IN THIS ISSUE



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# POPULAR GOVERNMENT

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# Fixing Fair Utility Rates


By R. O. SELF
Secretary, State Utilities Commission

. . . as told to M. R. Alexander
of the Staff of the Institute of Government


"Electric rates slashed 20%," a bold headline almost hits you in the eye, or "Telephone tolls ordered cut." The consumer, struggling in a day of talk of fabulous utility profits and advancing prices to make both ends meet, reads and beams; the stockholder, reeling from the blows of the depression and hopeful of making up for lost time and profits, only groans. The newspaper headlines speak a language that each alike understands. But how many of them take the trouble to look beyond the result to the numerous factors which determine rates, the various and often conflicting interests which are involved, and the knotty problem of balancing the welfare of investor, consumer, community, and general public which rate regulation gives Commission and Court? Let's take a look behind the scenes at some of the chief broad principles; it really isn't half so complicated as it sounds, and it is one of the chief subjects of great public importance today, this determining clearly of the true relationship between the public utility and the community it serves.

**The conclusion in May, 1936, after a 16-months legal fight, of the Southern Bell Telephone and Telegraph case, makes this discussion of the general principles involved in utility valuation and rate making particularly timely. It is estimated that the compromise rates agreed upon by the Telephone Company and the Utilities Commission will save 78,000 North Carolina customers around $250,000 annually. Nor does the adjustment of rates necessarily mean a loss to the company; at least two North Carolina utilities ordered to reduce rates in 1935 reported increased consumption, revenue, and profits as a result of the lower charges.**

The authority for the regulation of Public Utilities lies in the fact (1) that they may require rights of eminent domain for the development of natural resources, rights of way over, or the acquisition of private property; (2) that they may require franchise rights for operation without competition, and (3) that their products or services enter so fully into the public life that the mutuality of interest is inseparable. The reason for regulation follows that, having acquired certain monopolistic rights and privileges, the utilities owe a duty to the public which includes adequate and proper service and reasonable rates.

**"A Reasonable Rate—"**

The determination of a "reasonable rate," of course, depends, first, upon the *percentage of income* allowed on the investment and, secondly, on the *valuation* of the property of the utility. The former, of course, may be definitely and arbitrarily set according to prevailing opinion and investment returns, but the regulatory commissions are still laboring after 40 years for a simple rule to fix a fair valuation by which to measure reasonable rates to the consumer and fair compensation to the utility and stockholder.

One of the difficulties lies in the fact that we have one valuation for this purpose and another for that. Thus, you may value your corner lot at $7,500 to the tax lister and at $10,000 to a prospective purchaser. Just so, in the utility field there are valuations to fix a price or basis for (1) taxes, (2) purchase or sale, (3) issue of securities, and (4) rate base, and each may follow a different method to a different result. Valuations for taxation purposes are usually made only in sufficient detail to fulfill the requirements of the law. The next two must be more comprehensive, and a valuation to fix a rate base must be made in the minutest detail of all. To the public this is the most important of all valuations and is, therefore, subjected to a thorough analysis by regulatory bodies.

**—"And a Fair Return"**

The Supreme Court of the United States has held that the investor is entitled to a "fair return on the *reasonable value* of the property at the *time it is being used* for the public." As the last clause implies, the controlling factor is not the historic cost or estimated original cost (which are practically obsolete to-


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day) but the *cost of reproduction*. The yardstick is not the dollar but what the dollar will buy, as anyone can vouch for who recalls the way in which prices have changed and the value of the dollar has fluctuated over a period of years. A plant which cost $1,000,000 in 1932 might cost $2,000,000 today, shrinking a 6% return on the 1932 figure to 3% when judged by what it will buy in 1936.

Three methods have been used in determining reproduction cost:

1. Reproduction cost new based on:
   a. Current price as of the date of the valuation.
   b. Average prices prevailing over a period of years prior to the date of the valuation.
2. Reproduction cost new less accrued depreciation.

The term, *reproduction cost new*, refers to a valuation based on the estimated cost of reproducing the property new on the basis of prices current at the time of the valuation. This involves a translation of values from one year to another, frequently employing the use of price indices, as the wholesale commodity index of the U. S. Bureau of Labor. To illustrate: Suppose 1913 is taken as the base year and assigned an average index of 100, but in 1923 it is found that it takes $1.54 on the average to buy what $1.00 would buy in 1913. The index for 1923 becomes 154, and a utility costing $100,000 in 1913 appreciates to $154,000.

**Translating Values**

This method has been recognized by the courts and has been used by numerous commissions, but given varying weight. Our own Commission, in the important Southern Bell Telephone & Telegraph case, alluded to the Labor Index as "the best measure of this decrease in the general level of prices" and held that "*these figures may properly be considered for their bearing on a relationship between cost and present value.*" The Maryland Commission, on the other hand, carried the rule to an extreme, relying largely upon 17 price indices to establish the present value of a utility, and using the company's book value without making a special inventory appraisal.

The United States Supreme Court reversed the Maryland case in an opinion which best states the objections to such exclusive use of the pricing method. "An obvious objection," the decision reads, "is that the indices which are its basis were not prepared as an aid to the appraisal of the property. They were intended merely as price trends . . . One index used by the Commission and given weight of 3—that of the I. C. C.—bears a notation that it should not be used 'in the determination of unit reproduction costs.' . . . The wide variation of results of the employment of different indices . . . impugns their accuracy. . . .

"To an extent," the Court held, "value must be a matter of sound judgment involving fact data. To substitute for such factors as historical cost and cost of reproduction a 'translator' of dollar values obtained by the use of price trend indices, serves only to confuse the problem and to increase its difficulty, and may well lead to results anything but accurate and fair."

The determination of reproduction cost new, then, is not to be reduced to a simple mathematical proposition by taking the original cost and applying a magic price index to secure—presto, present value! Price indexes may be considered along with other factors, we gather from the law of the land as laid down by the Supreme Court, but not to the point of dispensing with the other factors and particularly with a hard and accurate appraisal.

*Roanoke Rapids officials recently moved into the new Municipal Building pictured above, which was constructed under the P.W.A. at a total cost of $34,000, and which gives the Halifax municipality one of the most complete and attractive city halls of any town in the State of comparable size. The new Municipal Building, which is of Georgian Colonial architecture and which is located on the main business street next to the also new Post Office, provides space not only for the city offices, court, and usual functions, but also for the police and fire departments.*

**Complete New Appraisal**

It is interesting to note in this connection that one of the first public acts of the present Utilities Commission was to require all utilities immediately to inventory and appraise their properties. This was in January, 1934, and the inventories were filed over a period of one and a half years. The cost has been estimated at around a half million dollars, but it is generally agreed that the resultant adjustment of rates on a fair basis to consumer and utility has more than justified the expenditure.

The method for appraising the property of a public utility for the purpose of establishing a rate base is a complicated, technical, and detailed matter, not within the scope of a short article on the broad principles underlying utility valuation and rate regulation. However, it may be of general interest to state that this involves taking an estimated amount for all lands used, based on the current market value of adjoining lands; adding the estimated cost of reproducing the structural property, at approximately current prices; deducting an estimated allowance for depreciation; and adding an estimated allowance for intangibles.

When the "fair value" is thus determined, the commission and the utility are in a position to set a rate schedule which will provide the latter with:

1. Cost of operation, including taxes and debt service.

2. Depreciation allowance sufficient to replace all items of depreciable property as they are taken out of service.

3. Reasonable return on the rate base thus determined.

It can not be said that the present method required by the law of the land is entirely satisfactory. Some time there may be evolved a formula for "rate base" computation that will meet the demand for equity and simplicity, and it is safe to assume that, if and when found, it will be applauded by both the Commissions and Courts. Until it has been disclosed, however, we must continue to find the "fair value" for the "rate base" by the method which has been set out above.

*Entrance to the famous Carolina Hotel in Pinehurst.*

# Beauty, Charm and Efficiency in Pinehurst

PATCH of green and charm on winter's map, Pinehurst is known far and wide as one of the State's show places and the nation's most popular winter resorts, but it is no less distinctive for its unique governmental organization. A community with a permanent population of 600 rising to 3,500 at the peak of the season, having a property valuation in excess of $3,000,000, Pinehurst provides streets, sidewalks, sewers, parks, lights, water, police and fire protection, and other governmental services not customarily expected outside a city. Yet Pinehurst remains a village, having stoutly resisted every suggestion to incorporate as a municipality; its affairs remain in charge of a village council, and measured charges for governmental services, provided for in the property deeds, take the place of taxes.

The charges are low, too, as low, in fact, as the service is high or the organization unique. But to understand the present, it is necessary to know something of the background out of which this spot of charm and beauty flowered, of its founder, and of its development. It is necessary to go back to a certain spring day in 1895, when James W. Tufts of Boston, with a heritage of village organization to his back, purchased approximately 6,000 acres of land in Moore County and drove a stake in the ground which was to be the center of the town he planned to make.

This was to be, in his words, "a place for men and women to flee from cold, weariness or worry, to spend the time by resting in the invigorating air and sunshine, or to pass the time with outdoor activity." The difference between the development of Pinehurst and most resorts has been that in others the principal purpose is frequently the sale of real estate. In this case, however, Mr. Tufts' main principle seems to have been the ideal quoted above; apparently he wanted to remain the owner of the land, and not until 1911 was there a real estate agent in the community. The demand for the purchase of land grew, however, and the first plot was sold in 1905. At present there are about 300 property owners, including residences and stores.

During the early development of Pinehurst, Mr. Tufts maintained his own water and sewer system, a light and power plant, and police force of one. This man was paid by Mr. Tufts but was also deputized for county duty.

It was felt that the property owner should pay a certain percentage of the cost of utility maintenance and services which are borne by the municipality in other communities. In the first deeds a fixed amount was set; at present the deed reads, "the party covenants and agrees to pay, annually, a sum not to exceed one percent of the taxable value of the premises as fixed from time to time by the constituted authorities for County and State taxation, for the maintenance and care of the roads and sidewalks, fire protection, police and such other expenses as would be properly chargeable to a municipality until such time as said Pinehurst shall become a regularly incorporated village, town or city." Acting in an advisory capacity in the assessment are ten freeholders who compose a village council.

*Pinehurst's modern water works and filtration plant.*

There are many restrictions in the property deed: the party must conform to restrictions on what the building is to be used for, must not "erect or maintain any barn, stable, store, shop, factory, hennery, piggery, sanitarium, public garage, boarding house . . . or any mercantile business of any description." The purpose behind these definite restrictions is to retain a strictly residential atmosphere.

*Court and community meetings are held in the handsome Community Building, which also houses the police and fire departments.*

The third generation of the Tufts family is now at the head of the Pinehurst organization. Several times since the sale of property was started here, the Tufts' have felt the urge to incorporate the town. However, the winter residents, who own the majority of the property in actual value, have strongly opposed the idea. Their objection lies in the fact that they want a word in the government, and not being residents and voters of North Carolina, they would not be entitled to a vote.

Since Pinehurst started, no special legislation, which would seem inevitable in a resort like Pinehurst, has ever been necessary. County laws, in force commonly in all towns

in Moore County, have been suitable to Pinehurst.

A recent study has been made of the comparative cost of owning property in seven different winter resorts fundamentally similar to Pinehurst. This showed that, whereas the light rate in Pinehurst is higher than the rate in all but two of the other resorts studied, the charge for governmental services is so much lower in Pinehurst that property owners in Pinehurst pay less in the way of taxes and charges for water and light than any other of the resorts listed. The figures given below are based on a study of real estate having an actual value of $20,000, occupied for six months during the winter and using 10,000 cubic feet of water, 100 kwh. of light and 350 kwh. of power per month:

| Place | Tax | Water | Electric | Total |
|---|---|---|---|---|
| Pinehurst | $262 | $38.00 | $126.00 | $426.00 |
| Resort A | 546 | 25.00 | 162.00 | 733.00 |
| Resort B | 302 | 35.50 | 142.00 | 479.50 |
| Resort C | 326 | 34.50 | 120.00 | 480.50 |
| Resort D | 560 | 24.00 | 79.50 | 663.50 |
| Resort E | 430 | 23.00 | 75.60 | 528.60 |
| Resort F | 468 | 34.00 | 61.50 | 563.50 |
| Resort G | 548 | 54.00 | 93.90 | 695.90 |

# HERE AND THERE

## —With Progressive Officials

The Florida Association of Tax Assessors has passed a resolution to seek coöperation with assessors in other states in exchanging information about intangible personal property of wealthy nomadic Americans. They offer to furnish taxing officials any "reasonable information" about Floridians who seek exemptions by claiming Florida citizenship. Along the same line is Detroit's action in sending a member of the assessor's staff to Washington to study records of the Securities and Exchange Commission for information on the stock holdings of Detroit corporations and wealthy individuals.

* * *

An amendment to the Detroit traffic ordinance permits police to "ticket" illegally parked cars in the absence of their owners, saving a great deal of time and permitting one policeman to handle the parking for a much larger area. A question has been raised as to the constitutionality of the new practice, and plans are being made to bring a test case.

