His teaching experience also includes the Florida Institute for Continuing University Studies.

Assistant Director **Allan Ashman** graduated Cum Laude with honors in history from Brown University and received his law degree at Columbia. Also an Instructor in Public Law and Government at UNC, his legal experience includes clerking for the Attorney General of Massachusetts and serving as editor of *Columbia Law Reports*.

Douglas Gill received honors in history when he graduated from Duke University. He holds an LL.B. from Harvard Law School and is a member of the Indiana Bar. A former law clerk for an Atlanta firm, Gill joins the Institute as an Assistant Director and Instructor in Public Law and Government.

Missouri Bar member **William Campbell** serves as an Assistant Director and Instructor in Public Law and Government. As a law student at Vanderbilt University he was case editor of the *Vanderbilt Law Review*. He received a B.A. in English with distinction from Southwestern in Memphis. Campbell has writttn for the *Tennessee Lawyer* and worked as clerk for the Nashville-Davidson County Metropolitan Police Department.

Research Associate **Robert Phay** is a Yale Law School Graduate who received a degree with distinction in history from the University of Mississippi. In 1964 he was admitted to the District Court for the District of Columbia and to the Circuit Court of Appeals for the District of Columbia. Phay comes to the Institute from a two-year tour in France as an Army First Lieutenant, Medical Service Officer.

Ashman

Howard

Pomrenke

Gill

Fundamentals of property tax listing and assessing was the theme of the 11th annual course for new county tax supervisors held at the Institute in October. Course director Henry W. Lewis (left), lectures during the five-day session. Above are some of the 30 tax supervisors in attendance.

INSTITUTE SCHOOLS MEETINGS CONFERENCES

The annual conference of Assistant and Deputy Clerks of Superior Court was held at the Institute in August. Above Assistant Director C. E. Hinsdale lectures on the judicial department act of 1965.

Following a session of the 1965 school for Newly-Elected Mayors and Councilmen, Assistant Director Don Hayman (far right) chats with some of the conferees.

Morrisey Succeeds McMahon as NCACC General Counsel

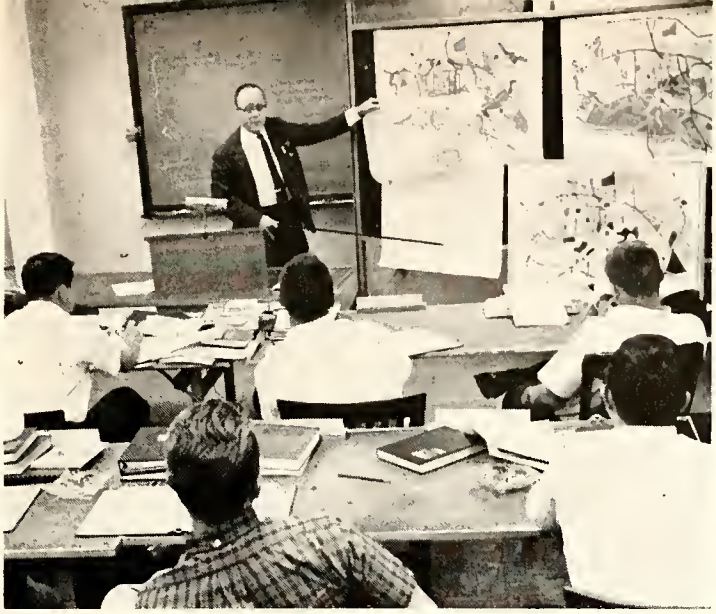
Morrisey *McMahon*

John Morrisey (left) has taken over the reins of general counsel for the North Carolina Association of County Commissioners from former Institute of Government staff member John Alexander McMahon (right). The new general counsel served as assistant to W. E. Easterling on the Local Government Commission for four years, spent six years as general counsel for the North Carolina League of Municipalities, and since 1961 had been Charlotte's first full-time City Attorney.

McMahon, who spent nearly seven years with the county association, and ten years with the Institute, resigned to join Hospital Savings Association in Chapel Hill as vice president for special development.

In a statement to the 58th Annual Convention of the North Carolina Association of County Commissioners, Institute Director John L. Sanders praised McMahon's work with the county organization and applauded the choice of Morrisey as his successor.

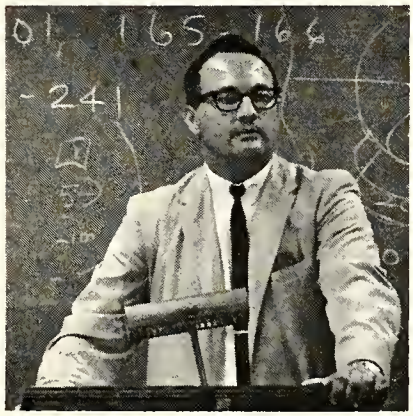
Planning Short Course



Bob Stipe (left) of the Institute staff criticizes student projects.

Morning sessions (below) were devoted to lectures. Afternoons and evenings were spent on field problems and design exercises.

Phil Green of the Institute staff chats informally with students during discussion of zoning problems.



Steve Davenport (above) of the D vision of Community Planning, Department of Conservation and Development, lectures on techniques of population projection.

Dennis Edge (above), Fayetteville Planning Department, answers questions concerning future development of Hillsborough.

Left to right above, students Ed Parks, Iredell County Zoning Administrator; Ned Skidmore of the Winston-Salem/Forsyth County Planning Department; and Randy Stanley, of the High Point Planning staff wind up land use survey problem.

Criminal Law . . .

(Continued from page 6)

in several respects — and gave the responsibility to the sheriff. This time only nine counties exempted themselves, though three of the nine were probably exempt already on the basis of local modification made to former §14-269(b).

The new act does not change the substantive provisions relating to carrying concealed weapons, but separates them into a revised G.S. 14-269 which applies in all counties. It adds a new G.S. 14-269.1 containing the rewritten disposition procedure probably applicable to 84 counties. See the table below.

The old procedure permitted sale only of pistols and guns and directed that all other confiscated concealed weapons be destroyed. It did allow, however, return of pistols or guns to the defendant in the discretion of the judge. The new procedure allows upon conviction, in the discretion of the presiding judge:

(1) return of a weapon to an innocent rightful owner other than the defendant;

(2) disposition of the weapon to a law enforcement agency in the county of trial, upon the written request of the head or chief of that agency;

(3) sale of the weapon under the direction of the sheriff in accordance with the prescribed statutory procedure, with the proceeds to go to the general fund of the county; or

(4) destruction of the weapon by the sheriff.

The sheriff must maintain the records pertaining under (3) and (4) above, but the clerk of Superior Court must keep the record of weapons turned over to enforcement agencies. Incidentally, it is not entirely clear what is meant by "a law enforcement agency *in* the County of trial . . . ." (Emphasis added). No distinction is now made between guns and pistols and other types of weapons, though the judge will undoubtedly take such matters into consideration in exercising his discretion.

The constitutional question raised as to disposition of confiscated conveyances under the Uniform Narcotic

Pistol Permit Law Administered by Clerk of Superior Court	*Pistol Permit Law Administered by Sheriff*	*Disposition of Concealed Weapons Placed in Discretion of Judge**	*Disposition of Concealed Weapons Probably Governed by Local Act*	*Disposition of Concealed Weapons Governed by New G.S. 14-269.2**
Ashe, Avery Bertie, Bladen, Cherokee, Currituck, Davie, Duplin, Franklin, Greene, Halifax, Harnett, Haywood, Hertford, Iredell, Jackson, Johnston, Jones, Lee, Lincoln, Macon, Madison, Mecklenburg, Mitchell, Moore, Pamlico, Pender, Perquimans, Person, Polk, Rockingham, Sampson, Stokes, Tyrrell, Union, Vance, Warren, Washington, Watauga and Yancey.	The remaining 60 counties.	Cumberland, Dare, Harnett, Pamlico, Perquimans, and Warren.	*By Sheriff:*** Edgecombe, Forsyth, Granville, Nash, Pitt, Scotland, Wake, and Wilson. *By Clerk:* Halifax and Rockingham.	The remaining 84 counties.

* The above table is based upon local acts which are carried as local modifications to former section 14-269 in the General Statutes. It is possible that other local acts exist but are not carried in the General Statutes. If so, this would affect the accuracy of this table.

** All of the local modifications but the one applicable to Forsyth and Pitt counties were passed prior to 1959. It could thus be argued that they kept the 1959 act from applying to these six counties and that the disposition of concealed weapons is still to be administered by the clerk of Superior Court. This may be particularly true as to Granville, Nash, and Scotland counties, as these local modifications specifically mentioned the clerk of Superior Court in their local modifications.

Chapter 228 (HB 42) (April 13) enacted a local modification to former §14-269(b) for *Forsyth* and *Pitt* counties to place disposition of confiscated concealed weapons in the hands of the sheriff and to specify the procedure to be followed. As indicated, local acts on a subject will almost certainly prevail over general legislation, even though it is enacted later, in the absence of anything in the general legislation purporting to impose an absolutely uniform rule and to repeal all prior local variations.

Drug Act can be raised as to this act. Here the constitutional issue calls in question not only the disposition of saleable weapons to law enforcement agencies but also the practice of turning the proceeds of sales over to the general fund of the counties. The latter was also the case under the former procedure and there apparently never was any challenge, but it may be that the amounts in question never justified the costs of litigation.

As noted, the new procedures is specifically stated not to apply in nine counties. Unfortunately, though, the portion of the act repealing former section 14-269 did apply throughout the state. Thus the law is silent as to disposition procedure in the nine counties in question unless (as in the case of at least three) there is some controlling local act. Disposition of confiscated weapons in the absence of a statute would be in the complete discretion of the presiding judge upon a conviction. The following table maye be helpful in the various counties:

Machine Gun Amendment

Chapter 1200 (HB 1167) (June 17) makes two amendments to G. S. 14-409. First, it authorizes the manufacture, use, or possession of machine guns and submachine guns for scientific or experimental purposes when (1) permitted under federal laws and the weapon is registered with a federal agency and (2) a permit to manufacture, use, or possess the weapon is issued by the sheriff of the county in which the weapon is located. Second, it redefines "machine gun and sub-machine gun" to exclude shotguns and pistols or other automatic weapons that shoot fewer than 31 shots. The section originally exempted weapons shooting fewer than 16 shots.

Demonstrations, Trespass, and Use of Public Property

For discussion of the revised law governing dumping on or littering the land of another, see the heading "Broadening Scope of Existing Offenses" within this article.

For a discussion of the revised law governing land posted to hunting and fishing, see GAME, FISH, AND BOAT LAW ENFORCEMENT in the December 1965 issue of *Popular Government*.

Curbing Demonstrations

Two acts passed this session appear to have had the primary purpose of discouraging demonstrations on certain public property.

Chapter 1183 (SB 563) (June 17) adds new G.S. 14-132.1 to prohibit any person or group of persons from demonstrating by sitting down, lying down, or inclining so as to block the ingress to or egress from any State, county, or municipal building after being forbidden to do so by the keeper of the building. Similarly, the act forbids, after warning, such assemblages, whether organized or not, that block or interfere with the customary, normal use of the building and its grounds. Violations are made a misdemeanor punishable by fine, or imprisonment, or both, in the discretion of the court.

Chapter 137 (HB 222) (March 30) adds G.S. 20-174.1 to make it a misdemeanor punishable in the discrecretion of the court to impede regular traffic flow by wilfully standing, sitting, or lying on a street or highway. (See also MOTOR VEHICLES AND HIGHWAY SAFETY, September 1965 *Popular Government*.)

One bill that failed to pass, HB 1109, may also have been aimed at demonstrators. It would have authorized the Governor under G.S. 74A-1 to appoint special police for corporations providing food, lodging, lawful entertainment, and recreation facilities for the public.

Highway Solicitations; Hitchhikers

Chapter 673 (SB 88) (May 25) rewrote G.S. 20-175 to lower the punishment for hitchhiking to a fiine of not more than $50 or imprisonment for not more than 30 days. The punishment provision is contained in new G.S. 20-175(c).

It amended the hitchhiking provision to prevent anyone from standing in any portion of "the State highways, except upon the shoulders thereof, for the purpose of soliciting a ride from the driver of any motor vehicle." The section formerly applied to persons standing "in the travel portion of the highway . . . ." The section as it formerly read could be applied to city streets as well as to highways in the open country; there may be some question of interpretation with regard to the new language so far as curbed streets are concerned. Does the new law apply only to the State highway system?