* * *

Whitesboro, Texas, invests the city's cash surplus in United States Government "baby bonds" rather than to allow it to lie idle on deposit in banks.

* * *

Traffic can be controlled and accidents minimized, is the assertion of officials of Palo Alto, Cal., which has just been awarded first place in a state-wide safety contest, and the way to do it is to clamp down on speeders and eliminate "tag-fixing." The city's record, before and after "clamping down," would seem to speak for itself: 1933—four traffic deaths, 22 serious injuries, and 1,075 arrests for speeding; 1935—one death, three serious injuries, and 5,219 arrests for speeding.

* * *

The State of Texas has, by constitutional amendment, abolished the fee system as a method of compensation for all district officers in the State and for all county officers in counties with 20,000 or more population. In counties with smaller populations the governing organ of the county, the commissioners' court, is given the power to determine whether county officials will be compensated on a fee or salary basis.

* * *

New York City has declared war on false alarms with their attendant danger and waste of money. Officials have stamped this form of moral pervert as a "dangerous criminal," and placards have been put up throughout the city, including each of the 5,000 fire alarm boxes, bearing the warning that the punishment is a fine of up to $500 and a jail sentence of up to one year.

* * *

It is not likely that the officials of Hamtramck will overspend or exceed their budget allotments. A charter amendment, approved recently, makes the official personally responsible for such overdrafts, and provides that he may be removed from office by action of any citizen.

* * *

"Driver's license restored on condition Defendant shall install a speed governor which will prevent his car from running faster than 40 miles an hour." The order of the New Jersey motor vehicle commissioner was promptly accepted, and what is believed to be the first instance of mandatory installation of a governor on the car of a chronic speeder was written into the books. There is no law covering the situation, but the driver having agreed to the installation the issue is not expected to come before the courts. All of which may suggest to the courts a new use for the old conditional sentence device—and perhaps a more effective means for curbing speed and the accidents it causes.

* * *

A small Texas city cares, to some extent, for its own unemployed by providing a small area of land for gardening. The unemployed are given an opportunity to work this land and thus provide for the production, in part, of their own food. The same city also works with the federal farm bureau in the rehabilitation of farms. Many families migrating into the city from farms have been returned to their homes through this means.

* * *

A new quarterly tax collection plan has been put into operation in Norfolk for 1936, calling for four equal payments on March 31, June 30, September 30, and December 5. If any installment is not paid on the due date, a 4% flat penalty is added to the amount for that quarter and 6% interest per annum charged thereafter until that quarter is paid. Failure to pay one installment in no way affects payments for subsequent quarters; each installment stands on its own bottom. The new plan is expected not only to assist the taxpayer and decrease tax delinquency but also to enable the City to operate without current borrowing in anticipation of taxes.

* * *

Kentucky is to have a state laboratory of criminal identification and statistics as a result of legislation passed by the Legislature this term.

# New Tax System Brings Results in Wayne County

By CHARLES NASH
Assistant Tax Collector

Under our former system, the tax scroll was made up and kept in the County Auditor's office, and ready-made receipts for the taxes due by the 15,000 taxpayers of the County were prepared from the scroll and handed to the tax collector. These receipts showed only the taxpayer's name, the total valuation of his property, and the total taxes due. Such a system is workable enough in the case of taxpayers who promptly pay their whole bill at one time. But suppose a taxpayer with several pieces of property raises a question about the correctness of the total valuation or wants to make a partial payment and release a particular tract from the tax lien? Or suppose a lawyer checking a title inquires if the taxes have been paid on a certain lot? Quite obviously, the old system provided no means to secure the information without going back to and making a tedious check of the tax abstract or scroll in another office. Moreover, the old system failed to provide the auditor an adequate system of control or check over the tax collector or the tax collector over his deputies.

### "All on One Sheet—"

Under our new system we have a ledger sheet for each taxpayer, setting out on one card, his name, race, age, and occupation, value of personal property listed, and a separate description and valuation of each parcel of real property, and calculating the amount of his general county tax and of his school (in two city districts), poll, and dog tax, if any. This information provides us with a ready description of the property and tax items of each taxpayer, and eliminates the need of going back to the abstracts in another office to straighten out payments made on a specific parcel.

I understand that this problem has been met in many places by showing each parcel of realty separately on the tax scroll, and in some places, as Guilford and Mecklenburg counties, by describing each parcel separately on the receipt.

We use blank receipts made up in triplicate. The original goes to the taxpayer, the second copies are turned over to the County Auditor with each day's bank deposits, and the third remains bound in the book. The receipt books are kept by the Auditor, and only two or three are turned over to the Tax Collector at a time, making it an easy matter for the Auditor to check the receipts turned over to him against those left in the Tax Collector's book, and giving him a well-nigh infallible check.

I am told that one of the reasons that other counties favor the use of predetermined receipts is that one copy may be used for a notice. However, we have found blank receipts, with a postal card notice, to be more satisfactory. We use for this purpose a printed form card, which may be mailed for 1c, and which takes no more time to prepare than a copy of the receipt, as it requires only addressing and insertion of the total taxes due.

### No More After-Lists

Our new system completely eliminates the after-list for items which the taxpayer lists or which the Tax Supervisor discovers and places on the books after the scroll and predetermined receipts are completed. This had always been a source of trouble and worry in this county, requiring an extra check of the after-list book to make sure the taxes of a particular taxpayer or a particular piece of property were paid, although the number of names and parcels after-listed was relatively small. Now when there is an after-list charge, the ledger sheet (if a new account) is placed in its proper place in the ledger and given the proper number indicating that it is an after-list. If the after-list charge is to an account already in the ledger, a typewritten notation is made explaining just what the charge covers. In either event, the separate checking of an after-list is

*(Continued on page eight)*

1935 Taxes—Acct No. 1332 NAME Nirdlinger, Mrs. R. S. ( Julia )

RACE White AGE ADDRESS 419 S. Front St., Goldsboro, N. C.

OCCUPATION Goldsboro Township, County of Wayne

REAL ESTATE OWNED

| NO. ACRES | DESCRIPTION OF PROPERTY | VALUE |
|---|---|---|
| | | |

Total Value Per. Prop $

Value of Stock Mds $

Total Value All Real Estate $ 7,666

Total Value All Property $ 7,666

| NO. LOTS | LOCATION AND DESCRIPTION | VALUE |
|---|---|---|
| 1 | 419 S. Front St. | 3333 |
| 2 | 506-510 E. Chestnut St. | 4100 |
| 1 | R.& L. Edmundson Hill | 233 |
| | Total Value Real Estate | 7666 |

COMPUTATION OF TAX

General County Tax $ 76.66

School Tax $ 19.16

Poll Tax $

Dog Tax $

TOTAL TAX $ 95.62

| OLD BALANCE | DATE | MEMO | FOLIO | CHARGES | CREDITS | TOTAL BALANCE |
|---|---|---|---|---|---|---|
| 95.82 | OCT 25 | PP | 773 | | 30.00 — | 65.82 * |
| Payment to apply on 419 Front Street | | | | | | |
| 65.82 | OCT 26 | | 899 | | 11.24 — | |
| | OCT 26 | | 899 | | .42 — | 54.16 * |
| Balance releasing 419 Front Street, By Mrs. R. S. Nirdlinger | | | | | | |
| 54.16 | NOV 9 | | 2411 | | 51.00 — | |
| | NOV 9 | | 2411 | | .25 — | 2.91 * |
| Releasing 506 & 510 E. Chestnut Street, By Mrs. Nirdlinger | | | | | | |

*New taxpayers' ledger sheet worked out by Mr. Nash, featuring description and valuation of each item of property, and showing the method for crediting partial payments and releasing particular parcels from the tax lien.*

## Notes from the Cities and Counties

Spring clean-ups, tax listing, street and highway improvements, refinancing arrangements, and building programs shared the top spot on the North Carolina local governmental calendar, as spring burst into bloom, with special school elections and preparations for the bigger contest to follow—the June primary. Anti- rabies vaccination, street and highway safety efforts, and drives on slot machines were other important items on the broad and many-sided program for Tar Heel officials.

The special tax elections held during the month resulted in a clean sweep for the school forces. Concord, Reidsville, and Lenoir joined Raleigh among the units voting supplements this year, and the holding of elections in several other units received the approval of the School Commission. Meanwhile preparations for the State-wide primary moved forward with the opening of registration books on May 9, and the political pot, simmering for some time, began to boil with all indications pointing to one of the most interesting gubernatorial contests in years.

* * *

Winston-Salem aldermen have met the taxi traffic problem by throwing open the officially designated zones to each company alike, without granting exclusive parking rights or spaces to any. Officials feel that this best provides for the convenience of the portion of the public which patronizes taxis, avoids the risk of charges of discrimination, and least aggravates the traffic congestion problem.

* * *

Beaufort County, in coöperation with the W.P.A., is beginning the erection of an agricultural building, which will provide offices for the County and Home Demonstration Agents, the American Legion, and County officials who have heretofore occupied rented offices, and which will house the Curb Market. The latter has developed into an important institution, of substantial benefit to the town people as well as to the country people having produce to sell. Other counties going ahead with plans for agricultural buildings under the W.P.A. include Cumberland, Johnston, Lee, Robeson, Union, and Wilkes. — Junius D. Grimes, County Attorney.

* * *

After two years of negotiations officials of Henderson County have worked out the details of a refinancing plan with the Local Government Commission which is calculated to put the resort County back "in the black" and enable it to meet all obligations. If approved by the bondholders, the County would refinance its bonded debt of $2,800,000 over a period of 30 years, with interest scaled down to 2%, rising to 4% over a period of 16 years, and then reverting to the original contract rate of 5½%. Back interest, up to July 1, 1936, would be paid at 1¾% with funds owing the County for highway advances to the State. It is estimated that the plan would save the County $1,300,000 in interest over the life of the contract.

* * *

Davidson County's Court House, one of the South's most admired architectural structures, graces the pages of the current issue of *Holland's* magazine. The picture, which appears in a collection of historical buildings of the South, also shows the Confederate monument and gives full display to the Corinthian design.—P. V. Critcher, County Attorney.

* * *

Under the supervision of George B. Lay, of the U. S. Biological Survey, Roanoke Rapids recently completed its first rat eradication campaign. Every home and business establishment in the city was treated with Red Squill bait, and mill areas without the city were also given a liberal distribution. Approximately 1,000 pounds of bait were put out by work crews of the City, while the local Merchants Association footed the bill for food materials and rat poison.—Miss Ruby Wood, City Clerk.

* * *

Charlotte officials are staging an Auto Safety Drive aimed principally at the inspection and correction of defective brakes. The move was initiated by City Manager J. B. Marshall and Safety Inspector B. Atwood Skinner by calling in and enlisting the assistance of the garagemen of the city. The inspection will be entirely voluntary, but a wide appeal will be made to motorists to realize their responsibility and coöperate, and windshield stickers will be used to designate drivers who have fulfilled their duty. The campaign may be extended later, it was said, to include other auto safety devices.

* * *

Non-profit electric membership corporations are being formed in Wilson and Pitt counties to expedite applications for federal Rural Electrification loans to build power lines. The areas would be served by municipal plants of Wilson and Greenville, which have already applied for loans for the same purposes. The Wilson plant set a new production record recently, generating 753,740 kilowatt hours during April.

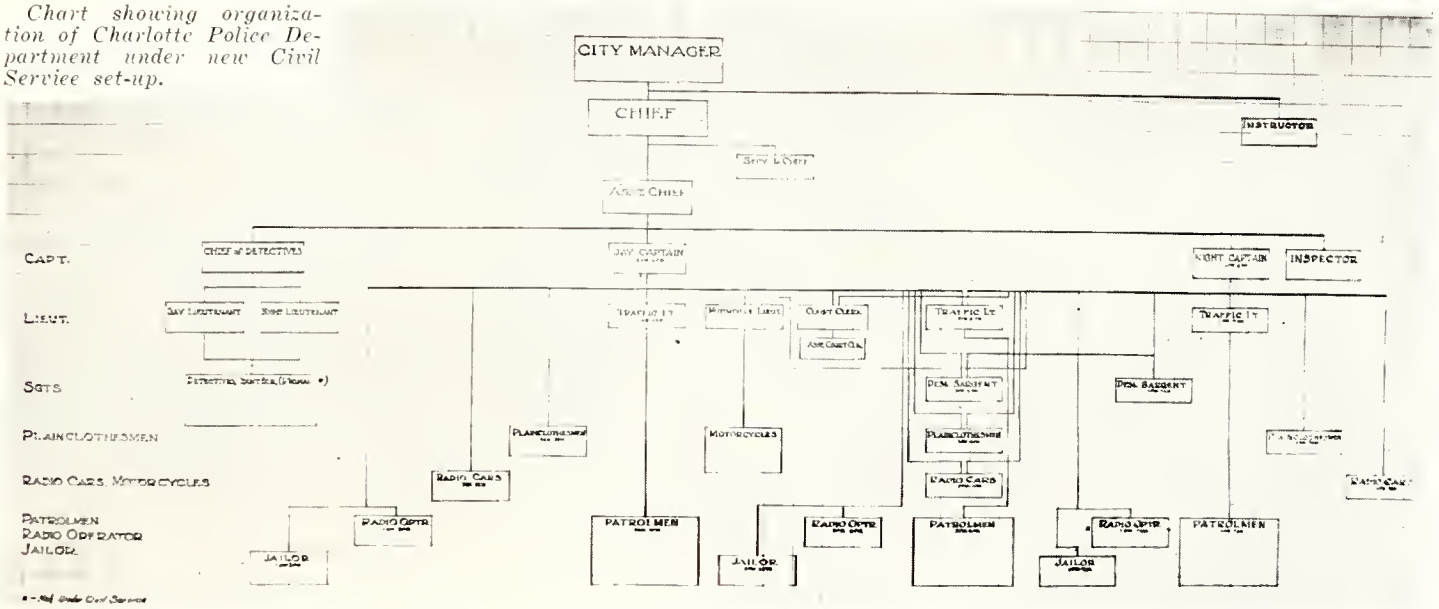
* * *

The first year's experience with a County Criminal Court found Burke officials well pleased with results. The extra court, it was stated, not only relieved congestion on the Superior Court docket and saved the county many hundreds of dollars by eliminating jury trials in cases which would otherwise have gone to that tribunal, but operated at a net profit of $3,004.30. Total revenue for the period was $13,096.58, total expenses $10,092.18, total criminal cases tried 950. S. J. Ervin, Jr., is Judge and Gordon Boger Solicitor.

* * *

Tarboro's new water plant was completed, formally accepted, and put into operation last month, along with the new Hickory filter plant and the Oxford sewerage disposal plant, to take the lead among the public improvements completed in the State so far this spring. The Tarboro plant is the largest of the three projects, having been built with P.W.A. funds at a total cost of $280,000, and being equipped to supply 1,500,000 gallons of water a day. Two other municipalities soon to have new water works are Concord and Mount Pleasant, the work on these two projects being rapidly pushed to completion.

*Chart showing organization of Charlotte Police Department under new Civil Service set-up.*




# Civil Service for Charlotte Police and Firemen

By C. C. BEASLEY
Chairman, Charlotte Civil Service Commission

Pursuant to an Act of the North Carolina State General Assembly, there has been established for the City of Charlotte a Civil Service Board, consisting of three members, having jurisdiction over and control of the employees of the Fire and Police Departments of the City of Charlotte. The qualifications for membership for appointment to the Board are the same as those required of other City officials. The members of the Board are appointed by the Mayor and the City Council. The only employees of the respective departments under its control, not directly responsible to the Board for their actions, are the Chiefs of each department. These two officials, under the provisions of the Act, are responsible to the Mayor and the City Council.

The enabling Act gives to the Board a rather wide discretionary power as to the administration of the departments under its control, providing only in general terms that the Board establish standard requirements for applicants for positions in either department. The Act gave to the Board the power of disciplining recalcitrant officers, and further provides for hearings and that there may be an appeal from the decision of the Board direct to the Superior Court of Mecklenburg County.

It might be stated as a general proposition that heretofore the Board has concerned itself with a great portion of the detail connected with its administration of the Fire and Police Departments, and has acted in this capacity as a policeman itself. The present Board felt that if it was truly to carry out the necessary functions of its office, in the spirit evidently intended by the framers of the Act, it should delegate the administration of the detail and the settling of ordinary everyday difficulties and breaches of discipline to the Chiefs and their subordinate officers, who, through training and experience were far better able to handle such matters. Consequently, one of its first acts as a Board was to delegate the various powers and duties of administration in accordance with the accompanying chart. Under this schedule, each departmental head is responsible for the carrying out of the duties assigned to his department, and upon him rests the primary duty of regulating the conduct and supervising the work of the officers in his department. From these departmental heads there is a direct flow of authority to the lieutenants and through them, to the Chief of the entire department. The routine matters which come up under this system are then handled by the Chief, working with the City Manager, and the Board is thus put in a position of acting in matters of administration as a Supreme Advisory Council; and in matters of discipline, as a Supreme Court.

### Organize Police School

The Board to date has spent most of its time working with the Police Department, for the reason that it felt that the Police being in daily contact with the public, and having to handle all of the traffic problems arising in the largest City of the Carolinas, were more in need of special effort than were the members of the Fire Department. Also, it is true that the administration of the Police Department is an entirely different field of endeavor than the administration of the Fire Department, and the problems arising in the former are far more complex and require more concentration, due to the very nature of the work, as has already been stated. In line with this thought, the Board has installed an instructor for the Police Department, this instructor being an expert in the field of traffic regulation, and a man of unusual experience. Under the tutelage of this instructor, there is held a weekly school for the Police, at which time they are given instruction in the handling of traffic and the carrying

out of their duties, after which time there is a round table discussion of the problems which have come before them, with each member benefitting from the experience and problems of his fellow officers. There has also been prepared a hand-book of rules and regulations for members of the Police Department, which rules are stated in plain and simple language, and which each officer is required to study and understand. From time to time, examinations are held, at which the officers are questioned as to their knowledge of the rules and regulations, and the promotion of officers is largely dependent upon, not only the efficiency with which they dispatch their daily duties, but also upon their standing in these examinations.

The present Board has endeavored to raise the standards of the department under its jurisdiction, by means of special instruction on the technical side of Police administration; also, it has established periodic physical examinations, and requires, within reasonable limit, that the applicants for positions in either department be of a uniform height, weight and age. It requires applicants to successfully pass a mental examination, which examination is prepared by three disinterested citizens, and the officers' grade, in this initial examination, is kept along with the results of other examinations, and this factor also is considered when promotions are being made.

Although the present Board has been in office but a short time, we feel that some of our efforts are already bearing fruit, and we believe that the continuation of the principles which we have endeavored to outline in this article, will tend for a betterment of the departments under our control, which are so important in the life of any city.

We wish to take this opportunity to express our appreciation of the coöperation of Chief E. D. Pittman of the Police Department; Chief Hendrix Palmer of the Fire Department, and City Manager J. B. Marshall, without whose coöperation and untiring efforts our ideas and plans would have been without whatever success they may now have had.

*Charlotte's re-organized Civil Service Commission is credited by city employees, officials, and citizens alike as having done an excellent job. Left to right: W. W. Kale, G. W. Patterson, and C. C. Beasley, Chairman.*

## WAYNE'S NEW TAX SYSTEM

*(Continued from page five)*

eliminated, saving both time and errors.

In the case of an allowance to an account a notation is made on the account giving in detail just why same was made.

When the time comes to advertise unpaid taxes, the information is available without referring to the tax abstract to ascertain the description of the property, thereby saving time and expense. After the sale is held, the account will be stamped "Land Sale" giving the date of same. Should the taxes remain unpaid and a tax foreclosure suit be brought, the number of the tax suit and the court costs will be shown on the account, giving a complete record on one sheet of all taxes and penalties against all property of the taxpayer for the year, and eliminating a great deal of trouble and uncertainty in the future.

### Provides Instant Check

The ledger sheets for our 15,000 taxpayers are filed by townships in one cabinet of five drawers. The accounts for each of the 12 townships are numbered beginning with 1. We have a control sheet for each township and a grand control sheet for the county. Each day's collections are posted first to the individual account and the total to the control account, providing a daily, in fact, an instant check on our collections and financial position, and permitting us to tell exactly where we stand at all times. Other tax officials secure the same result by keeping a running total of their reports to the Auditor, but we figure that our system reduces the work and the chances of error to the minimum.

Someone has raised the question as to whether single ledger sheets could not be easily mislaid or removed as compared with large bound records or scrolls. The possibility is slight, as no one outside the office is allowed in the ledger sheets. If this should happen, however, the sheets could be duplicated from the tax scroll, which is kept in the Auditor's office as before, and the record of any payments secured from the receipts retained in the Tax Collector's book.

As will be gathered from the foregoing, the new system makes our task of searching the records for current taxes on behalf of lawyers checking titles vastly simpler, easier, and quicker. This work in our County has always been done by the tax force, although I understand that some of the counties have worked out a system whereby the lawyers may do their own searching for unpaid taxes by tracing the property through the scrolls for the various years. The working out of a similar method remains a problem with us for the future; likewise the perfection of a system for the consolidation of delinquent taxes from year to year so as still further to consolidate our records and reduce the number of places to look in searching for taxes.

# Forsyth Clerk Rearranges Records to Save Time, Space and Expense

UNLESS his county is one of the fortunate few which either have a new court house or which made adequate provision for future expansion, every official who has anything to do with the recording of deeds, wills, judgments, and the host of other papers required by law, sooner or later runs directly into the problem of additional vault and storage space. For it is estimated that these records will in the average county double in size every 20 years. If additional quarters may be provided for the office of Clerk of Superior Court or Register of Deeds by adding a new wing, cutting off a part of another office or closing up a corridor, well and good. But what of the great number of counties with court houses without a foot of space for expansion and without funds for additions?

"Make one record book and one file do the job of two," is the advice of W. E. ("Bill") Church, and the hustling, young Forsyth Clerk of Court, by rearranging forms, consolidating records, and generally re-organizing the traditional system, not only for the present but going back over a period of years, is doing exactly that.

**Eliminating Waste Space**

Take the Docket, for instance, in which the Criminal Judgments of Superior Court are recorded. The County formerly used the small size record book (10½ x 16 ins.), although its steel shelf frames were made to hold the large type (11½ x 18). Mr. Church has gained 11,700 square inches or approximately 70 pages to each 300-page book by this change alone, yet the books are no thicker and the shelves therefor take up no more room. A similar saving has been accomplished by revising the rulings on the pages to eliminate waste space and unnecessary margins. In some of the old books a whole column was left for the number of the judgment, and the width of the margins and wasted columns was as much as four inches. The number of the judgment is now put at the top, taking one line instead of a column, and the margins are held to one and a half inch. Result: A Criminal Docket now lasts Forsyth a year instead of six months.

Space Saver No. 2 was the consolidation of County Court civil judgments, Superior Court civil judgments, liens, transcripts, and lis pendens. Up until the re-organization these five types of records were filed separately *by terms of court* with the result that many of the drawers were only partially filled. They have now been consolidated into two files numerically, criminal and civil (for both courts), eliminating the waste space, and each paper has been given a permanent number in the index so that it may be located even more readily than when filed by court term.

**New Indexes Also Time-Savers**

The volume of *miscellaneous papers* in the Clerk's Office has been consolidated and re-arranged with the same result, and the process is now being repeated for estate papers. The latter were scattered through a number of files—as inventories, annual reports, final reports, inheritance tax certificates, etc.—up to as many as 15. They are now being consolidated into one file with a permanent number for each estate, conserving not only space but also the time of the staff and proving a source of great convenience to attorneys and citizens having to look up records of estates.

Mr. Church has also gone back and compiled indexes for Partnerships, Corporations, Foreclosure Sales of Real Estate, and Miscellaneous Papers. These references, afforded by few record offices in the State, are said to have proven invaluable to members of the Bar as well as to the office. The Miscellaneous Index deserves special mention. North Carolina Clerks have experienced much difficulty in filing and, more important, in locating the hundred and one miscellaneous papers from pistol permits to Dentist's certificates which the law requires them to keep, but the problem gives the Forsyth office no concern. With the aid of the new index any such miscellaneous paper may be produced at a minute's notice. Another service to attorneys found in few counties was the annotation of the Civil Judgment Record with references to the Lunacy File, avoiding much grief for the title lawyer who in the maze of records in the average Clerk's office, might otherwise let escape him the record of sanity proceedings against any of the parties.

The revision, consolidation, and extra-indexing of the Forsyth records has been accomplished without adding to the regular staff of nine deputies. This by taking advantage of free labor afforded by the W.P.A. and by the number of high and business school graduates desiring the experience to fit them for places in law offices.

**On the Financial Side**

Although the various improvements were designed with a view chiefly to conserving space and time and promoting public service and convenience, some of them have resulted in substantial financial savings. Thus the new size record book with revised rulings costs only $2 more than the approximately $40 which was the price of the old style book, yet it holds twice as much.

The Clerk's office uses so few of some record books, it is impossible under an annual budget to buy in quantity. However, Mr. Church found that he could use a plain, standard marginal ruling for several books, as the long form Civil Judgment Docket, the five Minute Dockets, and Orders and Decrees. The savings on the last order, six books, was enough to pay for two additional books.

Mr. Church sticks to uniform size sheets and forms with uniform punching (5-post), permitting him to use different types of binders interchangeably and so switch covers with any changes in quality or price. He has also dispensed with index tabs, which cost $5 a set, on several books where there is no need therefor, due to the fact that everybody uses the cross-index. These include the Civil Judgment Docket, Liens or Lis Pendens, and Fiduciary Qualification Records.

*"Madison was a small man, too."—Newton D. Baker in Convention Address.*

# Plans to Re-organize A. B. A. Around State Bars Laid at Meet

THE structure of the American Bar Association would be de-centralized and re-organized with the leadership in the hands of the state bars, if plans formulated and discussed at the first regional meeting of the Bar of the Fourth Federal Judicial Circuit, held in Richmond last month, are carried out.