The act also adds a new provision as G.S. 20-175 (b). It prohibits standing or loitering:

> in the main traveled portion, including the shoulders and median, of any State highway or street, excludin sidewalks, or stop[ping] any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets . . . .

This provision does not apply to persons lawfully engaged in construction or maintenance of roads or engaged in making traffic or engineering surveys.

Refusal To Leave Hospital

Chapter 258 (HB 235) (April 15) adds a new article to Chapter 131 of the General Statutes containing a single section: new G.S. 131-137. Chapter 131 of the General Statutes applies to public hospitals, but the new section appears to be worded broadly enough to apply to any hospital. It states that if a hospital patient is considered cured, or no longer needing hospital treatment, in the opinion of the superintendent or administrator and in the opinion of two licensed physicians, then the superintendent or administrator may discharge the patient. If a discharged patient refuses or fails to leave after being directed to do so, the refusal constitutes a criminal trespass. The superintendent or administrator, however, must first inquire whether the patient is financially able to afford transportation home from the hospital and offer on behalf of the hospital to furnish transportation if this is needed before he can bring a prosecution.

Authority of Enforcement Officers and Other Officials

Search Warrants for Evidence of a Felony

North Carolina's search warrant laws have been enacted piecemeal over the years and, as could be expected, this has led to a number of inconsistencies. These inconsist-

encies relate to what may be searched for, who may issue warrants, and the territory in which a warrant is valid.

Chapter 377 (HB 117) (April 30) adds a new G.S. 15-25.2 to fill one of the large gaps in our current search warrant law. The section is substantially based on G.S. 15-25.1(a), but some of its phraseology goes back to G.S. 15-25. It authorizes search warrants for "any instrument, article or thing which has been used in the commission of, or which may constitute evidence of the commission of any felony . . . ."

Issuing officials named: justice of the peace, magistrate, judge of any court of record, and clerk or assistant clerk of any court of record. The reference to magistrates as well as to justices of the peace apparently is designed to allow the act to apply without hitch to the magistrates to be appointed under the Judicial Department Act of 1965.

Territorial validity of warrant: county-wide if issued by a justice of the peace; a magistrate; or by a judge, a clerk, or an assistant clerk of the superior court, district court, or any other court of record inferior to the superior court with territorial jurisdiction of a full county. Where issued by an officer of an inferior court with less than full-county jurisdiction, the warrant is valid only within the territorial jurisdiction of the court.

In broadening the scope of items for which search warrants may issue, North Carolina is following the example of many other jurisdictions. FEDERAL RULES OF CRIMINAL PROCEDURE 41(b) authorizes search warrants, among other things, for property "designed or intended for use or which is or has been used as the means of committing a criminal offense . . . ." WIS. STAT. ANN. § 963.02 includes "instruments or other articles which have been used in the commission of or may constitute evidence of a crime."

Although the North Carolina statute is less broad than the Wisconsin statute in that it applies only to property connected with felonies, it is in some respects broader than the provision in the Federal Rules. Broadly speaking, the federal law applies to fruits and instrumentalities of a crime but not to "mere" evidence of a crime.

Gouled v. United States, 255 U.S. 298 (1921)

The *Gouled* rule has been often criticized, see Shellow, *The Continuing Vitality of the* Gouled *Rule: The Search for and Seizure of Evidence*, 48 Marq. L. Rev. 172 (1964), but there is still a live possibility that the Supreme Court of the United States will impose it on the states under the doctrine of *Mapp v. Ohio*, 367 U.S. 643 (1961). Even if the high Court were to impose the *Gouled* rule, though, North Carolina searches for felony evidence under the new statute would still be authorized in a great many instances on the ground that the evidence in question would be either a fruit or an instrumentality of the crime.

One other bill in the area of search, SB 279, deserves mention even though it died in committee. It would have deemed any person lawfully in possession of a dwelling who requested a law enforcement officer to come to the premises and investigate a crime or possible crime to have consented to any search of the premises.

Blue Lights for Law Enforcement Vehicles

G.S 20-130.1 makes it unlawful to drive a vehicle on the highways of North Carolina displaying a red light visible from the front. Exceptions are provided for certain vehicles. G.S. 20-125(a) in like manner prohibits vehicles from being equipped with sirens. Exceptions are made in G.S. 20-125(b) — which are substantially similar but not identical to those made in G.S. 20-130.1 — for certain classes of vehicles. These exempted vehicles may carry special lights, bells, sirens, horns, or exhaust whistles approved by the Commissioner of Motor Vehicles. The list of vehicles exempted from the red light and siren law now has become rather lengthy and complicated. In addition, vehicles such as school buses, wreckers, road maintenance equipment of the State Highway Commission, and vehicles carrying red lights prescribed by the Interstate Commerce Commission are exempted from the red light law but not the siren law.

Because of the great number of vehicles now empowered to carry red lights visible from the front, law enforcement officers decided to switch to a distinctive color of their own. Chapter 257 (HB 200) (eff. July 1) added G.S. 20-125(c) to provide that all publicly-owned law enforcement vehicles plus others used primarily by law enforcement officers in the performance of their official duties may be equipped with a special blue warning light of a type approved by the Commissioner of Motor Vehicles. The act prohibits installation of such blue lights on other than prescribed vehicles and also prohibits operation of blue lights on a vehicle by anyone except a law enforcement officer in line of duty. As this is simply an added section, enforcement officers and departments will have the option of retaining their red lights or of converting to blue lights.

The broader language of the blue-light provision will cover township constables. The red-light-and siren language has often been interpreted not to include them, which put them in a technical bind because G.S. 20-183(a) requires that a red light or siren approved under G.S. 20-125(b) be activated prior to making stops of vehicles on highways outside municipal limits. On the level of very strict interpretation, of course, constables are still prevented under G.S. 20-183(a) from making stops outside municipal limits because the reference is only to equipment approved under G.S. 20-125(b) and not to G.S. 20-125(c). Since such an interpretation may have an adverse effect on other enforcement officers, however, there is some reason to doubt that it would be widely implemented.

Warning Tickets to Motorists

There is a continuing debate within the General Assembly as to the strictness with which the motor vehicle laws should be enforced. Some say strict enforcement is the key to highway safety. Others dispute this and state that the circumstances surrounding the violation will often govern whether or not it is a danger-producing offense, that the technical fact of illegality is often irrelevant to highway safety, and that numerous nonviolators often are as great a hazard to highway safety as violators.

In 1965 an act was passed giving enforcement officers the discretion to give warning tickets instead of prosecuting "a minor motor vehicle law violation." Chapter 537 (SB 225) (eff. October 1). A later act of the session amended this act to delete the minor-violation formula and to substitute the verbal formulation long set out in the policy manuals of the State Highway Patrol. Chapter 999 (SB 493) (eff. October 1) amends the above-cited act to add a new G.S. 20-183(b). In its final form it authorizes all law enforcement officers to issue warning tickets to motorists for conduct constituting a potential hazard to

the motoring public which does not amount to a definite, clear-cut, substantial violation of the motor vehicle laws.

Warning tickets must be prenumbered, contain information necessary to identify the offender, and be signed by the issuing officer. A copy of the ticket given to the offender is to be sent to the Driver License Division of the Department of Motor Vehicles. This ticket is not to be a part of the offender's driving record, but is privileged information to be used only within the Department of Motor Vehicles for statistical and analytical purposes.

It should be emphasized that this provision applies to *all* law enforcement officers charged with the duty of enforcing the motor vehicle laws.

Two somewhat related bills that failed of passage would have imposed restrictions on the enforcement actions of officers of the North Carolina Wildlife Resources Commission. SB 205 would have directed sale of the Commission's aircraft; SB 1026 would have empowered wildlife protectors to issue warning tickets for minor game and fish law violations.

Company Police and Other Special Police Authority

In 1963 two acts amended the old law in Chapter 60 of the General Statutes dealing with "Railroad and Other Company Police" to add a number of categories of persons that could be given police authority by appointment of the Governor. The comprehensive revision of the utilities law, however, completely rewrote Chapter 60 and transferred the special police provisions to a new Chapter 74A of the General Statutes entitled "Company Police." In the process, however, the new act neglected to carry forward the 1963 additions to Chapter 60.

In 1965, the General Assembly replaced the provisions that had been first passed and then left by the wayside. While it was at it, the General Assembly also revised the powers of company police slightly.

Chapter 297 (HB 19) (April 22) amended G.S. 74A-1 to add incorporated security patrols and various institutions to the list eligible to have special police. Chapter 581 (SB 361) (May 18) restored auction companies to the list. the first sentence of G.S. 74A-1 now reads:

> Any educational institution or hospital, whether State or private, or any other State institution, public utility company, construction company, manufacturing company, auction company, incorporated security patrols or corporations engaged in providing security or protection services for persons or property, may apply to the Governor to commission such persons as the institution, corporation or company may designate to act as policemen for it. . . .

The Attorney General has had recent occasion to rule that the provision authorizing incorporated security patrols to have employees commissioned by the Governor and thus gain the powers of arrest does not affect the private detective licensing requirement under G.S. 66-49.1 to -49.8. Presumably, of course, the Governor would not commission any security patrol employee unless all private detective licensing requirements had been met.

One bill introduced late in the session, HB 1109, was not reported by House committee. It would have added various places of public accommodation to the list of establishments entitled to secure company police.

The act revising the authority of company police was Chapter 872 (SB 52) (June 9). It completely rewrote G.S. 74A-2. The section formerly provided for county-wide enforcement jurisdiction in each county in which the company did business or in which a public utility was located. The 1965 act limits jurisdiction in G.S. 74A-2(b) as follows:

> (b) Such policemen, while in the performance of the duties of their employment, shall severally possess all the powers of municipal and county police officers to make arrests for both felonies and misdemeanors:
>
> (1) Upon property owned by or in the possession and control of their respective employers; or
>
> (2) Upon property owned by or in the possession and control of any person or persons who shall have contracted with their employer or employers to provide security for protective services for such property; or
>
> (3) Upon any other premises while in hot pursuit of any person or persons for any offense committed upon property vested in subdivisions (1) and (2) above.

The act also amended the section to raise the amount of the bond required to be filed in the governor's office from $500 to $2500 for each policeman appointed. An added G.S. 74A-2(d), however, exempts policemen appointed by a railroad company from the limitations contained in subdivisions (1) through (3) of subsection (b) and retains the $500 bond for railroad policemen. Presumably the amendment gives railroad policemen statewide authority.

The Charlotte charter, Chapter 713 (HB 917) (eff. July 1) [*Mecklenburg*], authorizes the city council to appoint, for one year terms, special peace officers to police and guard designated public or private premises.

Fingerprints and Mug Shots; S.B.I. Records Jurisdiction

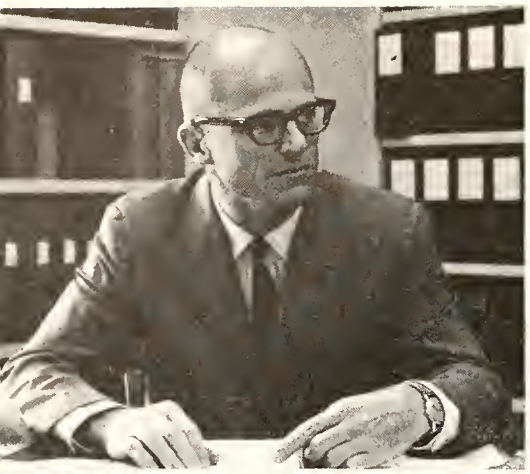
The law on taking and retention by police agencies of fingerprints and mug shots of persons arrested by them has long been somewhat confused in this state. Chapter 1049 (HB 1046) (June 14) clarifies the situation somewhat, though it does not grant all the authority that many police officials might wish.

The former law, section 148-79 of the General Statutes, required chiefs of police and sheriffs to take fingerprints of everyone *convicted* of a felony and to send them to the Consolidated Records Section — Prison Department. The fingerprints of other persons *arrested* were to be taken and forwarded when "deemed advisable" by such officers. In contrast to the rather liberal policy on fingerprints, the section further provided that a misdemeanant, even if convicted, could *not* be photographed unless a fugitive from justice, in possession of goods believed to be stolen at the time of his arrest, or believed to be wanted by some other law enforcement agency. The section was silent as to specific classes of persons who could be photographed and what to do with any photographs once taken.