Under the proposal presented by tall, white-haired, bespectacled American Bar President William L. Ransom, the officers of the Association would be elected and its policies determined, not by the relatively small group of members who attend the annual meetings, but by a fixed number of delegates selected by each of the state bars, thus making its leadership both local and representative.

Although the need for change in the structure of the Association was the theme and, in fact, the occasion for the gathering of 600 attorneys from the Carolinas, Maryland, and the Virginias, a keynote as frequently struck in the addresses and discussions was the opposition to suggestions of change in the United States Constitution. It ran like a thread through the whole meeting; scarcely a speaker failed to mention it in one way or another, and diminutive ex-War Secretary Newton D. Baker received prolonged applause when he declared in the Convention address on Madison that "before we change the Constitution we should understand its very soul by learning of the men who wrote it, their knowledge and opportunities of observation, their powers and capacities, the problems they faced and foresaw, and the conclusions they reached."

"Madison, like myself, was a small man—and correspondingly dignified," Baker solemnly observed in one of many humorous asides.

Of particular interest to the younger lawyers were the discussions of the Junior Bar Conference by the President and Secretary of this Section of the Association. This section has increased from 300 to 3,000 members since its organization in 1934. Its general program seeks to interest the younger lawyers (under 36) in bar activities in their communities and states; its specific program at present focuses upon bar co-ordination and the drafting of proposed legislation by experts. Typical recent activities of stronger groups include prevention of ambulance chasing and exposure of election frauds in Memphis; the merging of the Association and the State Bar in Louisiana; revision of the probate law in Virginia, and the control of publicity at criminal trials in New Jersey.

Senior Circuit Judge John J. Parker, who headed the delegation of 43 prominent attorneys from North Carolina, laid the background for discussion of the proposed new organization in his address of welcome. The tendency toward specialization on the part of lawyers in recent years has caused the American Bar Association to break up into groups of specialists, he observed in welcoming the regional meetings as offering to lawyers in a wide area an opportunity to meet together and discuss general problems common to all.

The logical unit of bar organization is the State, President Ransom declared in explaining the reasons for the proposed change. Lawyers are officers of the state courts, not

TAR HEEL BAR OFFICIALS

*J. M. Broughton (left) and Julius C. Smith (right) head the North Carolina Bar Association and State Bar, respectively, while Henry M. London (center) serves both organizations as Secretary. I. M. Bailey (third from left) is a former President of the State Bar.*

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**OFFICIAL STATE BAR NEWS AND VIEWS**

*Editorial Committee:* Julius C. Smith, President, Henry M. London, Secretary; Charles A. Hines, Councillor, and Dillard S. Gardner of the staff of The Institute of Government.

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*"Changes in statutory law but not in fundamental constitutional principles."—North Carolina's John J. Parker.*

the federal courts; there can never be an all-inclusive national organization of lawyers. The national organization must remain a voluntary organization, selective in membership, and can function most effectively as the unifying agency of the state bar organizations, responsible to them.

There are 110,000 lawyers in the national, state, and local organizations, it was pointed out, but only 28,000 belong to the national association, and of these only 10 per cent attend the A. B. A. annual meetings and direct the policies of the organization. The proposed plan, he emphasized, is an effort to make the national organization more representative of the 175,000 lawyers in the country, to decentralize the organization, and to place its leadership in the hands of the state bars.

Although the action of the A.B.A. would not bind the state organizations, he explained, it would offer the advantages of a permanent body continuously studying the national problems of the bar, and would provide an agency for keeping before the lawyers the traditions, obligations, and opportunities of the profession.

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## Law Lists and Directories

Recently the Supreme Court of Oklahoma amended one of the Rules of Professional Conduct governing lawyers of that state so as to define reputable law directories and lists, prohibit listings in other lists and describe what information may be given in such listings. The Court also ordered that the Governors of the State Bar be empowered to determine what publications are such reputable law directories and lists. The Bar Governors immediately drew up standards and regulations to aid them in the task. To date they have approved only one, a standard and well-known directory, and only two law lists.

Earlier, under similar rules and proceedings the Missouri Advisory Committee also approved two of these three lists and directories and added two others to their approved list. Missouri went even further. The Attorney-General of the State with the aid of several bar organizations has instituted a number of suits prosecuting collection agencies for the unauthorized practice of law. In one of these cases—the Dudley case—the special commissioner named to hear the case has filed his report holding that the respondent agency had been engaged in practicing law. His report shows that he was impressed with the finding that more than 10% of the 5000 claims handled by the agency since January 1, 1933, had been placed with attorneys. He concluded as a matter of law that when the efforts of the lay agency failed and it became necessary to place the claims with lawyers, at that point the field of the practice of law was invaded. This case, and others on similar points, are now pending in various stages of appeal, according to the *Missouri Bar Journal*.

In commenting upon the Missouri fight *Unauthorized Practice News* states that lay collection agencies throughout the country have realized the danger of an adverse decision in the case referred to above and that they are seeking from the agencies of the country $7,000 to be used to carry the case to the Supreme Court of the United States, if necessary—and if possible. (The U. S. Supreme Court recently refused to review the action of the Kansas Supreme Court in affirming an injunction which prohibited a collection agency from engaging in certain unauthorized practices in bankruptcy matters.)

Recently a Committee of the N. C. State Bar began a study and investigation of the problems related to the directories and lists. Its report and recommendations will be of interest to every lawyer in the State.

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## Jury Exemption

The New York Judicial Council, Second Report, 1936, suggests that "New York grants more exemptions from jury service than any other state except Virginia and South Carolina, exempting seventy-five per cent of the citizens of New York City otherwise qualified." New York state has three different jury exemption laws: 27 types of employment are exempted in Kings County, 24 in New York County, and 15 in the other counties. According to the report the 15 classes actually exempt "approximately 33 classes of public officers and 49 classes of citizens."

The Judicial Council recommends that the exemptions be reduced to the following: (1) Ministers, (2) physicians, surgeons, surgeon dentists, (3) attorneys, (4) members U. S. Army, Navy and Marines, (5) firemen, police, and (6) mariners and licensed pilots.

North Carolina's list of those occupations exempted from jury duty, like New York's, has grown through the years. It includes (1) practicing physicians, (2) licensed druggists, (3) telegraph operators, (4) train dispatchers, (5) licensed pilots, (6) ministers, (7) officers,

employees of state hospitals for insane, (8) active firemen, (9) funeral directors and embalmers, (10) printers and linotype operators, (11) grist millers, (12) U. S. railway postal clerks and R. F. D. carriers, (13) locomotive engineers, brakemen, and conductors, (14) active members of the National Guard, (15) contributing members of the National Guard, and (16) ex-Confederate soldiers upon request exempted by county commissioners.

Jury exemption by statute which began as a desirable concession, not to classes of occupation but in the interest of the general public good, has come to be almost a mark of class distinction. Too general by far is the idea that jury service is a burden to be avoided rather than the privilege of free men to be proudly borne.

# Case and Comment

By M. R. ALEXANDER
of the Staff of The Institute of Government

*Tax Listing—Solvent Credits—Deduction of Debts*—A mutual fire insurance company, collecting the standard premiums in advance, maintained an "unearned premium reserve fund," representing the advance premiums paid by policy holders but not yet earned, and paid any cancelled policies out of this fund. The company in listing its 1934 and 1935 taxes deducted this fund, as a debt from its solvent credits, and upon the county's refusal to deduct the amount, paid the tax under protest and brought an action demanding its return.

The Supreme Court held that the insurance company was entitled to deduct unearned premiums as against solvent credits on the theory of a *liability*. This greatly extends the doctrine of deductions from solvent credits, which has been limited very closely in the past to *bona fide indebtedness*, as distinguished from *liabilities* which may arise. In fact, the holding may go beyond the intention of the statute providing for such deductions, C. S. 7871 (47), which specifically reads "all bona fide indebtedness owing by any taxpayer as principal debtor," and there is grave danger that the decision may open the way to numerous other deductions.—Hardware Mutual Fire Insurance Co. v. Stinson, Treasurer-Tax Collector, and Mecklenburg County (to appear in Advance Sheets for June 1 or thereabouts).

*Tax Listing—Installment Contracts—Business Situs*—A Delaware corporation with its main office in Knoxville, Tenn., owned and operated a store in Charlotte, selling furniture for cash and on conditional sales contracts. The latter were retained and collected in the Charlotte office, and the funds deposited in a Charlotte bank subject to withdrawal only by the home office. Local operating expenses, exclusive of rent and purchase of merchandise, were paid by checks drawn by the Charlotte branch on another Charlotte bank out of an account supplied by the Home Office out of its general fund. The question was whether the installment accounts, which were not listed in Tennessee but which the company claims were taxed indirectly through Tennessee's capital stock tax, are taxable in Mecklenburg County.

The Supreme Court affirmed the decision of the lower court in holding that the contracts were solvent credits, subject to taxation on the theory that they had acquired a business situs in Mecklenburg County, making an exception to the general rule that intangibles are taxable at the domicile of the owner. The chief factors which the court looked at seem to have been the local situs and control of the property, the fact that they were an integral part of the business, and the fact that the property enjoyed the protection of the laws of Mecklenburg County. "If the Defendant was allowed to escape tax in this jurisdiction, under the facts and circumstances of this case," the Court added, "a foreign corporation by establishing a 'business situs,' as in the present case, would have a special privilege over other installment stores of like nature located and doing business in" this county.—Mecklenburg County v. Sterchi Bros. Stores, Inc. (to appear in Advance Sheets for June 1 or thereabouts).

*Building Permits—New Hearing—Res Judicata*—An application for a permit to erect a filling station was denied by the city Board of Adjustment in 1932, but granted in 1935 on the ground that conditions had changed and the property had been zoned for "neighborhood business." The Superior Court, reviewing the action, held that the Board of Adjustment was precluded, on the principle of res judicata, from approving the issuance by reason of its previous denial. The Supreme Court reversed the decision, holding that traffic conditions, as found by the Board, had materially changed since the former application was acted on, and that there was error in holding the principle of res judicata applicable to the facts of the record.—In Re Broughton Estate (to appear in Advance Sheets for June 1 or thereabouts).

*Streets and Sidewalks—Personal Injuries—Actionable Negligence*—The C.W.A. was filling in a ravine in a city so a street could be extended across it. A small foot bridge, not maintained by the city and used only by the residents of the vicinity for their convenience, was moved during the course of the work, and a passer attempting to cross one night fell and was injured. Held, that the evidence failed to make out a case of actionable negligence against the city, and decision of non-suit affirmed.—Duren v. Charlotte (to appear in Advance Sheets for June 1 or thereabouts).

*Streets and Sidewalks—Personal Injuries—Actionable Negligence*—The Plaintiff sued the city for injuries sustained in a daylight fall on a rough driveway crossing a sidewalk. Held, it was error not to grant the city's motion for non-suit. Conceding there was a material defect, it was broad daylight, and Plaintiff was charged with the duty to use due care.—Burns v. Charlotte (to appear in Advance Sheets for June 1 or thereabouts).

# The Proposed Changes in the State Constitution

## No. 5---The Relief of the Supreme Court

By DILLARD GARDNER
of the Staff of the Institute of Government

Suppose an "inquiring reporter" should halt you on the street and, without warning, demand, "What do you think of the proposed constitutional amendment affecting the Supreme Court?" Unless you are far better informed on such matters than most of us, you would probably be as completely at sea as if he had asked you about the price of rice in China or the form of government in Morocco. To the average citizen the Supreme Court is an institution which is both remote and aloof, insulated from contact with the citizenship by the lawyers of more than a century, veiled from popular comprehension by the mysterious practices and language of the law, and hallowed with a sanctity born of generations of public respect. To the layman the Supreme Court is a sort of legal Mount Sinai to which, at rare intervals, a judge or a lawyer is lifted. Thereafter, he dwells apart, absorbed in his duties. The public usually thinks of the Court only when, from time to time, it hands down its mandates commanding that men live or die, go free or spend their lives in prison, receive money and property or have that which they possess taken away.

The Chief Justice and the four Associate Justices rose to our highest court either directly from the practice or by way of the Superior Court bench. Having forged to the front in a profession which has always demanded rigorous intellectual discipline and sustained mental effort, they came to a Court noted for the industry of its individual members. By personal habit and professional tradition their lives are dominated by work. Whether a legal question is first raised before a magistrate at the foot of Mount Mitchell, a recorder near the Great Dismal Swamp, or a Superior Court judge holding courts in the Piedmont, that same question may ultimately be laid before these five men for the final answer. In an endless stream there pours in upon them the issues of law debated in the State's one hundred Superior Courts. Theirs is a continuous task of "finding answers."

Is the Supreme Court overworked? To this question, of course, no member of the Court itself gives answer, but for years the leaders of the North Carolina bar, noting the ever-increasing pressure of work upon these men, have given a most emphatic answer in the affirmative. If a poll were taken of the entire bar today, it is probable that a substantial majority of our lawyers would express the opinion that the duties of the Supreme Court are too heavy for five men. Yet, the present Constitution limits the membership of that Court to five. When the Constitution of 1868 was adopted, the number of the Supreme Court justices was increased from three to five. The State was then almost entirely rural having a population of barely one million. The Convention of 1875 again reduced the number of justices to three, but by 1889 an amendment had carried which increased the number again to five; at that time the population of the State was about one and one-half millions and the problems before the Court were almost entirely those of a nature traditional to a rural state. Today the Court still has only five justices, although our population is nearly three and one-third millions (more than a fourth of which is urban) and the industrial development of the state is well advanced, bringing with it a train of novel and important legal questions.

Miss Susie Sharp in a study prepared for the Constitutional Commission of 1931 found that, in 1929, the individual justices of our Supreme Court wrote more opinions than those of Georgia, a third more than those of South Carolina and of West Virginia, more than twice as many as those of Tennessee, and about four times as many as the justices of Virginia and of Maryland. During the discussion of the proposed Constitution of 1933 the statement was frequently made, in public addresses and in the press, that the Supreme Court was overworked; so far as is known there was no public intimation to the contrary. A count of the opinions written by the Court during the year ending with the Spring Term 1935 revealed that the number of opinions by individual justices had increased by 50% over the 1929 figures and the number of *per curiam*, unsigned opinions had increased 100%! It seems only fair, therefore, to assume that the Court is in need of relief and that within the next few years it will become necessary for the General Assembly to adopt some plan which will lighten the labors of the individual members of the Court.

An overworked Supreme Court may be aided in several ways. An intermediate appellate court might be set up, but this would result in further delays and greater expense to litigants and would render our court system more complicated and expensive to operate. Superior Court judges might be called in to sit as members of the Supreme Court, but even with our special and emergency Superior Court judges there are scarcely enough to keep the trial dockets cleared. A Court Commission might be appointed, but the Court would have to review its recommendations and write the opinions in the cases, and the extent to which a Commission would operate satisfactorily or reduce the Court's labors is problematical. One or more research counsel might be provided, relieving the justices of much legal research. However, the use of research counsel or assistants is primarily regarded as a means of relieving the members of detailed

research and improving the quality of written opinions rather than as a direct means of reducing the labors of the members. Although it naturally reduces to some extent the work of the members of the Court, it does not reduce the number of opinions to be written by the members.

The most direct and generally used means of aiding overworked appellate courts is to increase their membership. An increase in membership, particularly if the court has power to sit in divisions, definitely and materially reduces the pressure upon the individual members. It is this latter plan which the proposed amendment offers.

**The Proposed Changes**

The proposed amendment seeks to make the Court's duties less arduous: (1) By permitting the General Assembly to increase the membership from five to seven, and (2) by permitting less than the full membership to sit, as the Court, in divisions. A similar proposal was embodied in the Proposed Constitution of 1933, drafted by the Constitutional Commission of 1931, but there are two important differences in the proposals. The first is a limitation upon the number of additional members, and the second is an increase in the number of justices who would have to agree in every case; these differences will be mentioned again. Both the former and the present proposals are adaptations of a section of the Model State Constitution.

**Increasing the Membership**

A recent study showed that the highest appellate courts in four states and the District of Columbia have three justices, those of sixteen states including our own have five, three states have six, eighteen states have seven, three states have eight, three states have nine, and one state has sixteen. Thus only four states have fewer justices on the highest court, while twenty-eight states have a greater number.

The section in the Proposed Constitution of 1933 placed no limit upon the number of justices who could be added to the court. A late justice of that Court remarked that a limitation should be provided to avoid any possibility of the General Assembly increasing the number on the Court at a given time in order to procure a favorable opinion on particular governmental questions before it. The present proposal limits the increase to two additional justices, and it appears probable that these justices would be added shortly after the amendment carries. Even if they should not be, however, the most that could be accomplished by way of legislative control of the judiciary would be the change of a three-to-two judgment to a four-to-three decision. Thus, the present proposal has reduced to a practical minimum the danger adverted to in the previous proposal.

The present proposal embodies the requirement that at least four judges shall agree in any judgment of the Court. This gives a greater protection to litigants than at present, as the agreement of only three judges is now sufficient. Too, the express requirement that at least four judges must concur will prevent a minority of the Court from ever acting for the full Court, as, for example, when only a bare majority of the Court is sitting but the opinion of those sitting is divided.

With our present five-member Court, there is no constitutional limitation which prevents three members, in an emergency, from sitting as the court; if, while three are siting as the Court, there is a division of opinion, the decision would be rendered by only two members. The present proposal would require the agreement of at least a majority of the membership of the Court in all cases.

The division of the work of the Court among seven instead of five justices would be expected to materially reduce the delays, which usually run to weeks and sometimes extend over a period of months, from the argument of the cases to the rendition of the decision.

The larger tribunal will appeal to many lawyers and clients merely because they prefer seven justices rather than five to pass upon their cases, feeling that over a period of years seven justices must necessarily represent a greater store of legal wisdom than five. However, it must be remembered that the full Court will necessarily sit only on constitutional questions; to what extent

W. P. Stacy
*Chief Justice of the North Carolina Supreme Court.*

the Court would sit in divisions would be determined by the Court.

**Sitting in Divisions**

The full Court, except in emergencies, as when a member is ill or on leave, now sits in all cases. The clear implication of the present Constitution that the full Court shall sit in all cases now prohibits even a single justice from absenting himself from the oral arguments for the purpose of doing legal research or writing opinions. The smallness of the Court also makes it impracticable for a division of a portion of the membership to sit as the Court.

Of the fourteen states permitting the highest court to sit in divisions, three have six justices, eight have seven justices, and three have nine justices. Of the nine states which actually use the plan, three have six justices, four have seven justices, and two have nine justices. Five of these states require that four or more justices serve in a division; the other states permit fewer than this number. The proposal for North Carolina requiring four justices to concur in every judgment would make it necessary for at least four to sit in a division. Each of the nine courts using the divisional plan have two divisions.

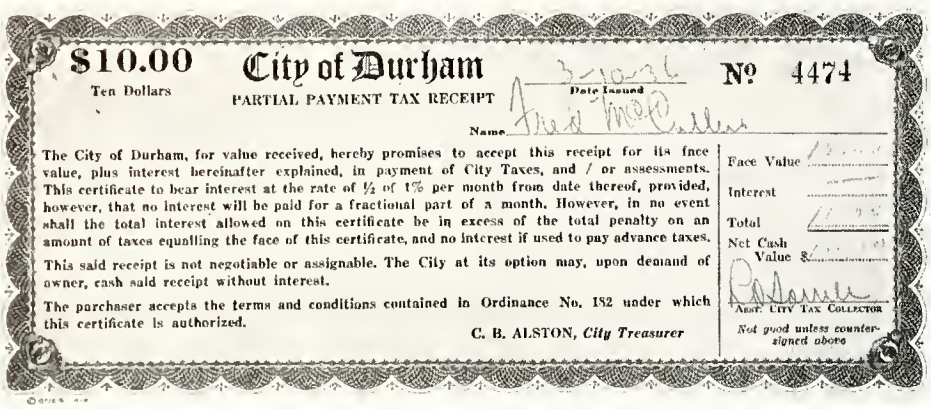
The use of the division plan would be left to the discretion of the Court itself "when necesary for the proper dispatch of business." It might never be used; it might be used only as an emergency measure; it might be

used as the regular and usual procedure of the Court. Whether the requirement that at least four members shall concur in each case will so narrowly restrict the use of the divisional plan as to impair its usefulness is problematical. However, those who lack enthusiasm for the divisional plan will see in the requirement a guarantee that no case will be determined by fewer than a majority of the Court. How many would sit in a division, how often the personnel of the divisions would be changed, whether the Chief Justice would sit with one or both or neither of the divisions, how the cases would be assigned to the divisions, whether there would be criminal and civil divisions or whether each division would hear all types of cases, whether the divisions would sit simultaneously or alternately—these, and similar questions, would all be determined by the Court.

Apparently those Courts which have used the divisional plan experienced no increase in motions to re-hear cases decided by a division, and since the present proposal requires that a majority of the Court must concur in every judgment, the adoption of the plan in this State should cause no increase in motions to re-hear. In practically all of the states the increase of inconsistent and out-of-line decisions has been prevented by having the Chief Justice sit with both divisions, by having the full court decide the questions in conference, or by having the opinions circulated to each member of the court for his approval or disapproval. As an aid to the more rapid disposal of cases, the divisional plan has been almost universally successful, enabling several courts to clear up dockets nearly three years behind, and enabling the court in one state to handle with equal dispatch twice as many cases as formerly. As to how the divisional plan would probably operate in this State, we may get some inkling from the following statement of Chief Justice Stacy (both he and Justice Schenck served on the Constitutional Commission of 1931) before the Joint Senate and House Committee in 1933: "One section would hear arguments, while another wrote opinions. This would take care of the situation for the next hundred years."

The five states providing for but not using the plan regularly do use it to some extent as an emergency method enabling the courts to catch up with their dockets. The chief objections in these states seem to be the opposition of the lawyers, the dissatisfaction of litigants, the difficulty of securing in all cases the agreement of a sufficient number of justices to obtain a majority of the court, and the fear that the plan would tend to encourage a lack of consistency between the decisions of the different divisions of the court. These objections do not appear to be fatal, having been largely overcome in the nine states which use the plan regularly and which have found it quite satisfactory. Some of them, in fact, are quite enthusiastic in their endorsement of it.

From the several methods which have been used or suggested as ways of relieving overworked courts, it seems to be a fair statement that the amendment has adopted two of the more desirable and widely used methods. The proposed amendment would not make either the increase in the number of justices or the use of the divisional plan mandatory. On the one hand, it would permit the General Assembly to add two additional justices when convinced of the need, and on the other hand, it would allow the Court itself to adjust its procedure so as to reduce the labor of its individual members or to accomplish the same work with greater dispatch, both of which are impossible without an amendment.


$10.00
Ten Dollars

City of Durham
PARTIAL PAYMENT TAX RECEIPT

Date Issued 3-10-36

No 4474

Name Fred McCullers

The City of Durham, for value received, hereby promises to accept this receipt for its face value, plus interest hereinafter explained, in payment of City Taxes, and / or assessments. This certificate to bear interest at the rate of ½ of 1% per month from date thereof, provided, however, that no interest will be paid for a fractional part of a month. However, in no event shall the total interest allowed on this certificate be in excess of the total penalty on an amount of taxes equalling the face of this certificate, and no interest if used to pay advance taxes.

This said receipt is not negotiable or assignable. The City at its option may, upon demand of owner, cash said receipt without interest.

The purchaser accepts the terms and conditions contained in Ordinance No. 182 under which this certificate is authorized.

C. B. ALSTON, *City Treasurer*

Face Value 10.00
Interest
Total 10.00
Net Cash Value $

Asst. City Tax Collector

*Not good unless countersigned above*

# Durham's New Plan of Handling Partial Tax Payments

Durham has worked out a unique method of handling partial payments on taxes by selling partial payment receipts which are a type of non-negotiable baby bonds. A taxpayer may buy partial payment receipts in any sum at any time, and when he has purchased an amount sufficient to pay any year's taxes, he may do so by presenting and exchanging them for the original tax receipt.

The city pays 6% interest on the partial payment receipts, but in order to prevent their use as savings accounts, the amount of interest is limited to the amount of the penalties accrued on the taxes. In case the receipts are used to prepay taxes, the holder gets, in lieu of interest, only the regular discount allowed for prepayment.

The receipts are issued in denominations of $2.50, $5.00, $10.00, and $20.00. They are serially numbered and are prepared in triplicate. The original is given to the purchaser; the duplicate is sent to the city auditor to record the sale in the city's books, after which it is returned to the tax collecting office and filed alphabetically; the triplicate remains bound in the receipt

*(Continued on page twenty)*

# Taking the Guesswork out of Pardon and Parole

By M. R. ALEXANDER
Of the Staff of the Institute of Government

The North Carolina parole system, both in the laws as passed by the Legislature and in the administration of those laws, is based upon the very close coöperation of the Parole Office and local welfare and law enforcement officials.

**The State's new Parole system is still in the transition stage, the old system and its limited procedure being changed or supplanted by the new. New methods are constantly being adopted during this experimental method, making it impossible at this time to give a summary which would codify the procedure used by the Parole office. As the new system progresses, The Institute hopes to be able to publish further articles dealing with parole in this State.**

Under the system which has evolved the Parole Commissioner and his staff investigate the cases of all persons sentenced to the State's Prison as well as all cases in which application has been made for executive clemency. The actual supervision of the paroled prisoner is not a function of the Parole Office, but is entirely a function of the local welfare officer.

Five men have been appointed by the Governor as Parole Supervisors. The name "Supervisor" is a misnomer; these men do not have custody of parolees, but are the liaison officers between the Office of the Commissioner of Paroles and the local welfare and law enforcement officers.

Splendid coöperation is given by the existing local agencies from the day the subject enters prison until his parole is ended through executive order or revocation. This can be illustrated best by taking a typical case and tracing its development from the day of commitment of the prisoner until the culmination of the parole.