The new act is a great deal more consistent. It repeals former sections 148-79 and -81 relating to the Prison Department and authorizes the State Bureau of Investigation to receive and keep central police records and statistics and other crime information in this state. New section G.S. 114-19 does not require fingerprints or photographs

(Continued on page 30)

Bounds, Gunn Get State Posts



V. Lee Bounds leaves the Institute staff this month to become North Carolina's Director of Prisons.

For fifteen years Bounds had been in charge of the Institute's work in the field of corrections. An Assistant Director of the Institute of Government and Professor of Public Law and Government at the University of North Carolina, he has worked closely with his predecessor in The State's top Prison job, George Randall. His responsibilities during that period have included serving as advisor to the State Departments of Prisons, Probation and Parole, and drafting most correctional legislation. He fought for and obtained a Training Center on Delinquency and Youth Crime at the University, within the administrative framework of the Institute and with the aid of funds from the Department of Health, Education, and Welfare and became its director.

Bounds attended the University of California at Los Angeles and obtained his law degree at the University of Virginia. He taught at the University of Chicago prior to joining the staff of the Institute. He served with the U. S. Navy in wartime and holds the rank of Commander in the Reserve.

North Carolina's Governor Dan Moore, in appointing Bounds, said: "I am pleased Mr. Bounds has accepted the Prison Commission's offer of this position, and I am glad to approve his appointment. Chairman Clyde Harris informs me that the Commission made a diligent search for a Director and approached Mr. Bounds only after determining he would be the best man for the job." Director John Sanders of the Institute of Government said: "We are extremely sorry to lose him, but I can understand why the Governor took him. He is exceedingly able and a diligent worker. He made a valuable contribution to the Institute."

Bounds expressed regret at leaving the Institute. He said that, however, he could not refuse a post which, in a sense, challenged him to "put up or shut up" in carrying through programs he had helped correction officials plan and initiate.

Robert L. Gunn has been named attorney for the North Carolina Department of Revenue. Gunn had served as Assistant Director of the Institute of Government and Assistant Professor of Public Law and Government at the University of North Carolina at Chapel Hill since September, 1962. His special field was motor vehicles, and his responsibilities included running the Institute of Government training program for the State Highway Patrol and advising and helping draft legislation for the North Carolina Department of Motor Vehicles. A native of Alabama, Gunn is a graduate of the Law School of the University of North Carolina. He has served in the United States Air Force and Army, and presently holds the rank of Captain in the Army Reserve and is active on the staff and faculty of the Durham USAR School. □

Agricultural . . .

(Continued from page 10)

Chapter 1064 (SB 119) appropriates $25,000 from the General Fund to the North Carolina Agricultural Experiment Station to provide for research on the production and mechanical harvesting of cucumbers. The money is for use during the 1965-67 biennium. The purpose of the program is to increase yields per acre, to improve quality and production technology, and to develop an effective mechanical harvesting system.

The establishment and operation of a research program for peanut processing and product development is provided for by Chapter 984 (HB 1114). The Agricultural Experiment Station of North Carolina State University at Raleigh will conduct the program through General Fund appropriations of $25,000 for each of the 1965-66 and 1966-67 fiscal years. The bill funds each year's appropriation for such items as salaries, travel, supplies and equipment.

A program of research on the production, processing and marketing of native grape species is to be jointly conducted by the Agricultural Experiment Station and the Agriculture Extension Service. Chapter 1065 (SB 167) provides General Fund appropriations of $80,300 for the first year of the biennium and $64,700 for the second year of the biennium for Experiment Station research in production processing and marketing; the Extension Service is to receive $10,500 each year of the biennium for marketing economics research. The preamble to the bill observes that the North Carolina grape has a "delicate and extraordinary flavor" and that there is a demand for these grapes for use in blends with other wines produced in other states. It is also noted that there is a "large potential demand for North Carolina grapes for fresh consumption and for use in juices, jams, jellies, pasteurized soft drinks and other food products." The bill specifies the portion of the funds which are to be used for salaries and the portion to be used for maintenance and operations.

Poultry Random Sampling Research Tests

The poultry random sampling research tests at the Piedmont Research Station in Rowan County will be up-

dated by means of funds appropriated by Chapter 1150 (HB 1111). General Fund appropriations are made to the Department of Agriculture in the amounts of $37,300 for the first year of the 1965-67 biennium and $5,000 for the second year of the biennium.

Nematode Assay and Advisory Service

Chapter 1010 (HB 528) recites that "plant-parasitic nematodes are serious pests of the major agricultural crops in North Carolina," that "effective control measures are available for most nematode types," and that a sound assay and diagnostic service to growers on the kinds and levels of nematodes present in soil would aid them in selecting the most effective control measures. To this end, the bill provides for expanded research to increase the efficiency of assay techniques, and the creation of an advisory service for growers. Appropriations are made from the General Fund to the Experiment Station in the amounts of $100,000 and $38,000 for the fiscal years ending June 30, 1966, and June 30, 1967. Included in the appropriation for the first fiscal year is $55,000 for construction of a laboratory building and greenhouse. The remaining funds are to be used for employment of a nematologist, other personnel and maintenance and operations.

Miscellaneous

Promotion of Use and Sale of Agricultural Products

G.S. Ch. 106, Article 50 provides for cooperative effort among farmers, processors and dealers in the promotion of use and sale of certain agricultural commodities. The Article provides for farmer referendums on the question of supporting the program by levy of assessments on the commodities or the acreage used in producing them. Formerly, the law provided that such referendums be held at three-year intervals. Chapter 1046 (HB 1031) provides that after the program has been in effect for a three-year period, subsequent votes may be on whether the assessments shall be continued for another three or six years. □

Child Abuse Cases

(Continued from page 18)

who caused the abuse and "shall take such action in accordance with law necessary to prevent the child from being subjected to further abuse, neglect, injury or illness;" (3) although the North Carolina act eliminates the physician-patient privilege in child abuse cases, the husband-wife privilege under the law of evidence was not waived by the North Carolina act as recommended by the model act; thus, neither parent is a competent witness to testify as the facts of child abuse of the other in any criminal case where the other is the defendant.

There were many differences of opinion in North Carolina concerning this statute. Some social workers and public welfare personnel felt strongly that mandatory reporting by physicians should be required as suggested by the model act. However, some physicians objected to the criminal sanctions against doctors if they fail to report child abuse cases. One legislator (a leader in securing passage of S.B 44) felt that more child abuse cases would be reported by physicians if the reporting were voluntary. Future experience under the new law will determine the wisdom of this decision.

The reporting of child abuse cases to the director of the county welfare department seems sound planning. A doctor, nurse, teacher, etc. might be more likely to report a child abuse case to the director of the welfare department (which gives the director the duty to investigate and take appropriate action) than to a police department or other law enforcement agency which might issue a criminal warrant and arrest the abusing parent. Welfare departments in North Carolina have traditionally been professionally involved in the protection of neglected children. Case work and counseling with abusing parents have been their initial approach. If this approach fails, they have not been hesitant to protect children through law enforcement referrals and appropriate juvenile or criminal court action.

Under the law of evidence in North Carolina, neither husband nor wife is a competent witness to testify against the other in a criminal case in which the other is the defendant.[5] The model act suspends this rule of evidence in child abuse cases so that either parent is a competent witness to testify to the child abuse of the other. When S. B 44 was introduced, it contained a provision similar to the model act making either husband or wife competent to testify concerning child abuse of the other. It was amended in the House to delete this section. Thus in North Carolina, when a parent is prosecuted under criminal law for child abuse, the other spouse is not a competent witness to testify as to the facts of child abuse, even though such other spouse may be the only witness.

Two significant facts must be remembered: (1) child abuse often occurs in the privacy of the home; (2) the abused child is often too young to speak for himself. Thus, when a child is abused by his own parent and such abuse is observed only by the other parent, the abusing parent could rarely be convicted in North Carolina; there would be no competent evidence of the facts.

What About the Future?

There have not been many cases diagnosed as "battered" children in North Carolina. However, our community agencies are not well-in formed about the "battered child syndrome." Presumably, we have stumbled across some child abuse situations without fully understanding their implications.

Our new law reflects increasing concern about this problem in North Carolina. While people may disagree with specific portions of the act (i.e. lack of mandatory reporting by physicians, failure to waive the husband-wife privilege in child abuse cases), most will agree that our new law is a beginning toward developing a wider understanding of the problem. Hopefully, the law will achieve better protection and community planning for abused children in our state. □

5. N. C. General Statutes §8-57.

Fire Laws . . .

(Continued from page 12)

Acts of Local Interest

Chapter 447 (HB 588) amends Chapter 302 of the 1957 North Carolina Session Laws relating to rural fire protection districts in Orange County. Chapter 302, as originally enacted, differed from the general law only in that it permitted fire

Past and present staff gathered at the Institute to honor Jack Atwater. Left to right are Elmer Oettinger, Basil Sherrill, Raleigh attorney; UNC Law School Dean Dickson Phillips; Ben Loeb; Deputy Attorney General Peyton Abbott; Bill Campbell; John Alexander McMahon, Vice-President, Hospital Saving Association of Chapel Hill; Bob Gunn, attorney, North Carolina Department of Revnue; and North Carolina Fund Director George Esser. Oettinger, Loeb, and Campbell are currently Institute staff members.

Commemorating Jack Atwater's 25 years of service to the Institute, Director John Sanders presents a gold watch as UNC Law School Dean Dickson Phillips looks on.

Jack Atwater: 25 Years of Institute Service

In July of this year Jack Atwater completed 25 years of dedicated service to the Institute of Government. Everyone who has worked at the Instiure during that period knows Jack. So, it was not surprising that Institute staff members of earlier years drove to Chapel Hill to join with the present staff to celebrate the occasion and to show their affection and appreciation, or that a former Governor of North Carolina sent Jack a congratulatory telegram.

The telegram, from former Governor Terry Sanford, once an Institute staff member, read: "Congratulations on your long and devoted service to the Institute of Government and the State of North Carolina. We are proud of you." More tributes came from Director John Sanders and such former staff members as North Carolina Deputy Attorney General Peyton B. Abbott, North Carolina Fund Director George Esser, U.N.C. Law School Dean Dickson Phillips, and then North Carolina Association of County Commissioners Director John Alexander McMahon. The occasion was presided over by Elmer Oettinger who had served with George Coltrane and David Warren on the planning comittee. Jack was presented with a handsome engraved watch. As he cut the cake commemorating his 25 years of service, a surprised Jack observed to his wife that this was the first thing that had been planned at the Institute of Govetnment that he hadn't known about in advance.

When Jack Atwater was hired by Institute Director Albert Coates in 1940, he was the lone janitor for the first Institute of Government building, now the offices of the Consolidated University on Franklin Street in Chapel Hill. Through the years his responsibility increased to the point that he is now the head of a group of service personnel responsible for the extensive Institute mimeographing, mailing, and other services. With the exception of founder Coates, he has served more years with the Institute than any other individual. The staff tribute to Jack reflected genuine gratitude for a job well done. □

protection district boundaries to be extended upon application of a majority of the owners of the new territory to be included rather than requiring their unanimous consent. The effect of Chapter 447, a very significant departure from the general law as contained in GS 69-25.11 (1), is to eliminate the requirement that only *adjoining* territory may be added to existing fire districts. Thus, districts in Orange County may henceforth extend their boundaries to include non-adjoining as well as adjoining territory.

Chapter 1101 (HB 1076) adds a new subsection (4) to GS 69-25.11 to authorize the relocation of boundaries between adjoining fire protection districts having different tax rates in effect. Prior to the passage of this statute, boundaries could be altered only between those districts having exactly the same tax rate for fire protection. Although Chapter 1101 is a public act the purpose of its passage was to facilitate the relocation of boundaries between two fire districts in Wake County.

Tort Liability

One major area of concern to professional firemen's organizations was left virtually untouched by the General Assembly. Except as hereinbefore noted, no attempt was made to clarify the law relating to a fireman's liability for negligence while engaged in the performance of his assigned duties. This is a nebulous subject at best since there are no statutes or modern North Carolina Supreme Court decisions precisely on point. However several reasonably recent cases do concern the tort liability of other types of public officers and employees. In *Miller v. Jones*, 224 N. C. 783, a store owner sued two employees of the State Highway and Public Works Commission, alleging that a "sweeper" operated by defendants had blown dirt into plaintiff's store damaging his merchandise. The defendants contended that they could not be held personally liable for negligence in the discharge of their governmental functions. The Supreme

Court agreed that an *officer* charged with the performance of a governmental duty involving discretion could not be held liable for simple negligence with respect thereto, but held that such immunity was never extended to a mere *employee* of a governmental agency upon this principle.