The following example is indicative of the procedure in investigating and supervising a parole case. However, it is not applicable to all cases. Each case varies from the last because of the human element and, although the mechanics might be essentially the same, the procedure is elastic and is made to conform to the case at hand.

### A Typical Case

John Doe is convicted of robbery in X county and is sentenced to serve not less than four and not more than six years in the State's Prison. Upon arriving at the Central Prison he is finger-printed, photographed, given a physical examination, and "put through the mill."

After John has been assigned a number and cell, a representative of the Parole Office, whose sole business it is to interview all prisoners upon their commitment, calls him into the interview room, where he obtains certain information from the prisoner. The purpose in this initial interview is two-fold: to gain information and to implant some hope in the man.

The information gained from the prisoner includes his admitted criminal record, his own story of the crime, fraternal and social orders to which he has belonged, the extent of his education and the schools which he attended, former occupations and names of employers, names of persons on the outside who might act as first friends.

In addition, the Parole Officer obtains all of the information possible about the prisoner's family, both his dependents and those upon whom he is dependent.

John may be transferred from the State Prison to any one of the several felon camps in the State.

### Dependents Not Overlooked

The Parole Officer who has held this interview studies the information which the prisoner has given. A memorandum is sent to the Commissioner of Public Welfare, in the event John's family will need aid while he is in prison. The Commissioner of Public Welfare relays this information to the local welfare officer, who carries out the suggestions made and sends the Commissioner of Public Welfare an account of what has been done in the case. A copy of this information is placed in the prisoner's file.

The Parole Office contacts John's former employers and the persons whom he has given as references, the principal of his school and teachers who have had him in charge. These persons are asked to give their impressions of the subject.

For each person committed to the State Penitentiary, the Parole Office has set up a file in which goes all of the institutional and other data. Under institutional data is included the physical report, a finger-print record, obtained by the Prison Department from Washington, a prison record sheet, and a typed copy of a report based on the first interview. A number is assigned each file and a date is set when that file will be studied and a hearing given the prisoner. This date is set by law as being after the prisoner has served one-fourth of his minimum sentence.

### Every Case Heard Annually

John has been sentenced to four years, so his case will come up at the end of his first year in prison. (In cases where the sentence is over four years a hearing will be given annually. The Parole Commissioner

*Attorney General Cummings (right), snapped by the candid camera on his recent visit to this State, paused in his address before the North Carolina Conference for Social Service to praise the State's new parole system.*

has made this a rule in order that each case shall receive the most careful consideration possible.) At the time John's case gets its first hearing the law enforcement and welfare officers, as well as other local officials, are asked to give what information they can obtain about the man.

If John's conduct has been good and he has attained the honor grade, which information is supplied by the Prison Department, social attitude reports are requested from the Prison officials who have had him in their personal charge. These reports give the particular official's estimate of John's attitude and the likelihood of his being a good parole prospect.

Provided all these State and local officials have supplied information favorable to recommendation for parole, the trial Judge and Solicitor are contacted for their views. In many cases the Judge or Solicitor, on their own volition, will have submitted a contemporaneous memorandum, made at the time of the trial.

John does not, unless he is an exceptional case or person, get a parole upon his first hearing, but all the information possible will have been obtained from both State and local officials. His case is then continued until a later date to enable the Parole Office to give a further study of his case and to allow John to give further signs of reformation.

**Finding a Job**

If John is deserving, as the time approaches for parole, the investigation shifts to the all-important problem of finding gainful employment and a community willing to receive the prisoner. This part of the investigation is carried on largely by the welfare authorities under the direction of the Parole Office.

The Parole Commissioner, if this coöperative investigation has impressed him with a belief that the ends of justice have been met, that reformation has taken place, and that the prisoner has a place to go and a job waiting for him, recommends to the Governor that he grant a parole. If the Governor grants John a parole, an officer of the Prison Department takes him to the Welfare Officer in the county in which he is to reside.

The original of the Parole Order is sent to that Welfare Officer, and John is placed in his custody, to remain for the duration of his parole. John must report to the Welfare Officer once a month until he is released from reporting or his parole is ended by executive order.

A Supervisor from the Parole Office goes to each County once every ninety days to confer with the law enforcement officers, Court officials, and Superintendent of Public Welfare regarding each man on parole in the county. Court records are searched and officers and citizens contacted to determine whether or not parolees are conducting themselves according to the terms of their paroles. If John is found to have been of good conduct, to have settled down to gainful employment, to have shown every sign of reformation, his parole, on the recommendation of local officers, will be ended through executive order.

In the event John's conduct has not been up to the standard required of parolees, his parole will be revoked and he will be returned to finish serving the remainder of his sentence. In these cases, too, the local law enforcement and welfare officers coöperate in giving information upon which revocations are based. As a matter of course, the Prison Department informs the Parole Office of all parolees who have been sentenced to another term, and the paroles are promptly revoked.

**The "Short-Termers"**

John's case is one indicative of the handling of a felony case. It is impossible to interview all persons sent to the roads for the relatively short sentences given misdemeanants. This is true not only because of the great number of that type prisoner, but also because the misdemeanants are sent directly to the many camps and county farms throughout the State. They are not cleared through one central place, as felons, who are cleared through Central Prison.

In order that these "short termers" will not go unheard, the Commissioner of Paroles, through coöperation of the Prison Department, has provided for the camp superintendents to send in reports known as Prisoner's Progress Reports, in the case of each man whom the superintendent believes worthy of a hearing.

The Parole System in North Carolina differs from systems in other States chiefly in the fact that it utilizes all existing local agencies, both for the investigation of prisoners and the supervision of parolees. The success of the system depends upon the close coöperation of these agencies with the Parole office, and the response is said in every case to have been splendid.

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# Relative County Debt Loads

By J. L. PEELER

Statistician, Kirchofer & Arnold, Inc-

The business vicissitudes of the past few years have brought unwholesome reactions to practically every form of economic endeavor. Not only have these adversities been felt by the less stable businesses, but they have permeated the financial structures of municipal corporations as well, long regarded as almost impregnable.

Municipal bonds, i.e., bonds of counties, cities, towns, districts, and townships, prior to 1930 passed through investment channels and were generally regarded as sound investments under two conditions. First, that the bond be accompanied by an opinion of a bond attorney, approving its legality, and second, that it was a full faith and credit obligation of the issuing unit whose officials had the power to levy a tax without limit as to rate or amount on all the taxable property within the unit, for the payment of bond principal and interest.

It is perhaps natural, therefore, in view of the experiences of municipal investors during the past few eventful years, that this sense of false security has been cast aside to a marked degree and a more realistic attitude adopted by them. Literally thousands of investors are asking themselves today, "How much indebtedness can this munici-

pal corporation safely issue without endangering its credit?" Increasingly they are scrutinizing the ability of the issuing unit to carry out the terms of its loan contract.

There are obviously many factors to be considered in approaching an adequate appraisal of municipal obligations. However, among these, debt ratios and per capita figures are the yardsticks most commonly employed by the average investor.

In considering the analysis of municipal obligations it should be borne in mind, however, that comparative debt statistics are not all-embracing and hence should not be used to the exclusion of many other pertinent factors. Too, a set rule for debt ratios and per capita figures can not be made to apply to all units, for what might be considered a conservative basis of appraisal for one unit might be excessively high when applied to another.

In a recent study, some interesting light was shed upon the relative debt burdens of the 100 North Carolina Counties. Partial results of this analysis are presented and expressed in debt ratios and per capita figures, because only when reduced to a visible yardstick of comparison do debt statistics lend themselves to full interpretation.

| | Per Capita County-wide District & Twp. Net Debt | Ratio of County-wide Dist. & Twp. Net Debt to Ass'd Val. | Per Capita Total Net Debt Load (Including Municipalities & Special Charter Districts) | Ratio of Total Net Debt Load to Ass'd Val. | | Per Capita County-wide District & Twp. Net Debt | Ratio of County-wide Dist. & Twp. Net Debt to Ass'd Val. | Per Capita Total Net Debt Load (Including Municipalities & Special Charter Districts) | Ratio of Total Net Debt Load to Ass'd Val. |
|---|---|---|---|---|---|---|---|---|---|
| Alamance | $ 48 | 6.8% | $101 | 14.2% | Jones | 46 | 12.4 | 50 | 13.2 |
| Alexander | 43 | 7.8 | 52 | 9.5 | Lee | 44 | 7. | 62 | 9.9 |
| Alleghany | 25 | 4.5 | 25 | 4.5 | Lenoir | 54 | 11.4 | 68 | 14.3 |
| Anson | 25 | 4.9 | 35 | 7. | Lincoln | 33 | 6. | 41 | 7.3 |
| Ashe | 66 | 38. | 68 | 39. | Macon | 56 | 13.6 | 62 | 15.1 |
| Avery | 63 | 16.9 | 64 | 17.3 | Madison | 40 | 11.1 | 50 | 13.9 |
| Beaufort | 49 | 8.9 | 66 | 12. | Martin | 48 | 11. | 61 | 14. |
| Bertie | 34 | 9.3 | 41 | 11. | McDowell | 59 | 7.3 | 78 | 9.5 |
| Bladen | 52 | 11.6 | 56 | 12.5 | Mecklenburg | 29 | 2.8 | 90 | 8.6 |
| Brunswick | 150 | 37. | 155 | 38.8 | Mitchell | 52 | 11.9 | 56 | 12.8 |
| *Buncombe | 218 | 26.6 | 425 | 51.9 | Montgomery | 108 | 13. | 151 | 18.1 |
| Burke | 38 | 5.8 | 38 | 5.8 | Moore | 26 | 3.6 | 49 | 6.9 |
| Cabarrus | 26 | 3. | 38 | 4.4 | Nash | 24 | 5.3 | 30 | 6.3 |
| Caldwell | 34 | 4.8 | 62 | 8.7 | New Hanover | 26 | 2.2 | 83 | 6.9 |
| Camden | 34 | 6.2 | 34 | 6.2 | Northampton | 23 | 6.5 | 23 | 6.5 |
| Carteret | 247 | 53. | 347 | 75. | Onslow | 48 | 10.9 | 51 | 11.7 |
| Caswell | 25 | 6.4 | 25 | 6.4 | Orange | 24 | 3.5 | 46 | 7. |
| Catawba | 52 | 6.1 | 78 | 9.3 | Pamlico | 99 | 30. | 102 | 30.9 |
| Chatham | 51 | 8.2 | 62 | 9.9 | Pasquotank | 42 | 6.6 | 115 | 18.2 |
| Cherokee | 67 | 14.8 | 88 | 19.3 | Pender | 38 | 7.9 | 42 | 8.7 |
| Chowan | 38 | 6.6 | 43 | 7.4 | Perquimans | 57 | 11.3 | 60 | 11.8 |
| Clay | 82 | 24.6 | 88 | 26.6 | Person | 36 | 8.2 | 63 | 14.4 |
| Cleveland | 17 | 3. | 30 | 5.3 | Pitt | 46 | 8.8 | 49 | 9.4 |
| Columbus | 44 | 9.1 | 52 | 10.5 | Polk | 80 | 14.9 | 125 | 23.3 |
| Craven | 122 | 29.1 | 147 | 36.9 | Randolph | 53 | 11.2 | 66 | 13.9 |
| Cumberland | 72 | 16.3 | 81 | 18.4 | Richmond | 25 | 3.9 | 48 | 7.4 |
| Currituck | 9 | 1.4 | 10 | 1.4 | Robeson | 35 | 7.6 | 46 | 9.7 |
| Dare | 70 | 14.6 | 83 | 17. | Rockingham | 61 | 8.1 | 92 | 12.3 |
| Davidson | 24 | 3.5 | 76 | 11.3 | Rowan | 31 | 3. | 91 | 8.5 |
| Davie | 30 | 4.1 | 37 | 4.8 | Rutherford | 76 | 13.8 | 114 | 20. |
| Duplin | 59 | 13.8 | 66 | 15.4 | Sampson | 31 | 7.4 | 38 | 8.9 |
| Durham | 31 | 2.2 | 138 | 9.9 | Scotland | 25 | 4.3 | 33 | 6. |
| Edgecombe | 32 | 6.6 | 40 | 8.4 | Stanly | 53 | 6.9 | 56 | 7.2 |
| Forsyth | 26 | 1.9 | 143 | 10.5 | Stokes | 47 | 12.9 | 60 | 16.4 |
| Franklin | 43 | 11.8 | 57 | 15.5 | Surry | 40 | 6.9 | 66 | 11.3 |
| Gaston | 29 | 2.9 | 70 | 7.1 | Swain | 154 | 30.4 | 181 | 35.5 |
| Gates | 20 | 4.3 | 22 | 4.7 | Transylvania | 217 | 47. | 299 | 65. |
| Graham | 70 | 6. | 78 | 6.7 | Tyrrell | 63 | 12.8 | 78 | 15.7 |
| Granville | 36 | 6.2 | 53 | 9.4 | Union | 31 | 8.7 | 36 | 10.2 |
| Greene | 39 | 11.5 | 46 | 13.5 | Vance | 30 | 4.9 | 49 | 7.9 |
| Guilford | 40 | 3.5 | 211 | 18.2 | Wake | 26 | 3.3 | 99 | 12.5 |
| Halifax | 20 | 3.5 | 47 | 8.4 | Warren | 14 | 3.6 | 15 | 3.9 |
| Harnett | 44 | 9.1 | 56 | 11.5 | Washington | 66 | 13.5 | 90 | 18.2 |
| Haywood | 63 | 8.1 | 89 | 11.3 | Watauga | 33 | 6.8 | 56 | 11.3 |
| Henderson | 125 | 14.3 | 265 | 30.2 | Wayne | 36 | 6.3 | 63 | 11. |
| Hertford | 28 | 7. | 36 | 8. | Wilkes | 37 | 11. | 47 | 14.2 |
| Hoke | 21 | 4.1 | 29 | 5.8 | Wilson | 63 | 11.7 | 65 | 11.9 |
| Hyde | 80 | 18.6 | 80 | 18.6 | Yadkin | 23 | 5.6 | 24 | 5.8 |
| Iredell | 71 | 10.4 | 93 | 13.8 | Yancey | 76 | 23.5 | 95 | 29.4 |
| Jackson | 55 | 12. | 61 | 13.6 | | | | | |
| Johnston | 61 | 11.9 | 72 | 14. | | | | | |

* Buncombe only approximate.