On the other hand, the Supreme Court failed to find any liability in *Wilkins & Ward v. Burton*, 220 N.C. 13, where a division engineer of the State Highway and Public Works Commission was sued for injuries sustained by plaintiffs when their car struck a tree lying across a public road. In this latter instance, the Court determined that the defendant was a public officer, as distinguished from a public employee, and as such could not be held liable for breach of duty unless acting in a malicious or corrupt manner.

Most firemen are public employees, not public officers, and therefore probably have no tort immunity under common law principles enunciated by the courts of North Carolina. This view is shared by the North Carolina Attorney General, who stated in an opinion dated June 22, 1959 that: "An individual member of a (municipal) volunteer fire department who might personally be guilty of negligence would be liable in damages to the party injured."

Conclusions

A major thrust of the new acts is to remove obstacles which, in the past, have prevented unprotected areas from securing the benefits of a fire department. Now Chapter 707 affirms a department's authority to send firemen and apparatus beyond the territorial limits of the political subdivision or other area which it normally serves; Chapter 625 permits rural fire districts to extend their boundaries without securing unanimous consent of property owners whose land is to be added; and, Chapter 447 allows Orange County districts to annex territory not adjacent to an existing district boundary.

Another of the enactments, Chapter 648, gives firemen statutory authority to extinguish fires, even over the objections of the owner of the property which is burning. Finally, and most important, counties are now empowered, by virtue of Chapter 626, to adopt and enforce county fire prevention codes. Passage of these acts is indeed a timely development in the law since during 1964 alone losses from fire in North Carolina resulted in 242 deaths and over 26 million dollars in property damage, with a considerable part of the loss directly attributable to a lack of adequate fire protection. □

Coming next month:

Insurance Purchasing through an Advisory Committee

by Michael G. Allen

BOND SALES

From May 25, 1965 through October 5, 1965 the local Government Commission sold bonds for the following governmental units. The unit, the amount of bonds, the purposes for which the bonds were issued, and the effective interest rates are given.

UNIT	*AMOUNT*	*PURPOSE*	*RATE*
Cities:			
Carolina Beach	120,000	Sanitary Sewer	4.02
Claremont	285,000	Sewer System	3.99
Conover	300,000	Sanitary Sewer	3.77
Conover	100,000	Water Bonds	3.90
Kinston	88,000	Parking Facility Revenue	3.00
Lake Lure	390,000	Electric Power Facility Revenue	4.22
Madison	100,000	Water and Sewer	3.87
Mount Holly	455,000	Sanitary Sewer	3.73
Mount Olive	225,000	Municipal Building and Fire Station	3.87
Rockingham	175,000	Municipal Building and Fire Station	3.43
Sims	72,000	Water Bonds	3.62
Southport	235,000	Water, Sanitary Sewer, Refunding Water and Sewer	4.06
Tarboro	110.000	Fire Fighting Equipment	2.97
Tarboro	300,000	Street Improvement Bonds	3.06
Troutman	310,000	Sanitary Sewer	3.98
Counties:			
Buncombe (Metropolitan Sewerage District)	7,700,000	Sewage Disposal System	3.78
Carteret	1,000,000	County Hospital Bonds	3.86
Chatham (Goldston-Gulf Sanitary District)	600.000	Water System	3.87
Cleveland	225,000	School Building	2.93
Dare	1,250,000	School Building	4.19
Durham	5,540,000	School Building, Series A; School Building 1965; County Building	3.05
Forsyth (Rural Hall Sanitary District)	30,000	General Obligation Water Bonds	3.79
Pender	65,000	County Hospital	3.28
Robeson (Lumberton School District)	385,000	School Bonds	3.33

. . . Administrative Office of the Courts

(Continued from page 16)

temporary body, and the latter's structure and duties may well be altered in the transitional period, 1967-71.

The Administrative Office of the Courts has occupied an office on the fourth floor of the Justice Building in Raleigh. Judge Huskins and Mr. Montague are hard at work. The efficient administration of justice over the next decade in this State rest largely in their able hands. □

Criminal Law . . .

(Continued from page 25)

to be sent to the S.B.I., but authorizes those taken pursuant to the new law to be so sent.

G.S. 114-19 now authorizes police chiefs and sheriffs to take both the fingerprints *and* photographs of:

(1) anyone *charged* with a felony and

(2) anyone committed to jail or prison upon conviction of a crime. It preserves the old provision as to when photographs may *not* be taken, but rewrites it to allow photographs of convicted misdemeanants.

The statute still leaves to local discretion — and to case law — the problems related to taking and retention of fingerprints of persons arrested for misdemeanors who are either not convicted or who upon conviction are not imprisoned.

Two bills relating to the State Bureau of Investigation which failed of passage may be appropriate to mention here. SB 103 and identical HB 275 would have appropriated funds for establishing an S.B.I. field office in western North Carolina. HB 1155 would have appropriated funds for five additional special agents of the S.B.I.

One rather significant local bill relating to fingerprints and photographs of persons arrested received an unfavorable report. HB 145 would have amended the Winston-Salem charter to exempt the police of that city from the general law and to authorize the taking of fingerprints and photographs of any person arrested.

Local Police Jurisdiction

As usual a spate of local acts gave enforcement officers of cities and towns extended jurisdiction outside municipal limits. The following table gives the 1965 acts:

County and Municipality	*Area of Extension Beyond Limits*	*1965 Act*
Beaufort:		
Belhaven	Two miles	Chapter 50 (HB 74) (March 5)
Dare:		
Kill Devil Hills	Two miles, but not within the limits of any other municipality	Chapter 107 (HB 171) (March 24)
Duplin:		
Faison	One mile	Chapter 1130 (HB 1158) (June 16)
Edgecombe and Nash:		
Whitakers	Two miles, plus town property wherever located	Chapter 996, § 8.1 (SB 469) (June 14)
Forsyth:		
Kernersville	One mile	Chapter 49 (HB 72) (March 5)
Onslow:		
Richlands	Three miles	Chapter 45 (HB 91) (March 4), making a local modification to G.S. 160-21
Pender:		
Atkinson	Two miles	Chapter 561 (HB 732) (May 14)
Pitt:		
Farmville	Within Farmville Township	Chapter 36 § 32 (SB 19) (March 4)
Ayden	One mile, plus town property wherever located	Chapter 79, § 10.3 (SB 33) (March 17)
Bethel	Three miles, but not beyond boundaries of Bethel Township	Chapter 451 (HB 605) (May 7)
Sampson:		
Roseboro	One mile	Chapter 552 (HB 650) (May 14)
Washington:		
Plymouth	A described area northeast of town including a portion of U.S. Highway 64	Chapter 93 (HB 142) (March 23)

Two additional acts contain variations on the extension of police jurisdiction. Chapter 92 (HB 121) (March 23) repeals the 1963 act which gave the police of Dobson jurisdiction one mile out into *Surry* County and replaces it with a provision giving Dobson enforcement officers jurisdiction to make arrests up to two miles outside the town limits for *motor vehicle* offenses that occurred within their presence within the boundaries of the town. Chapter 324 (HB 428) (April 27) gives Brevard officers jurisdiction three miles out into *Transylvania* County for crimes committed *within* the town limits.

Chapter 376 (SB 278) (April 30) may have been intended to extend the jurisdiction of Greenville officers out into *Pitt* County, but it is not clear that it does so. The act makes all ordinances of Greenville enacted in the exercise of police powers applicable to the territory located outside the city within one-half mile of the corporate limits. The act does not mention the enforcement jurisdiction of Greenville officers. It is possible, of course, that Greenville officers already have extended jurisdiction under some prior act, but a check of local laws over the past two decades fails to reveal such a provision. Another 1965 bill applicable to Greenville, SB 142, would have extended the effect of police-power city ordinances merely to the site of Pitt Memorial Hospital in Pitt County. This bill was not reported out of committee.

Two other bills relating to extended jurisdiction also failed. HB 32 would have extended the jurisdiction of Wilson city police three miles outside the corporate limits, and to all other city property wherever located. HB 1160 was a proposed revision and consolidation of the charter of Newton introduced too late in the session to receive consideration. One of its provisions would have extended police jurisdiction one mile and also to all city property wherever located. It also would have made all city ordinances effective on city-owned property.

Local Police Residence

There were fewer acts this year than usual authorizing municipal police chiefs or police officers generally to reside outside the corporate limits. These acts have been very popular in the past despite the doubts as to their constitutionality.

Chapter 546 (SB 350) (May 14) authorizes the police chief and his officers in Tarboro, *Edgecombe* County, to live up to one mile outside the municipal limits. It ratifies any actions already taken by or with regard to officers living in this area.

Several municipalities this session got a charter amendment to provide that the chief and other police officers need not be residents of the municipality at the time of their appointments. Except for the one pertaining to Sharpsburg, all the acts listed in this paragraph also applied to various other appointive municipal officials. The acts include: Chapter 669 (HB 871) (May 21) Sharpsburg, *Edgecombe, Nash,* and *Wilson* counties; Chapter 296 (HB 314) (April 21) Pineville, *Mecklenburg* County; Chapter 586 (HB 597) (May 18) Hertford, *Perquimans* County. In addition, the charter of the newly-created Town of Alliance in *Pamlico* County has a provision similar to the ones above. Chapter 760 (HB 816) (June 1).

Chapter 775 (HB 600) (June 2) provides that persons employed by the Police and Fire Departments of Statesville in *Iredell* County who do not reside within the city limits must move there within 90 days after they go on the force.

Chapter 331 (HB 449) (April 27) authorizes the governing body of the Town of Richlands in *Onslow* County to employ a chief and other police officers who reside outside the town and are thus not qualified voters of the town.

Chapter 478 (SB 312) (May 11) applied to the Town of Liberty in *Randolph* County. Under this act it is not necessary for any appointive official of the town or of the Liberty Recorder's Court to reside within the town limits. The act also amends a 1959 local modification to G.S. 7-186 to provide that the recorder may live anywhere within Randolph County.

HB 766 consolidating the charter of St. Pauls was not reported out of committee. It would have, however, authorized the town board of commissioners to appoint police and other officers and employees who were not residents of the town when appointed.

Other Miscellaneous Local Police Authority

In sorting through the numerous local acts passed in 1965, it will be impossible to list here all of those that would interest persons working in the administration of criminal justice. The selection of acts for inclusion and exclusion is somewhat on an *ad hoc* basis, but the following generalities may be observed. Acts that would be primarily of interest to local officials themselves, such as salary and fee bills, terms of appointment of local officials, and the like, are omitted. The general basis for selection of local acts has been the likelihood of general interest on the part of judges, lawyers, enforcement officers, and the public in the county and elsewhere.

Abolishing constables: Chapter 381 (HB 481) (April 30) abolishes the office of township constable in *Avery* County. In lieu of constables, it authorizes the sheriff with the approval of the board of commissioners to appoint township deputies. Such deputies must reside in the township for which they are appointed.

Two bills that failed of passage would have limited constables in two additional counties. SB 565 would have repealed a 1963 act authorizing the constable of Asheville Township in Buncombe County to appoint deputy constables. HB 733 would have restricted constables in Davie County to exercise of their powers within their respective townships — except in transporting prisoners.

Issuance of warrants: After the addition of G.S. 160-20.1 plus numerous local acts in 1963 concerning issuance of warrants by police desk officers, the 1965 activity in this area is very minimal. Chapter 497 (HB 626) (May 11) revising the charter of Denton, *Davidson* County, authorizes issuance of *arrest* warrants by the police chief, assistant chief, captains and lieutenants in charge of work shifts, and duty desk sergeants. Chapter 97 (HB 181) (March 23) authorizes the Louisburg chief of police in *Franklin* County to issue warrants in criminal matters on Sundays, on official holidays, and between the hours of five p.m. and nine a.m. on all other days. For this activity the chief is to receive the same fees as justices of the peace. Chapter 498 (HB 635) (May 11) applicable to *Gaston* County authorizes the chief of the rural police department and the sheriff each to appoint three men as desk officers with the authority of justices of the peace to issue *arrest and search* warrants and to set the amounts of appearance bonds. The names of the officers appointed must be filed with the clerk of the superior court. The act prohibits the officers from conducting any trial or preliminary hearing. Chapter 4 (HB 7) (February 23) enacts for the Town of Madison in *Rockingham* County the desk-officer provision that was the most popular in 1963. The chief of police is authorized to designate desk officers who may issue warrants in criminal matters. In this act — as in all of the acts discussed in this paragraph — the usual provision prohibits the issuing officers from serving their own warrants.