The above statistics are subject to the following explanations:

1. Total net debt load, as used, equals county-wide, township, and district net debt, plus the net debt of special chartered districts and municipalities.

2. Net debt was computed by deducting from gross debt, sinking funds, and in the case of cities and towns, that amount of debt which the net water revenues would service and retire in about twenty years. No deductions were made of special assessments.

3. These compilations were made from estimated debt burdens of the various units as of June 30, 1935, in most cases, and are not to be construed as infallible. They are sufficiently accurate, however, to serve the purpose for which they were compiled.

# Magistrates Formulate Program

President J. M. Broughton, of the N. C. Bar Association, suggested a comprehensive program for the State's Justices of the Peace in his address before the Second Annual meeting of the N. C. Association of Magistrates at Salisbury, April 24th. After commenting upon the value of the organization as a means of promoting fellowship, of exchanging experience and information, and of elevating professional standards, he suggested the following as objectives: (1) seeking a better method of selecting Justices of the Peace, (2) placing limitations upon their number, (3) the fixing of fee schedules and the elimination of price-cutting, (4) a positive and constructive legislative program to supplement the present negative and defensive one, (5) the elevation of the dignity of magistrates' courts by conducting them in a dignified manner and by compelling public respect of them, and (6) individual and collective aid in the improvement of law enforcement.

President H. A. Bland, of Raleigh, in his report recommended that: (1) Magistrates be given jurisdiction of more minor offenses, particularly traffic violations, but opposed any change of the constitutional status of the office, (2) the numbers of magistrates be reduced, (3) coöperation with constructive suggestions for improving the office and unqualified opposition to any attempt to abolish it, and (4) the continuation and expansion of the program (begun three years ago by the Judges', Solicitors', Local Bar Officials' and Magistrates' Divisions of The Institute of Government) of holding local and district schools of instruction for Justices of the Peace.

Several magistrates recommended to the group the regular study of the State Department rulings carried monthly in POPULAR GOVERNMENT, and President Broughton's recommendation that they should regularly inform themselves concerning new decisions affecting their duties was so enthusiastically received that this publication is expanding the regular bulletin service to include brief abstracts of all recent decisions particularly affecting these officers.

*Officers of Magistrates' Association at Salisbury meeting. Front row (left to right): H. H. Koonts, Lexington, vice-president; H. A. Bland, Raleigh, president; Berch C. Willard, Winston-Salem, secretary-treasurer. Back row: Vice-Presidents H. H. Brown, Goldsboro, H. L. Jenkins, Greenville, and C. E. Fesperman, Salisbury, and Hon. J. M. Broughton, President of the State Bar Association, who was principal speaker.*

Secretary-Treasurer Berch C. Willard, of Winston-Salem, reported a continuing but decreased deficit and a membership of 207, about three-fourths of whom joined the first year. The President, Secretary-Treasurer, and three of the Vice-Presidents, C. E. Fesperman of Salisbury, G. W. Denny of Charlotte, and H. L. Jenkins of Greenville, were re-elected, and H. H. Brown of Goldsboro was elected Vice-President to succeed T. A. Henley of the same city, who resigned. C. E. Fesperman, the host, delivered the welcome.

# Recent Decisions of Interest

ACCOUNT STATED

**When Considered Admitted** (Evidence showed that on several occasions defendant was informed of the total of the account and that he did not deny that he had received the merchandise, although he insisted upon certain credits.) **Held,** an account rendered which is assented to as correct, or to which there is no objection within a reasonable time, may be treated as admitted, and judgment upon such a verdict is approved. **Stephenson v. Honeycutt,** 209 N. C. 701.

BAIL

**Limitation on Appearance Bond** (The appearance bond limited the liability of the surety to a trust fund the amount of which was not stated but reference was made to the trust instrument as being of record in a foreign county. Personal liability of the trustees and beneficiaries was disclaimed in the bond and the instrument.) **Held,** (1) The actual and constructive notice to the State, when the bond was accepted, that the trustees were not personally liable was binding on the State. (2) If such a bond is void as against public policy the State can not recover on it. In neither view is there any liability beyond the trust fund. **State v. Thomas,** 209 N. C. 722. (Note: Whether such a view is not a denial of the doctrine that estoppel does not operate against the sovereign, or whether such a provision could not be void without invalidating the entire instrument, are not discussed.)

BILLS AND NOTES

**Extension of Time on Note** (Note stated that extension of time of payment was waived by all parties.) **Held,** the endorser was a party and was bound by this waiver. **Grady v. Grady,** 209 N. C. 748.

CRIMINAL LAW

**Character Evidence** (On trial for larceny defendant asked a State's witness if he knew defendant's general reputation, but the judge refused to allow this.) **Held,** a defendant may put his character in evidence without going on the stand and he may do this on cross-examination, as he is not limited on cross-examination to matter brought out on the direct examination. **State v. Huskins,** 209 N. C. 727.

**Murder** (Evidence included a confession of the homicide with a deadly weapon, threats, motive, etc. Court submitted issues only as to first degree murder and "not guilty.") **Held,** the court should have submitted the question as to second degree murder also to permit the jury to pass upon the existence of premeditation and deliberation. **State v. Perry,** 209 N. C. 604.

**Manslaughter, Murder, Distinguished** (The State's evidence indicated that the defendant cut the throat of his brother's assailant while the brother and the assailant were fighting.) **Held,** if the jury should find this contention to be the facts, such cutting done maliciously would be second degree murder but if done in the heat of passion it would be manslaughter. **State v. Edmundson,** 209 N. C. 716.

**Double Jeopardy** (Defendants, previously convicted of burglary, on trial for murder did not plead former jeopardy, offer evidence of it, or preserve their rights to have it passed upon.) **Held,** that they

lost any right to have the question adjudicated. **State v. Stamey**, 209 N. C. 581.

**Private Prosecution** (On trial for murder private counsel assisting prosecution refused to state by whom they were retained.) **Held**, that permitting private counsel to assist the solicitor is largely in the discretion of the trial judge whose duty it is to permit only "such assistance as fairness and justice may require." **State v. Carden**, 209 N. C. 404.

**Dying Declarations** (Wife, shot five times, stated immediately to a witness that her husband had "shot and killed" her.) **Held**, that her statements concerning the shooting were competent. **State v. Carden, supra.**

**Driving Intoxicated** (County Recorder charged that if, when the truck was parked on a hill, defendant put his foot on the brake to keep the car from rolling down hill, he was guilty.) **Held**, the word "operate" implies motion of the automobile and merely holding the truck in place by means of the foot-brake is not "operating an automobile" with the intent of the statute. **State v. Hatcher**, 209 N. C.—[Filed 4/29/36]

CRIMINAL PROCEDURE

**Appeal after Plea of Guilty** (Appeal to Superior Court from Recorder's Court. Attempt on appeal to show plea in lower court to restrict trial to matters of law only. Record silent as to plea below.) **Held**, the judge cannot hear evidence to determine the plea below, as this can only be shown in such case by **recordari** or **certiorari**. **State v. McKnight**, 209 N. C.—[Filed 4/29/36]

COURTS

**Appeals from County Courts** (A civil action appealed from General County Court was docketed on appeal at the next succeeding term of the Superior Court.) **Held**, that C. S. 1608 (cc) requires the same rules (although "ill adapted" for the purpose) applied as in appeals to the Sureme Court; hence, an appeal can be taken only to the next Superior Court term commencing after the adjournment of the County Court term at which the judgment was rendered. **Grogg v. Graybeal**, 209 N. C. 575.

**Jurisdiction of Recorder's Court** (After action for disability benefits under an insurance policy was nonsuited in a County Recorder's Court, a new action was begun on the same policy in the Superior Court of another county.) **Held**, that since the act creating the Recorder's Court gave it no equitable jurisdiction, so much of the judgment "as of nonsuit" as ordered the policy rescinded and cancelled was void, and such void judgment is no bar to a later suit on the same cause of action. **Mauney v. Insurance Co.**, 209 N. C. 499.

**Equity Jurisdiction of Magistrates and Inferior Courts Intimated**, that the Recorder's Court, just as justice of the peace, "may have the right to allow an **equitable defence**, but this would not extend to the right to administer **affirmative equitable relief.**" **Mauney v. Insurance Co., supra.**

HOMESTEAD

**Fraudulent Conveyance** (Land was ordered sold for the benefit of creditors in an action setting aside a conveyance as fraudulent. The debtor demanded his homestead.) **Held**, he is entitled to his homestead as a fraudulent conveyance does not forfeit it. **Casualty Co. v. Dunn**, 209 N. C. 736.

JUDGMENTS

**Upon Confession** (Where a judgment was confessed without action before a Clerk under C. S. 624 upon sufficient verified statements, the Clerk failed to endorse the judgment on the statements.) **Held**, as the Clerk entered the judgment on the Judgment Docket, the judgment was valid despite the irregularity. **Cline v. Cline**, 209 N. C. 531.

JURY

**Questioning Prospective Jurors.** (Judge in absence of jury heard evidence and determined that A insurance company was insurer of defendant in an automobile injury action and upon this based his finding that questions, asked the jurors on their **voir dire** as to their business connection with A insurance company, were in good faith.) **Held**, whether such questions were asked in good faith or were prejudicial to the adverse party rests entirely in the sound discretion of the judge. **Sparks v. Holland**, 209 N. C. 705.

LANDLORD AND TENANT

**Summary Ejectment** (After the lease was forfeited by the lessee, his sub-lessee, whose term had not expired, refused to yield possession to the owner.) **Held**, although the sub-lease had not expired, when the lease was forfeited the owner was entitled to possession. **Lange v. Evans**, 209 N. C. 747.

MASTER AND SERVANT

**Liability for Servant's Acts.** (Servant returning from an errand for the master stopped at his own home and between that point and the master's he ran over plaintiff. Evidence indicated bad feeling between servant and plaintiff and that servant ran over him purposely.) **Held**, prima facie he was in the scope of his employment as stopping at his own home was only a minor deviation from the direct route. However, the conduct of servant in backing up before striking plaintiff, the bad feeling existing, his threats, and plaintiff's position with respect to the highway showed that the servant left the course of his employment to vent his personal spite and the nonsuit as to the master was correctly entered. **Jackson v. Scheiber**, 209 N. C. 441.

MORTGAGES

**Injunction Against Deficiency Judgment** (In an action for a deficiency judgment where a beneficiary in a deed of trust foreclosed a deed of trust and bid in the realty, the jury finding that the fair value of the property at the time of the sale exceeded the amount for which it was sold, the judge enjoined the consummation of the sale and ordered re-sale.) **Held**, Ch. 275, Public Laws 1933 permitting this is constitutional. The purchaser must first account for the fair value of the property at the time of the sale before claiming a deficiency, and the amount bid at the sale is not the test of the fair value at that time. **Mortgage & Loan Corp. v. Bank**, 209 N. C.—[Filed 4/29/36]

**Levy Under Execution** (Sheriff sold under levy property claimed under a chattel mortgage.) **Held**, the evidence failed to show it was the same property; hence, there was no proof that the mortgagee had any interest in the property levied upon. **Gerks v. Weinstein**, 209 N. C.—[Filed 4/29/36]

TRIAL

**Voluntary Nonsuit** (In a condemnation proceeding on the hearing of exceptions to the report of the commissioners, the Clerk refused a request for a "voluntary nonsuit.") **Held**, just as in civil actions, the plaintiff in a special proceeding may take a nonsuit at any time before the confirmation of the report, on payment of the costs. **Light Co. v. Mfg. Co.**, 209 N. C. 560.

## PARTIAL TAX PAYMENT

*(Continued from page fifteen)*

book. The amount of unredeemed receipts is carried as a liability of the City's General Fund. When the receipts are redeemed they are treated, in so far as the Tax Collector is concerned, as cash.