Auxiliary police and cadets: In the 1963 version of this article, the following appeared:

> There is no statewide law authorizing municipalities to appoint auxiliary police officers. It is always possible, of course, to appoint and swear in unpaid volunteers as regular officers — and this is probably the legal basis upon which many auxiliary police groups in the state are founded. There are drawbacks to this approach, however. On the basis of old cases involving citizens deputized in emergencies, it seems clear that unpaid police officers who are injured in the line of duty are entitled to Workmen's Compensation. But the statutes are not specific as to what rate of compensation applies. Also, even though G.S. 160-20 provides that the town board may regulate the policemen appointed, it has not been settled whether a town can take away the power of arrest once an officer has been sworn in. Because of this, a number of cities have recently been adding provisions in their charter as to the appointment of auxiliary policemen and firemen. Even though the statutes do not say so straight out, it is usually thought that a person with an auxiliary appointment would not have the power of arrest unless called to duty.

Against this background, it is interesting to study the several 1965 acts relating to auxiliary police.

Chapter 662 (HB 675) (May 21) authorizes the *Gaston* County commissioners to set up an auxiliary force for the Gaston County Rural Police Department. It specifies that the auxiliary police are to be paid only when called to duty, are not to be under civil service, and are to have the same powers as the country rural police when called to duty. The act specifies that it is not to affect the right of the auxiliary force to any benefits provided for civilian defense workers or auxiliary police by the State of North Carolina or by Congress. Pay is to be as set by

the county commissioners, but there is no mention of the base to be used in determining Workmen's Compensation.

In another *Gaston* County act, Chapter 663 (HB 677) (May 21), a Cadet Corps is created for the Gaston County Rural Police Department. County residents over 18 are eligible for nonenforcement duties with the Department as a method of training future policemen. Those successfully completing the cadet training program who are recommended by the chief and who take the civil service examination for rural policemen within a year of completing the program are entitled to a five-point bonus on the examination.

Chapter 309 (HB 71) (April 27) authorizes High Point, *Guilford* County, to establish a police and fire reserve. These auxiliary members when injured on duty are to receive Workmen's Compensation based on the entrance salary for regular city police patrolmen or firemen. This act also provides that it does not affect any benefits provided by North Carolina or the United States for civilian defense workers or auxiliary policemen and firemen.

The provisions in the charter for Charlotte, *Mecklenburg* County, relating to auxiliary police are brief. Chapter 713 (HB 917) (eff. July 1) in setting out the consolidated charter simply states at the end of the section on the civil service for police and firemen that the city council may authorize the city manager to appoint auxiliary policemen and firemen without previous examinations by the Civil Service Board. The men shall have the powers and duties of regular policemen and firemen when called to duty, but are subject to discharge at the pleasure of the city manager.

Police personnel provisions; civil service: In making changes in the Concord charter, *Cabarrus* County, Chapter 222 (HB 363) (April 9) among other things repeals some prior acts dealing with special police appointments by the mayor and chief of police and other obsolete personnel provisions relating to the police department. Chapter 693 (HB 870) (May 25) amends the charter of New Bern, *Craven* County, to specify that the Civil Service Board is to fix the requirements of police officers employed with the advice and counsel of the chief of police. It authorizes the chief to suspend police officers up to three days on his own motion, and revises the discharge procedure before the Civil Service Board. Chapter 775 (HB 600) (June 2) amends the Statesville charter, *Iredell* County, in several respects. It opens civil service examinations for policemen and firemen that formerly could be taken only by city and county residents to all, but gives city residents first priority and county residents second priority. As for chief of the police and fire departments, the board must first examine the six top ranking officers within the department; if all fail to pass the examination or else disqualify themelves, then the board may employ a chief for either department from outside the city if he has had at least ten years of experience. Nonresidents accepted must move within the city limits of Statesville within 90 days of employment.

Chapter 713 (HB 917) (eff. July 1) continues the detailed charter provisions relating to the Civil Service Board for the City of Charlotte, *Mecklenburg* County. The civil service provisions apply to members of the police and fire departments, but not to the chiefs of those departments. The chiefs may discharge members of their departments employed for less than 12 months under rules approved by the city council without regard to civil service procedure. Chapter 790 (HB 984) (June 2) amends the laws governing the civil service commission for the police and fire departments of the City of Raleigh, *Wake* County, to change the necessary notice procedure prior to civil service examinations.

Chapter 301 (HB 574) (April 22) obolishes the requirement that the chief of police in Macon, *Warren* County, must be elected. It authorizes the town board to appoint a chief of police to serve at the pleasure of the board.

Sheriff's radio equipment: Chapter 888 (HB 890) (June 9) is a highly detailed local act amending a 1959 local act concerning installation of radio equipment in the motor vehicles of the Sheriff of *Mitchell* County and his salaried deputies.

Authority of Firemen

See, in this issue, 1965 CHANGES IN NORTH CAROLINA FIRE LAWS.

Special Authority to Control Traffic

Chapter 1074 (SB 396) (June 16) amends G.S. 143-224 to make the motor vehicle law contained in Chapter 20 of the General Statutes apply to all streets, alleys, and driveways on property owned by or under the control of the State Ports Authority. It also empowers the Authority to make ordinances relating to safety of persons, parking, and use of streets, alleys, and driveways on property controled by the Authority.

The 1965 amendment revised the portion of G.S. 143-224 relating to the special police of the Authority to make certain that the powers of arrest conferred applied to ordinance violations as well as other violations of the laws of North Carolina. In the process the police authority may have been broadened somewhat, as the provision specifying the power of arrest without warrant for violations on property under Authority control was eliminated. This leaves the portion of the section giving them the powers of policemen of incorporated towns unmodified.

Chapter 688 (HB 742) (May 25) adds G.S. 116-62.1 extending the motor vehicles laws to the campus of Chowan College in Murfreesboro. The college board of trustees is empowered to make traffic and parking ordinances in similar fashion to that set out in the act discussed above. The act, however, does not mention campus police. This is not necessary, of course, in the light of the 1965 amendment to G.S. 74A-1 treated in a previous portion of this article.

Licensing and Other Regulatory Provisions

Occupational Licensing Bills That Failed

There is a continuing controversy surrounding occupational licensing. The normal philosophy of a free-enterprise system is to allow people to go into any line of work they wish. When it is thought, however, that the public welfare would be seriously affected by having unqualified or untrustworthy persons in an occupation or profession, the legal power of the state is sometimes used to regulate the trade or profession.

This year the General Assembly rejected bids for licens-

ing of the following groups: polygraph examiners (HB 155), warm air heating and air conditioning contractors (HB 547, HB 548, HB 549), and landscape architects (HB 991). In addition, a bill to make a number of changes in the licensing provisions applicable to real estate brokers and salesmen, SB 61 — HB 176, was killed in a House committee.

The polygraph examiner bill would have required licensing of this group by the State Bureau of Investigation under the procedures already set up for licensing of private detectives.

A companion bill to the polygraph examiner one, HB 156, would have raised the license tax on private detectives from $25 to $50 per year. It was reported unfavorably in the House.

Regulation of Bondsmen

In 1963 the General Assembly added a new Chapter 85A to the General Statutes to provide for regulation and licensing of bail bondsmen and runners by the Commissioner of Insurance in 20 counties. HB 1009 would have repealed this 1963 legislation, but was tabled in the Senate. Two counties were deleted from Chapter 85A, however, by local act: *Columbus* and *Currituck*. Chapter 1195 (HB 1058) (June 17). A bill to exempt a third county, HB 1154 (Cleveland), died in a Senate committee.

Buncombe County now has its professional bondsmen and their employees taxed and regulated under Chapter 1196 (HB 1133) (June 17). Also, Chapter 1076 (SB 485) (eff. July 1) makes substantial amendments to a 1943 local law regulating professional bondsmen in *Wayne* County.

Unclaimed Bicycles

Under G.S. 15-12, unclaimed personal property in the possession of a sheriff, police department, or a constable as a result of the discharge of duty may be advertised and sold after remaining unclaimed for 180 days. Chapter 807 (HB 962) (June 3) amends G.S. 15-12 to reduce the waiting period prior to sale to 30 days in the case of unclaimed bicycles. Fourteen counties were exempted from the 1965 act, and in those the 180-day waiting period still applies. They are: *Alamance, Cherokee, Cleveland, Columbus, Gaston, Haywood, Henderson, Hoke, Mitchell, Moore, Northampton, Pender, Scotland,* and *Wilson.*

Closing-Out Sales

G.S. 66-76 through -84 providing for the regulation and licensing of closing-out sales has been amended to add four additional counties under the provisions: *Edgecombe* and *Nash* (Chapter 374 [SB 248] [April 30]), *Henderson* (Chapter 96 [HB 168] [March 23]), and *Iredell* (Chapter 306 [HB 462] [April 23]).

Filing Pawn Tickets with Sheriff

Chapter 84 (HB 139) (eff. July 1) amends G.S. 91-5 to require that pawnbrokers must file copies of pawn tickets with the sheriff of the county within 48 hours. Previously the tickets needed to be filed only with the chief of police; now copies must be made for filing with both.

Public Vehicle Marking

G.S. 14-250 has undergone a number of changes since its enactment in 1925. It started out requiring all publicly-owned vehicles to carry a statement of the public ownership and the words "for official use only" in letters at least three inches high. Various amendments were amde in 1925, 1945, 1957 and 1961. Chapter 1186 (SB 594) (June 17) again amends G.S. 14-250. No longer is there any mention of how large the letters must be, and the wording "For Official Use Only" need not be used on any publicly-owned vehicles. The basic requirement is only that wording be on the vehicle to identify the public ownership. Enforcement vehicles are still exempt, and counties still have the option of placing a seal of the county at least eight inches in diameter on each side—without any wording needed. This county option probably also applies to municipalities, as G.S. 14-252 makes the vehicle-marking statute apply to cities and incorporated towns. The final option for state-owned vehicles is that they have imprinted on the license tag above the license number the words "State Owned" and also carry a plate on the front with the words "State Owned."

State employees came within an ace of having their new passenger vehicles purchased after July 1 painted black and silver under the terms of SB 468 and identical HB 981. The House Bill was reported unfavorably. The Senate Bill, after some ups and downs, was tabled in the House.

Water Heater Regulation

Recent water-heater explosions pointed up the need for regulatory legislation on this subject. Chapter 860 (HB 610) (eff. January 1, 1966) enacts provisions codified as G.S. 66-27.1 to -67.4 applying to automatic hot water tanks and heaters of 120 gallon capacity or less. Such hot water heaters must have approved relief valves on them before they can be installed, sold, or offered for sale. All relief valves sold or installed separately must also carry the required stamp of approval. Similar provisions relate to dip tubes, nipples, baffles, and traps and to heaters of the above capacity equipped with them; they must have been tested to withstand a temperature of 400 degrees Fahrenheit. Violation of the provisions of the new legislation is a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court.

State Highway Commission Conflict of Interest

Chapter 55 (HB 59) (eff. July 1) effected a major reorganization of the State Highway Commission. In the process, as an aftermath of a recent prosecution of an employee of the Commission, it rewrote G.S. 136-13 to expand the coverage of the section and to increase the punishment. Among other things, the person corruptly influencing a member, officer, or employee of the Commission need no longer be (or be an agent or employee of) a contractor with the Commission. The possible punishment has been increased to imprisonment up to ten years, fine up to $20,000 (or three times the monetary equivalent of the thing of value in question, whichever is greater), or both such fine and imprisonment.

The same reorganization act also adds G.S. 136-13.1. It states that no member of the State Highway Commission, nor any official or employee of the Commission, shall be permitted to use his position to influence elections or the political action of any person.

Laws Relating to Prisoners and Fugitives

For a discussion of the bills enacting the Interstate Agreement on Detainers and liberalizing prison furlough

arrangements, see the article on PENAL-CORRECTIONAL ADMINISTRATION in the September 1965 issue of *Popular Government*. The 1965 amendments to the Interstate Compact on Juveniles are discussed in PUBLIC WELFARE AND DOMESTIC RELATIONS in the same issue of *Popular Government*.

Post-Conviction Hearing Act Revision

Chapter 352 (HB 305) (eff. July 1) rewrites the Post-Conviction Hearing Act to put the substance of former section 15-217, as amended, in new G.S. 15-217 and -217.1 and to amend several other sections of the act set out in Article 22 of Chapter 15 of the General Statutes. The changes in the law are detailed by section below.

G.S. 15-217: It provides for a review of the conviction of persons imprisoned in the common jail of any county or in the custody of the State Prison Department upon allegation that there was a substantial denial of constitutional rights in the proceedings resulting in the conviction, *or that the court was without jurisdiction to impose the sentence, or that the sentence is otherwise subject to collateral attack upon grounds formerly available under writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy*, as to which there has been no prior adjudication by any court of competent jurisdiction. [The portion in italics is now.] The act adds that post-conviction review is not a substitute for nor does it affect any remedies normally incident to trial and appeal, but except as otherwise provided it comprehends and takes the place of prior common law and statutory remedies for testing the validity of imprisonment — and it is to be used exclusively in lieu of such remedies. The former provision placing a five-year statute of limitations on post-conviction proceedings is deleted.

G.S. 15-217.1: It revises the procedure to require that the prisoner file all three copies of his petition with the clerk of Superior Court of the county in which the conviction took place; originally, the prisoner had to file two with the clerk and serve the third on the solicitor. Now the clerk must forward one copy to the Superior Court solicitor and, as in the past, docket one copy. It adds a provision requiring the clerk to bring the petition to the attention of the resident judge or any judge holding court in the district or the county and requires the judge to review the petition and make such order as appropriate concerning time and place of hearing, proceeding without payment of costs, and appointment of counsel. To prevent injustice, the judge may order the prisoner to be brought before the court without delay and he may direct the solicitor to answer the petition within a time specified — as in the case of a petition for a writ of habeas corpus. If upon review of the petition it does not appear to the judge that an order advancing the hearing or other order is appropriate, he is directed to return the petition to the clerk with a notation to that effect.

G.S. 15-220: It adds that if the prisoner elects to withdraw his petition, the withdrawal constitutes a waiver of any claim of denial of constitutional rights or other error remediable under Article 22 which has been alleged in the petition. It further provides that the judge may order transcripts and other records of proceedings in question and that if the prisoner is indigent the cost of furnishing such transcripts or records is to be borne by the county.

G.S. 15-221: It adds that unless the judge sets a different time the clerk and the solicitor are to calendar the matter for hearing at the next session for the trial of criminal cases in the county after the time for pleading by the solicitor has expired.

There was no substantial change in G.S. 15-218, -219 or -222.

Regulation of Intoxicating Liquor and Public Drunkenness

Local Public Drunkenness Punishments

Two more counties in 1965 adopted local acts to be codified under G.S. 14-335 and thus make public drunkenness a crime throughout each county: *Bertie* (Chapter 265 [HB 389] [April 15]) and *Onslow* (Chapter 595 [HB 207] [May 18]). Both of these counties were added to paragraph 1 of G.S. 14-335; thus offenses of public drunkenness in those counties will be punished by a fine of nor more than $50 or by imprisonment for not more than 30 days—with no increase of punishment for subsequent offenses.

Two other counties were switched from paragraph 1 to paragraph 10 of the statute; first offense, up to $50 or 30 days; second offense within 12 months, up to $100 or 60 days; and third offense within 12 months, misdemeanor punishable in the discretion of the court. The counties adopting this punishment were *Gaston* (Chapter 39 [HB 64] [March 4]) and *Martin* (Chapter 44 [HB 39] [March 4]).

With the addition of Bertie and Onslow to the ranks of counties punishing public drunkenness, this leaves only eight full counties (and most of a ninth) which have no act punishing public drunkenness: *Alexander, Alleghany, Bladen, Polk, Robeson, Sampson, Stokes* (except for King High School District), *Tyrrell*, and *Watauga*. It should be noted, of course, that municipalities within those counties may well have ordinances forbidding public drunkenness, and the offense of public drunkenness and disorderliness under G.S. 14-334 applies throughout the entire state.

Municipal ABC Elections

As always, there was a stream of local bills to authorize particular municipalities in dry counties to hold ABC elections. As in 1963, a bill setting up a general authorization for such municipal elections made very little progress. SB 406 would have authorized any municipality in a non-ABC county with over 2,000 population during at least two months of the year to call its own election on the establishment of ABC stores within the municipality.

Most of the local acts followed the same general pattern, though there were a number of differences of detail. Some authorize the municipal governing board to call an election on its own motion without regard to any petition, but require that this be done if a petition signed by 15 percent of the voters at the last municipal election for mayor is received; most simply require the election upon receipt of a petition; and a few merely authorize (but do not require) the governing board to call an election upon receipt of a petition.

(Continued on page 38)

Among officers of the National Asociation of County Treasurers and Finance Officers installed at the annual NACO Convention in San Diego, July 11-14, was Rowan County Auditor Wayne Simpson (far right), second vice-president. Also pictured, left to right, are NACT & FO founder Addie Reikat, Nebraska; President Eva Cook, Oregon; and first vice-president Bob Miller, New York.

1965 NACO Report

Affiliate organizations were present when the National Association of Counties held its 30th Annual Conference in San Diego, July 11-14. Represented at the Human Problems Congress were administrators, civil attorneys, engineers, information officers, park and recreation officials, planning directors, recorders and clerks, treasurers and finance officers.

Following are the North Carolina office holders in affiliated organizations of the National Association of Counties:

Eunice Ayres	Forsyth—Registrar of Deeds	President, National Association of County Recorders and Clerks
Betty June Hayes	Orange—Register of Deeds	Secretary-Treasurer, National Association of Recorders and Clerks
Duke Paris	Alamance—Register of Deeds	Board of Directors, National Association of Recorders and Clerks
R. B. Jordan	Montgomery—Board of Commissioners—Chairman	Board of Directors, National Association of Counties
Wayne C. Simpson	Rowan—County Auditor	2nd Vice-President, National Association of County Treasurers and Finance Officers
Hugh Ross	Guilford—Accountant and Director of Finance	Board of Directors, National Association of County Treasurers
C. Bryan Aycock	Wayne—Accountant	Board of Directors, National Association of County Treasurers and Finance Officers
Mrs. J. C. Spencer	Caldwell—Former Accountant	Board of Directors, National Association of County Treasurers and Finance Officers
Fred Parker	Wayne—County Attorney	Board of Directors, Association of Civil Attorneys
Lindsay Cox	Guilford—Director of Planning	Board of Directors, National Association of County Planning Directors
Robert House	Forsyth—County Manager	Board of Directors, National Association of County Administrators

National Association of County Recorder and Clerks officers for 1955-56 include two North Carolinians: President Eunice Ayers, Forsyth Register of Deeds, front left; Secretary-Treasurer Betty June Hayes, Orange Register of Deeds. Also shown are vice presidents George Y. Core, Florida, front right; and Ambroise Landry, Louisiana.

Notes on NACRC

By BETTY JUNE HAYES

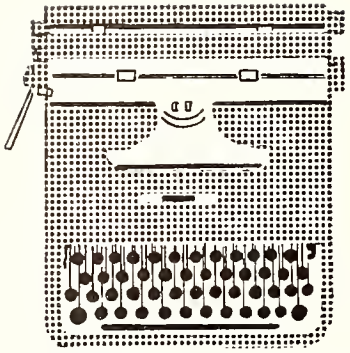
Nine North Carolinians attended the 17th Annual Conference and Work Shop meeting of the National Association of County Recorders and Clerks in San Diego, California, July 9-14. Ray Lee, Recorder of Los Angeles and President of NACRC, presided over the meeting.

The opening address, "Archival Records, Foundation of the Future", was given by Admiral A. M. Patterson, Assistant North Carolina State Archivist.

NACRC work shop sessions included such topics as: "Uniform Election Proceedures", "Clerks' Administrative Proceedures", and "Record Retention and Retrieval". A list of distinguished public officials, headed by the Vice President of the United States, Hubert Humphrey, appeared on the NACO program.

The following North Carolina Registers of Deeds were elected to offices in NACRC: Eunice Ayers, Forsyth County, President; Betty June Hayes,

(Continued on page 40)



● NOTES FROM . . . CITIES AND COUNTIES

Airports

The Federal Aviation Agency has approved a grant of $152,900 for construction of a general aviation airport at *Goldsboro* and $49,026 for an airport at *Mount Olive*. Funds in each case must be locally matched.

* * *

Operations at the *Asheville* Airport were closed October 10-18 to allow for reinforcing the runway — a $253,000 repaving job. Resurfacing of the major 6000-foot runway will open the facility to heavier aircraft, including jetliners.

* * *

Central Business District

Hickory voters killed a major downtown renovation program by defeating two bond proposals which would have provided for the purchase of downtown railroad land and eventual renovation of the area. Although voters gave a slight majority to approval of water and sewer plant expansions, they also defeated a bond issue which would have provided for a new branch fire station and new fire fighting equipment.

* * *

Education

Avery County voters approved a milestone school bond issue by a 2-1 margin with 1,923 favoring the $900,000 issue and 1,033 opposing it. With an estimated $325,000 from the state school bond issue, the county plans a consolidated high school between *Newland* and *Montezuma* which will absorb some thousand students from present *Crossnore*, *Cranberry* and Newland high schools.

* * *

College President Dr. Raymond A. Stone gave the key address at the formal opening of Sandhills Community College in *Southern Pines* early this month.

* * *

Community college officials in northwest North Carolina are busy with blueprints, conferences with architects and consultations with state educational leaders as all four try to ready physical plans for opening in the fall of 1966. Involved are *Davidson*, *Rockingham*, *Surry*, and *Wilkes* Community Colleges.

* * *

Health

One million dollars has been alotted by the North Carolina Medical Care Commission for construction of a new *Wayne* County hospital. The commission intends to grant $2 million more over the next two fiscal years, provided federal funds are available. The $3 million outlay falls $465,000 of the amount originally requested by hospital trustees.

* * *

Housing

Contracts for construction of new low-rent public housing have been awarded for projects in six North Carolina cities. *Hendersonville* will construct 150 units; *Charlotte*, 175; *Mount Airy*, 40; *Mount Guilead*, 30; and in separate projects, *Shelby* will erect 90 and 60 units and *Wilson* 24 and 72.

* * *

Belmont Commissioners have okayed a minimum housing code which calls for hiring of a building inspector. In adopting the minimum building, plumbing and electrical code, the commissioners followed an eight-point recommendation by the planning board.

* * *

Gastonia councilmen have voted to submit a workable program for community development to the Federal Housing and Home Finance Agency, opening the gates for a slum clearance project. Federal government authorities have classified 3700 of the city's 11,000 housing units substandard.

* * *

Law Enforcement

New badges and cap shields have been issued *Winston-Salem* policemen, displaying the officer's rank over a full color seal of the State of North Carolina. They replace a badge style popular over 30 years ago.

* * *

Municipal Government

W. G. Royster, veteran *Henderson* city clerk, has been elected the city's first manager at a special session of the city council. Earlier this year citizens had approved adoption of the city manager form of government by a two-to-one margin.

* * *

Parking

Fayetteville councilmen have adopted a new parking meter ordinance which revamps the city's parking system by eliminating the parcelling of time in existing meters. The only 12-minute meters to remain will be those in front of the post office; all others will operate on an hourly or two-hourly basis.

* * *

Planning and Zoning

Following two and a half years of work, research and controversy, *Durham* County's planning board has approved a subdivision control ordinance. Highlights of the ordinance include regulation of street width, street grades, block length, alleys, drainage, utility plans, and land and facilities designated for public use.

* * *

A six-member planning board has been established in *Orange* County as the first step toward enactment of zoning regulations in any part of the county.

* * *

Kernersville aldermen have voted to extend town zoning to a mile beyond the municipal limits for protection against a proposed *Forsyth* County zoning plan.

* * *

Winston - Salem aldermen have amended the city's zoning ordinance to provide for construction of town houses and "planned residential development."

Commissioners in *Roanoke Rapids* have approved entering a contract with the State Department of Conservation and Development for a two-year study of the city's planning areas. Partial financing for the study comes from a $17,000 Federal grant.

* * *

Streets and Highways

Fayetteville voters favored issuing $1.5 million in street paving bonds by a vote of 427 to 182. Although this election passed, as did a vote for $200,000 in storm sewer bonds, the voting turnout appeared dismal—only 610 of the city's registration of 15,000 managed to make their way to the polls.

* * *

Urban Renewal

Durham's massive downtown rehabilitation project has been signed and sealed. With the signature came $9.3 million in federal funds. Top priority in the project goes to construction of a traffic loop around the heart of the city. The six-year project will also include sidewalk widening, revitalization of a five point intersection, development of several malls, and renovations of a number of downtown stores.

* * *

Utilities

Begun a year ago in July, construction has been completed on a $375,000 addition to the *Goldsboro* water plant. The new wing houses four one-million gallon filter basins to supplement three older basins. Two of the new basins went into immediate operation to increase daily water output from three to five million gallons.

* * *

Mebane voters have passed a sewage bond issue with a vote of 154 to 16. The $280,000 will be used for construction of a sewage disposal plant and remodeling of the present pumping station.

* * *

Huntersville commissioners have voted to issue $300,000 in bond anticipation notes to finance the first part of work on a new water system.

* * *

Buncombe County's Metropolitan Sewerage District has the green light on its $10.1 million sewage treatment system. Construction is starting this month with completion expected in two years or less. Financing comes from a $7.7 million bond issue, $2.1 million in federal grants, and $228,000 in interest on unexpended funds during the construction period. The MSD includes four municipalities and ten sanitary districts which have been given notice by the State Stream Sanitation Committee to end pollution in the French Broad River valley.

* * *

Belmont residents, 287 of them, passed a million dollar sewer disposal bond election by a ten to one margin with only 25 voters in opposition. A $250,000 federal grant is also being sought.

* * *

Lumberton voters have okayed issuing bonds totaling $3.2 million for construction of a sewage disposal plant by a vote of 774 to 100. The city has 5,579 registered voters.

* * *

Initial bids on the expansion of *Jacksonville's* sewer system have been rejected by councilmen. The lowest bid was $65,000 more than the city has available for the project.

* * *

Raleigh's new eight million-gallon water reservoir, a huge drum shaped structure, is undergoing a period of testing. During the first two weeks of October the tank was filled with highly-chlorinated water necessary for sterilization. The water was then drained and the tank refilled. If tests prove that the water is then acceptable, the tank will become a storage receptacle in the city's water supply, to be fed by four impounding reservoirs. Eventually the tank would become part of the new Neuse River water supply of project. □

Traffic Cases . . .

(Continued from page 7)

tricts, three to four judges, there will be opprtunity for specialization among the judges by subject matter. The Chief District Judge (who will be appointed by the Chief Justice of the Supreme Court) is required by statute, to the maximum extent practicable, to assign himself and the other judges of the district so as to permit specialization. It is thus possible — even probable, in the larger districts — that traffic cases, for example, will be handled by a judge who specializes in this type of case, and who, in all likelihood, will receive special training in this field. In the rural, sparsely-populated, two-judge districts, specialization will not be possible, but the coming of a full-time, career-motivated judge should nevertheless be a big improvement over the present system.

Prosecutors in the district courts will also be full-time, paid $11,000 per year, and forbidden to pursue any other occupation. Furthermore, since the Constitution is silent as to how prosecutors should come into office, they will be *appointed*. The legislature felt that the prosecutor should be freed of fears of what a record as a vigorous prosecutor would do to his chances for re-election. His appointment will be made by the senior regular superior court judge of his district, an official whose every professional inclination will be to obtain the most qualified man available for the job.

Under the district court system all judges, prosecutors, clerks, and other court employees will be paid by the State. Compensation will be by salary — not fees — and salaries will be uniform. The opportunity for undue influence which sometimes arises from payment of salaries locally will be eliminated. Furthermore, the costs of court will be uniform throughout the State. For example, a misdemeanor conviction — any misdemeanor — in District Court (in any county of the State) will cost $15. This is a standard charge. The fine, of course, if any, will remain subject to the judge's discretion, but not the cost of court. Most of this $15 will go to the State to support the Judicial Department, but a fixed portion will be retained locally to be used exclusively to maintain the courtroom and clerk's office, and to support law enforcement activities.

Under the 1962 North Carolina Constitution, the court of the Justice of the Peace is abolished outright. Since a minor judicial official is still needed at the lowest level, however, to issue warrants, to conduct probable cause hearings and set bail, and to dispose of the most petty civil and criminal matters, an official known as the Magistrate was created. The Magistrate, unlike the unsupervised Justice of the Peace, is an officer of the District Court, *appointed* by the resident superior court judge, and under the direct administrative control of the Chief District Judge. In addition to issuing warrants, he will be allowed to accept guilty pleas in minor ($50 or 30-day) criminal cases, including some but not all traffic offenses, and to try, on specific assignment, small claims not

(Continued on page 40)

Criminal Law . . .

(Continued from page 34)

Another respect in which the acts tended to differ was with respect to division of profits. Most give some percentage of the profits to the general fund of the county, though a few exclude the county. The general law as to county ABC stores calls for the county unit to spend between five and ten percent of the profits on law enforcement, and provides for the hiring of county ABC officers. A number of the local acts substitute a fixed percentage contribution to the municipality for use in its law enforcement program for the general provision. Others give a percentage of the net profits to the municipalities for law enforcement, but it is not always clear whether this is in addition to the hiring of town ABC officers or in lieu of it.

The listing of municipal ABC election acts below is by county. Special or unusual features not found in the average act are noted in several instances. Unless noted otherwise, the votes authorized below have already been held and ABC stores were approved.

Alexander: Taylorsville. Chapter 549 (SB 355) (May 14).

Davidson: Lexington. Chapter 653 (SB 304) (May 21). Lexington voters turned down ABC stores.

Duplin: any incorporated municipality within county. Chapter 1004 (SB 567) (eff. August 1). Duplin recently voted against ABC stores in a county election, but separate elections have been called for November 9 under the provision of this act in Faison, Kenansville, and Warsaw.

Hertford: Ahoskie, Harrelsville, Murfreesboro, and Winton were authorized by four separate acts to hold ABC elections, but the need for these acts faded when a county ABC election established county stores. For this reason, the municipal acts are not listed here.

Iredell: Mooresville (Chapter 7 [HB 23] [February 25]) and Statesville (Chapter 534 [HB 814] [May 13]). Mooresville has voted for ABC stores, but as of this writing Statesville has not set any date for an election.

Moore: Carthage. Chapter 962 (HB 820) (June 11). Provides that the Moore County ABC Board must open a county store within Carthage if the election is in favor of ABC stores. (Until the recent favorable election under this act, the Moore County board operated ABC stores in Pinehurst and Southern Pines only under a local act that has been in effect since 1935.)

Randolph: Asheboro (Chapter 167 [SB 140] [April 5]) and Randleman (Chapter 168 [SB 14] [April 5]). The Randleman act placed on the same ballot a question whether to authorize the off-premises sale of beer and wine. Randleman voted for beer and wine as well as ABC stores, but Asheboro voted against ABC stores and will remain totally dry.

Richmond: Rockingham. Chapter 199 (HB 284) (April 8).

Rockingham: Reidsville. Chapter 650 (HB 879) (eff. July 1). Provides that if the Rockingham county commissioners call a county ABC election and a majority of Reidsville voters vote against ABC stores, then there may be no further election under the act for three years. Provides further that if county stores are voted in before any city election is held, then no city ABC election shall be held.

A county election was held in Rockingham County before any Reidsville election and the majority of the voters were against establishing ABC stores. In the voting precincts embracing Reidsville, there was a slight majority against ABC stores. It was impossible, however, to tell how the majority of Reidsville voters voted as the precinct lines were not the same as the city limits. The Attorney General thus ruled that Reidsville was entitled to hold its separate election, which is scheduled for October 23.

Stanly: Albemarle (Chapter 721 [SB 294] [May 28]) and Norwood (Chapter 722 [SB 322] [May 28]), as amended by Chapter 1122 [SB 593] [June 16]). The acts for both municipalities provided for their ABC officers to have enforcement jurisdiction throughout the county. The voters of both Albemarle and Norwood, however, voted against ABC stores.

Surry: Elkin. Chapter 806 (HB 961) (June 3). In the election held, the vote was against ABC stores.

Watauga: Blowing Rock. Chapter 745 (SB 356) (June 1). Ten percent of the net profits are allocated to the *Caldwell* County Board of Education.

Wilkes: North Wilkesboro (Chapter 412 [SB 259] [May 5]) and Wilkesboro (Chapter 413 [SB 260] [May 5]).

Distribution of ABC Profits

There was a much larger number of local acts this session than usual relating to the distribution of ABC profits by both county and municipal ABC systems. Persons interested in a particular local act may use the reference below to check the changes made; only provisions that have a bearing on law enforcement will be mentioned in this listing.

Anson: Wadesboro. Chapter 270 (SB 128) (April 16). Amends 1963 Wadesboro ABC act to make a slight change in the percentage of profits to be spent, among other things, on law enforcement. Gives persons appointed by ABC board as law enforcement officers all powers which may be conferred by G.S. 18-45(15), which may be exercised throughout the entire county.

Burke: Morganton. Chapter 196 (HB 210) (April 8).

Cumberland County. Chapter 892 (HB 960) (June 9). Authorizes county commissioners to appropriate $25,000 per year from ABC net profits for prevention of alcoholism and treatment and rehabilitation of emotional disorders and mentally ill persons.

Dare County. Chapter 201 (HB 386) (eff. July 1).

Granville County . Chapter 91 (HB 53) (March 23).

Harnett: Dunn. Chapter 728 (SB 429) (May 28).

Hertford County. Chapter 895 (HB 1039) (June 9). Sets aside ten percent of profits for law enforcement instead of the discretionary amount between five and ten percent in G.S. 18-45(15). Allocates five percent to alcoholic education and rehabilitation.

Johnston County. Chapter 512 (HB 448) (May 12).

Nash County. Chapter 1086 (SB 586) (June 16). Modifies G.S. 18-45(15) to authorize expenditure of from five to 20 percent of ABC profits for law enforcement.

Person County. Chapter 197 (HB 228) (April 8; eff. from January 1, 1964).

Richmond: Hamlet. Chapter 535 (HB 815) (May 13).

Rockingham County . Chapter 971 (HB 1049) (June 11). Modifies G.S. 18-57 as it applies to distribution of ABC profits within Rockingham County. This act will have not immediate application, however, as the tally went against county ABC stores at the recent election.

Union: Monroe. Chapter 165 (SB 105) (April 5). Modifies slightly the percentage of profits to be spent on law enforcement and alcohol education and rehabilitation.

Vance: Henderson. Chapter 865 (HB 885) (June 8; eff. in part from July 1, 1964).

Wake County. Chapter 428 (SB 306) (May 6).

Washington County. Chapter 93 (HB 142) (March 23).

Other Local ABC Acts

As noted above, the ABC act for the Town of Randleman also included an issue relating to sale of beer and wine. In addition two separate local acts touched on beer and beer-wine elections.

G.S. 18-127 authorizes towns with a population of 1000 or more at the last census located in counties that have voted against either the sale of beer or wine or both to hold a town election on the same subject. G.S. 18-127.1 extends this authorization to towns of 200 or more having an organized municipal police force so far as voting on the sale of 3.2 percent beer, but a large number of counties — including Brunswick and Watauga — are exempted from this section. G.S. 18-127.2 extends the beer-wine election provisions of G.S. 18-127 to municipalities having a seasonal population for at least a period of six weeks — but a number of counties, including Watauga, are exempted from the provisions of this section.

Chapter 486 (HB 486) (May 11) modifies G.S. 18-127 to permit the Town of Shallotte, *Brunswick* County, to hold an election on the off-premises sale of *beer* notwithstanding the minimum population limitation. In the election held, the majority voted in favor of the sale of beer.

Chapter 874 (SB 357) (June 9) modifies G.S. 18-127.2 to apply to the Town of Blowing Rock despite the exemption of *Watauga* County, but placed the following limitations on the sale of beer and wine: on-premises sales may be made by Grade A hotels and restaurants only; off-premises sales may be only of unrefrigerated beer and wine. The act authorized the beer-wine election to be held on the same day and the question to be placed on the same ballot as the Blowing Rock ABC election mentioned above. In the election, the vote was in favor of the sale of beer and wine.

One other local act deserving brief mention is Chapter 98 (HB 186) (March 23). It authorized the county commissioners in *Onslow* and the county ABC board to lease or transfer between themselves property and property rights relating to sale and distribution of alcoholic beverages.

Reorganization of State Board of Alcoholic Control

See STATE GOVERNMENT in the Setember 1965 issue of *Popular Government*.

Other 1965 Acts

Chapter 326 (HB 441) (April 27) adds G.S. 18-132.1 to require anyone applying to the State Board of Alcoholic Control for a permit to manufacture or sell beer or wine to pay an application fee. The fee is $25 for new applications, except that if a combination beer-wine permit is being applied for the total fee is still only $25. Where a new permit is required because there is a new manager, the fee is ten dollars unless the new manager has held a permit as manager elsewhere within the past 30 days.

The 1965 General Assembly listened to complaints by beer wholesalers who said that the highly-competitive breweries were putting pressure on them to short-cut some of the laws and regulations placing controls on wholesalers in their promotion and distribution of various brands of beer. Chapter 1191 (HB 880) (June 17) was the General Assembly's answer. It adds G.S. 18-69.2 to make it unlawful for a brewery or any of its representatives either (1) to put pressure on wholesalers to violate liquor laws or regulations or (2) to cancel or terminate any franchise or agreement to supply the wholesaler with beer unfairly, without due regard to the equities, or without just cause or provocation. In addition to the criminal penalty and the automatic license revocation that accompanies it, the Superior Court is given the power to enjoin the cancellation or termination of any franchise or agreement. The act also gives the State Board of Alcoholic Control the power to suspend or revoke the license of a brewery for violation of any injunctive provision.

For a discussion of Chapter 506 (SB 326) (May 12), rewriting G.S. 18-124(f) as to elections on the sale of wine and beer, see the article THE CITIES AND THE 1965 GENERAL ASSEMBLY in the September 1965 issue of *Popular Government*.

Bills That Failed

In addition to SB 406 on municipal ABC elections already discussed, the following bills dealing with the subject of the liquor laws failed to pass in 1965:

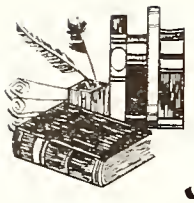
SB 99: which would have authorized issuance of a permit by local ABC boards to a person to buy, transport, and possess up to five gallons of alcoholic beverages.

SB 261: which would have authorized the State Board of Alcoholic Control to license manufacture of distilled spirits in North Carolina.

SB 559: would have amended G.S. 18-60 and -90.1 to clarify the law concerning sale or distribution of various types of intoxicating liquor to minors.

HB 887: would have amended G.S. 18-45(15) to add *research* into the effects of the use of alcoholic beverages to the present authorization to local ABC boards to spend up to five percent of the profits on education as to effects of alcohol and rehabilitation of alcoholics.

HB 1019: would have amended G.S. 18-3 to permit advertising of intoxicating liquors containing up to five percent alcohol by weight. The current law applies to such liquors (which would only be beer and other malt beverages) which contain no more than 3.2 percent alcohol by weight. □



Book Reviews

THE IDEAL CITY. Edited by Robert Kevin Brown. Atlanta, Georgia: Bureau of Business and Economic Research, School of Business Administration, Georgia State College, and Real Estate Education Foundation, Inc., 1964. 120 pp. $1.95.

The title of this book has very little to do with its contents. Basically it is a collection of essays by eminent writers on various aspects of contemporary urban life which appeared originally in the *Atlanta Economic Review*. The book includes short pieces by Victor Gruen on the problems of downtown, by Tracy Augur on the future of the metropolitan area, by Professor Robert Garren of Georgia State College on human ecology and urban activity systems, and by other urban-oriented professional and academic specialists, each with a message of his own. That taken individually or as a whole the papers do not add up to "the ideal city" does not detract from the value of the book as an interesting collection of ideas on what is wrong with our cities and what needs to be done to make them more habitable.

Professor Brown has included two of his own papers in the book. One is an overview of "the urban problem," and the other deals with the importance of urban design. Neither of these is up to the quality of the other essays presented. In the first, he exhorts the urban real estate specialist to higher standards of professional performance (always a laudable thing to do), but he builds his arguments by blaming the professional city planners in very fuzzy language for holding attitudes that most of them would readily disavow if given the chance. His concept of planning as a professional activity seems to rest on the rather perverted and inaccurately stated views of Jane Jacobs — a sensationalist young lady of Greenwich Village who climbed to dizzying heights of notoriety several years ago by charging in a hefty book that "planners are ruining our cities." With the best of intentions she misled many people, and it is likely the Professor Brown's opening comments will do likewise.

His second paper on the importance of urban design is no more or less than an impassioned plea for the inclusion of design training in the curricula of the graduate planning schools. Since all of the respectable planning schools did this a long time ago, the issue is no longer a live one and its inclusion in this book adds little or nothing to it.—R.E.S.

MAN'S STRUGGLE FOR SHELTER IN AN URBANIZING WORLD. By Charles Abrams. Cambridge, Massachusetts: The M.I.T. Press, 1964. 307 pp. $7.95.

One of the world's most outstanding authorities in the field of housing describes the incredibly difficult problems involved in furnishing decent, safe, and sanitary housing for the peoples of the world. Concentrating on the underdeveloped countreis, he paints a dismal picture of the prospects of achieving acceptable solutions in a time of population explosion, urbanization, rising expectations, and all the rest. — P.P.G.

URBAN LAND USE PLANNING. By F. Stuart Chapin, Jr. Urbana, Ill.: University of Illinois Press, 1965. 487 p. $7.95.

This second edition of Professor Chapin's first volume of the same title, published in 1957, is likely to become one of the standard reference books in the libraries of most city planners. It will be of little interest to the general reader concerned with urban problems, but of immense value to the city planner concerned with the methods and techniques of preparing a land use plan. It is a highly technical book, and to read it through from cover to cover will be a labor of love, even for planners. One can surmise that its principle value will be as a reference on particular aspects of land use planning.

Whether or not intended to be so used, this edition, like the first, has its primary usefulness as a procedural guide to the preparation of the major part of the city plan. It brings together the viewpoints of the sociologist and the economist in an attempt to establish a theoretical base for identifying what should be developed and where in an urban area, and it presents and evaluates a wide variety of statistical techniques for analyzing and projecting space requirements for residential, commercial, industrial and public service components of the land use plan. It is disappointing that the author is content merely to acknowledge and describe the relationship between the land use plan and the transportation plan, although a new chapter on urban "activity systems" will be of considerable interest to many readers. Among other new materials, there is a chapter on recent developments in planning theory, and a section on the use of models in planning studies. This edition also includes discussion of newer and more elaborate methods of studying the urban economy.

Even if it were not the only work of its kind available it would still serve as "the" reference book for the working planner.—R.E.S.

Notes on NACRC

(Continued from page 35)

Orange County, Secretary-Treasurer; Duke Paris, Alamance County, Director; and Lemuel Johnson, Chatham County, Honorary Director.

Those from North Carolina who attended were: Registers of Deeds Catherine Griffin, Nash County; D.G. Kinlaw, Robeson County; Horace Robinson, Vance County; Mark Stewart, Guilford County; Miss Hayes, and Mrs. Ayers.

Also present were Shelton Jordan, Clerk of Court, Wayne County; and Admiral and Mrs. Patterson.

Traffic Cases . . .

(Continued from page 37)

over $300 in value. He will receive a *salary* ($1200 to $6000, depending on the work load) paid by the State.

Traffic Offenses

With respect to the handling of traffic offenses, North Carolina's new system may, in some respects, be unique. While traffic offenses, like other misdemeanors, will be within the exclusive jurisdiction of the district court, in some cases they will be handled somewhat differently from other misdemeanors. Control over *convictions* and *sentences* in all traffic cases will be vested in district

judges; magistrates will not be allowed to exercise discretion over conviction or sentence in any traffic case. All contested traffic cases will be heard by the district judge. The Chief District Judges, once a year, on call of the Chief Justice, will meet to formulate a list of traffic offenses for which magistrates will be allowed to accept written appearances, waivers of trial and pleas of guilty. For each offense on the list, the amount of the fine (or at least the upper and lower limits of the fine) will also be specified. It is not contemplated that serious offenses will ever be placed on the list, although of necessity some of the less hazardous moving violations will be listed. It is also considered unlikely that offenses for which revocation or suspension of an operator's license is mandatory — and there are quite a few of these in North Carolina — will be placed on the list. The two major categories of listed offenses are likely to be equipment violations and minor speeding infractions. Of course the Conference of Chief District Judges will be free to place any traffic misdemeanor on the list, but in view of the present climate in North Carolina which is strongly favorable to highway safety measures, this is considered highly unlikely. If this should happen, the legislature would be free, of course, to prescribe a list of offenses, such as that set out in the Model Traffic Court Act, for which court appearance would be mandatory.

The big advantage of this arrangement for the processing of traffic cases is that the discretion of the JP-type lowest judicial officer is removed from the traffic picture. The Magistrate is in effect a "violations bureau" and nothing more, in traffic matters. All authority over traffic offenses is centralized in a small group of 30 full-time, career-minded, highly-trained judges. With the authority, of course, goes the responsibility. If the system fails to work, or works less well than it should, it will be easy to locate the trouble and apply the cure.

A traffic offender who desires to plead guilty to an offense on the waiver list has but to sign a written-appearance, waiver-of-trial and plea-of-guilty form, and leave the amount of the fine, plus costs ($15), with the Magistrate. The Uniform Traffic Ticket, already in use throughout most of the State, will be suitable, with some slight modification, for this purpose. If the offense charged is not on the waiver list, or if the motorist wants to plead not guilty, he will (if the Magistrate finds probable cause) post bail for his appearance in district court. In many counties, court will be held daily or almost daily, and even in the most rural areas, will be held at least once a week. Bail will be set in an amount designed to insure the appearance of the offender; if he does not appear, his bail bond will be forfeited, and he will be subject to arrest and trial in the usual manner. Uniform bail schedules will be within the authority of the Conference of Chief District Judges. (The whole subject of bail, is, of course, undergoing great ferment, and perhaps constitutional challenge, so that procedures in this area are necessarily subject to adjustment as caselaw developments require.)

The new system will bring about a change in present practices with respect to the issuance of warrants. Currently in many parts of the State, especially the larger cities, a practice of warrant issuance by police desk officers has grown up. This placing of a judicial function in a law enforcement official is admittedly a bad practice, if not of shaky constitutionality. The new law provides that warrants will be issued by Magistrates and clerks of court only, thus completely separating this important function from the hands of the police. This means, of course, that Magistrates will have to be located at various places in the county in addition to the county seat, for the convenience of law enforcement personnel, and that Magistrates (and perhaps some deputy clerks) will have to work irregular hours (or at least be available) for the same reason, but this should present little difficulty since such working conditions will be known in advance of appointment.

Nonjudicial Affairs

Finally, and of great importance, the nonjudicial affairs of the entire court system are placed under a statewide Administrative Officer of the Courts, to be appointed by, and responsible to, the Chief Justice of the Supreme Court. This office is given broad authority under the new law to administer the affairs of the entire General Court of Justice in a business-like manner, freeing the judges of all nonjudicial housekeeping. In particular, the Administrator will have power to prescribe uniform record-keeping and business methods for the office of clerk of court and for the Magistrate, to approve the adequacy of courtroom facilities at outlying seats of court (other than county seats), to authorize additional Magistrates and per-diem prosecutors when and where needed, to prepare the budget for the Judicial Department, to collect statistics, recommend assignments of judges, and make recommendations for the improvement of the administration of justice generally. On 1 July 1965 the Chief Justice of the Supreme Court appointed a superior court judge (J. Frank Huskins) to this office, and the Judge has already plunged into the big task of planning for a radically new judicial set-up in all 100 counties of the State. The Administrator's salary is fixed at $19,500, plus very liberal noncontributory retirement benefits, thus reflecting the legislative intent that this office should carry the respect and prestige equal to its assigned responsibilities.

Gradual Change

North Carolina is shifting over to a new lower court system on a gradual, five-year, three-phase schedule. Gradual implementation is a constitutional requirement, and in view of the tremendous adjustments to be made in switching from a 19th century to a 20th century court system, it is undoubtedly a good thing. Since judges must be elected, the schedule of implementation is coordinated with the regular election machinery. Twenty-two counties will elect district court judges and enter into the new system in 1966; about 60 counties will do so in 1968, and the few remaining counties will come under the district court system in 1970. While total 100-county implementation is possible in 1968, it is considered likely that at least a few counties will choose to hold out, perhaps for political reasons if no other, so that total implementation is unlikely before 1970. This lengthy transitional period gives a valuable opportunity to correct, on a small scale, oversights, or to make adjustments in the overall plan. In a major reorganization such as this, undoubtedly some minor modifications will be required from time to time. □

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