Durham's tax collector, F. C. Cavedo, and other officials have found the use of these receipts to be the solution of the many inconveniences brought about by accepting partial payments, since it avoids the numerous calculations as to penalties and interest found in the usual methods of recording partial payments, as well as the trouble involved in allocating partial payments to the various funds. No receipts are accepted until the taxpayer has a sufficient amount of receipts or receipts and cash to pay a full year's taxes. At such time one calculation of penalties and interest, as well as allocation to the various funds, is made. Small differences are adjusted in cash.

Since the receipts are non-negotiable and serially numbered, there is no danger if they are lost, and duplicates mimeographed upon plain white paper and given the same serial number as the original certificate may be issued for any that are lost or destroyed. The taxpayer has only to certify in writing, before a witness, that the original has been lost or destroyed.

By keeping an alphabetical file of the duplicate receipts, the tax collector also is enabled to look through the file periodically for the names of taxpayers who have fairly large amounts of receipts, and by reference to the tax books notify them as to whether they have an amount sufficient to pay a given year's tax. By a little advertising the city is also able to get small taxpayers who might find a full payment at one time difficult to begin to purchase these receipts prior to the time their taxes become due in order that they may meet payment at the due date.

How well the system has worked in Durham is evidenced by the fact that there are $18,000 worth of the partial payment receipts outstanding at the present time, and that the city collected more than 90% of last year's taxes before the land sale date.

# Bulletin Service

**Opinions in this issue are taken from rulings of Attorney General and State Departments from March 15 to April 15**

★

**Prepared by**
**M. R. ALEXANDER**

**1. Ad valorem taxes.**

**A. Matters relating to tax listing and assessing.**

**3. Exemptions—property of State agencies.**

To E. L. Loftin. Inquiry: Is residential property owned and rented by the World War Veterans Loan Fund subject to ad valorem taxation, under the doctrine of Board of Financial Control v. Henderson County, 208 N. C. 569, as not being used for a public purpose?

(A.G.) No. This case refers to municipally-owned property, and the constitutional provision construed (Article V, Section 5) is not involved in the question of taxation of State-owned property, which derives its immunity from taxation from the fact of sovereignty of the owner.

**30. Situs of personal property.**

To D. W. Newsom. Inquiry: If a citizen of North Carolina has cash in a bank in Virginia on April 1, is it taxable here or there?

(A.G.) In my opinion, a deposit in a Virginia bank is a solvent credit taxable at the domicile of the owner in North Carolina.

**40. Special assessments.**

To R. M. Lilly. Inquiry: Is public school property subject to special assessments, as for paving? (A.G.) Yes, see the similar case of Tarboro v. Forbes, 185 N. C. 59, relating to city park property, and C. S. 2710 providing that "no lands in the municipality shall be exempt from local assessment."

**79. Deductions from solvent credits—debts.**

To A. C. Hudson. Inquiry: Are taxes due and owing the City, County, State or Federal Government deductible as debts from solvent credits in listing taxes?

(A.G.) While the State has declared taxes to be debts for certain purposes, in my opinion such taxes due the State are not intended to be included within the deductions of bona fide indebtedness from solvent credits listed for taxation.

Referring particularly to inheritance taxes, while the duty rests upon the personal representative to list solvent credits, and while he is permitted to make deduction therefrom of bona fide indebtedness, I should say that the solvent credits which came into his hands as a part of the personal assets of the deceased could not be reduced by the deduction therefrom of the inheritance tax, which is an obligation of a different character accruing only upon the death of the deceased, and certainly not any obligation of the decedent at the time of death.

**92. Credit to hospitals for charity work.**

To G. E. Welch. Inquiry: Are hospitals owned by the Duke Foundation exempt from ad valorem taxes? (A.G.) Hospitals owned by the Duke Foundation and devoted entirely to charitable work are exempt from ad valorem tax under Sections 304 and 306 of our Machinery Act.

**110. Listing of personal property.**

To H. M. Burrus. (A.G.) The stocks of goods of merchants must be listed as property owned by the merchant on April 1 and so valued. That means the actual stock owned by the merchant at that time.

To T. L. Ware. Inquiry: Are stocks of gas and oil in storage tanks of the various oil companies on April 1 subject to ad valorem taxation? (A.G.) Yes.

**B. Matters affecting tax collection.**

**12. Penalties and interest.**

To J. H. Mayo. Inquiry: Please give me full information regarding penalties on 1935 taxes? (A.G.) Please see the 1935 Machinery Act, Section 805, for the complete penalty set-up.

To J. D. Grimes. Inquiry: Is there any procedure by which officials of a county might extend the benefit of the provisions of Chapter 222, Public-Local Laws of 1935, providing waiver of penalties on taxes if paid by May 1, 1936? (A.G.) No.

**15. Delinquent taxes — incidents of notes given under Ch. 181, P. L. 1933.**

To G. G. Brinson. Inquiry: C. S. 8034, providing for the giving of notes for certain years' delinquent taxes, stipulates that the notes shall bear interest at 6% and allow the taxpayer a 10% discount for payment of the notes on or before the due date. Does the discount cover accumulated interest or only the actual tax?

(A.G.) This Office has formerly ruled that the 10% discount, when a payment is made on a tax note, should apply to the amount due including interest.

**22. Delinquent taxes—time for sale and foreclosure 1935 taxes.**

To C. K. Reynolds. Please advise if Montgomery County may postpone until August the sale of 1935 delinquent taxes under Chapter 234, Public Laws of 1935?

(A.G.) This Act permits the postponement of sales on account of delinquent taxes until August.

**35. Tax foreclosure—costs and fees.**

To W. C. Berry. Our County is willing to pay the fees allowed to officers for service of summons in tax foreclosure actions. Please advise if it can legally make payment in advance of the settlement of the suits?

(A.G.) I doubt whether the officers could demand it, but if the county is willing, I think it would have authority to make payment in advance of the one-half fees provided in tax foreclosure actions, under C. S. 8037.

**47. Tax foreclosure—rights of second unit.**

To G. S. Marsh. Inquiry: The County is selling under tax foreclosure suits real estate against which city taxes are also owing. Will the town be barred from collecting taxes because of failure to make answer or protect itself at the sale?

(A.G.) Where a tax foreclosure suit has been instituted by a county and due notice thereof given to the town, it has heretofore been held that it is the duty of the town to file answer and set up the tax due it, and if it failed to so do, that the purchaser at the foreclosure sale will take the property free from the municipal tax lien.

The same would be true in the case a foreclosure were brought by the town and the county failed to assert its claim when duly notified.

As to paving assessments, the matter has not been settled by the courts, but my best opinion is that this would likewise be divested by this procedure.

**77. Tax collection—priority of lien.**

To H. C. Wilson. (A.G.) The Federal authorities have always contended that the lien of Federal taxes, when that lien exists, is superior to those of the State and County, and we have never been able to successfully combat this position in any administrative proceeding for the enforcement of taxes. In this connection you may like to read 31 U. S. C. A. 191; Hatch v. Morosco Holding Co., 61 Fed. 2d 944; Spokane County v. United States, 49 Sup. Ct. 321, 279 U. S. 80; Re: Caswell Construction Co., 13 Fed. 2d 667.

**III. County and city license or privilege taxes.**

**A. Levy.**

**10. City automobile licenses.**

To T. R. Wall. (A.G.) Under C. S. 2621 (31) (c) cities and towns may levy a tax of not more than $1 per year upon resident motor vehicles. I do not think your town has authority to levy a license tax against non-resident motor vehicles.

**11. For hire cars and transfer trucks.**

To R. O. Self. Inquiry: Certain cities and towns are endeavoring to tax motor vehicle common carriers the same as express companies. Is this permitted in view of Chapter 375, Public Laws of 1933, Section 30 (a), which states: "No additional

**MAY UPSET TAX RULINGS**

**Attorney General A. A. F. Seawell has requested POPULAR GOVERNMENT to call the especial attention of officials and attorneys to the case of Hardware Mutual Fire Insurance Co. v. Mecklenburg County, handed down by the North Carolina Supreme Court on April 29, and summarized on page 12 of this issue. There is a possibility that this case, which may be said briefly to hold that liabilities (as unearned fire insurance premiums) as well as bona fide debts may be deducted from solvent credits in listing property for taxation, may upset some of the tax rulings given by the Attorney General, prior to the decision of this case, in this and previous Bulletins.**

franchise tax, license tax, or other fee shall be imposed by the State against any franchised motor vehicle carrier taxed under this act, nor shall any county, city or town impose a franchise tax or other fee upon them"?

(A.G.) I agree with you that under this section counties, cities, and towns may not impose any additional franchise, license tax or other fee upon such carriers operating through their territory.

**14. Privilege license—beer.**

(A.G.) We have formerly ruled that there is no authorization for the State or a municipality to levy a three or six months' license to retail or wholesale beer dealers.

**15. Privilege license on businesses, trades, and occupations.**

To W. G. Wells. Inquiry: May a municipality levy a privilege tax on businesses conducted or enjoyed within the town on which the State or county do not levy a like tax?

(A.G.) A town has power under C. S. 2677 to levy a privilege tax on businesses conducted or enjoyed within the town, unless the particular privilege has been covered by other law, as the Revenue Act. In the latter event the town can only tax in accordance with such law. In other words, C. S. 2677 permits a tax of this sort "unless otherwise provided by law."

**61. Outdoor advertising.**

To A. J. Maxwell. Inquiry: Does the license tax on outdoor advertising levied by Section 151 of the Revenue Act apply to such advertising by candidates for public office? (A.G.) In our opinion, no.

**70. Chain store tax.**

To W. P. Kelly. Inquiry: Does the chain store license tax under Section 162 of the Machinery Act apply to a merchant operating two or more stores but selling a different class of merchandise in each? (A.G.) Yes, in our opinion, this factor makes no difference.

**IV. Public schools.**

**A. Mechanics of handling school funds.**

**14. School budgets—adoption and review.**

To W. F. Warren. Inquiry: What authority does the State School Commission have over the expenditure of local school supplement funds voted by the people and approved by the board of trustees and the tax levying authorities?

(A.G.) Section 14 of the School Machinery Act of 1935 (Chapter 455 Public Laws) provides that in order to submit the question of a local school supplement to an election the proposition must be approved by "the State School Commission."

Section 15 provides that "the request for funds to supplement State school funds, as permitted under the above conditions, shall be filed with the tax-levying authorities in each county, and city administrative unit, on or before the 15th day of June, on forms provided by the State School Commission."

The law also provides that the tax-levying authorities to whom this is presented may approve or disapprove the supplement budget in whole or in part and, upon the approval being given, the same shall be submitted to the State School Commission, which shall have the authority to approve or disapprove any object or item contained therein.

**15. Conformance with budget.**

To C. A. Erwin. Inquiry: The local act providing for a Manager for our County (Chapter 108 Public-Local Laws of 1929) authorizes the Manager to purchase supplies for the departments of the county government. Does this carry with it authority over school purchases, after approval of a budget by the county commissioners?

(A.G.) In my opinion the control of purchases and materials for the public schools of the county is in the hands of the Director of the State Division of Purchase and Contract, rather than either the County Manager or Superintendent. So far as I have been able to discover, the School Machinery Act and the public school laws generally do not confer authority for making school purchases on the Superintendent. Even if it was ever intended for your County Manager Act to confer authority on this official to buy school supplies, I think that upon the creation of the State Division of Purchase and Contract and the State's taking over of the public schools this authority was vested in the Director thereof.

I think that under Section 6 of this Act the Legislature intended that sources of supplies for schools should be fixed by contract and certified by the Director of Purchase and Contract, and that thereafter the County Boards of Education should make requisition for materials required for the county schools. Once the contracts have been certified by the Director and the requisitions made, the detailed expenditures should be handled by the Boards of Education, and may be left in the hands of the Superintendent as a matter of convenience and record.

**D. Powers and duties of present school districts.**

**31. Elections to supplement State funds.**

To I. S. London. Does the County Board of Elections have supervision over a special school tax election?

(A.G.) Where the County Commissioners have called an election upon the subject of supplements to a school fund in a City Administrative Unit, this Department has ruled that the election is had under the provisions of Chapter 95 of the Consolidated Statutes, Art. 23, Secs. 5639 et seq., which law is referred to in the School Machinery Act providing for such elections. See Chapters 136 and 219, Public Laws of 1923. The election seems to be held under the auspices of the County Commissioners, and the return apparently under that law is to be canvassed by that Board. See School Machinery Act of 1935, Chapter 445, Section 14.

To C. D. Hogue. Inquiry: Please give us your interpretation of C. S. 5780 (59) (60) on the question whether a Board of County Commissioners is required, prior to the calling of an election on the question of school supplement, to approve the proposed budget?

(A.G.) It has been held by this Department that it is not necessary for the budget required by C. S. 5780 (60) in detail to be filed with the State School Commission and tax levying authorities before the election is called as provided in C. S. 5780 (59).

To T. C. Hoyle. Inquiry: Who is the proper official or agency to authenticate the ballots in a local school election?

(A.G.) I think C. S. 6055 (a-5) controls, requiring the County Board of Elections. C. S. 6055 (a-2) makes the Subchapter of which (a-5) is a part applicable to all school districts in the State. Another section within the same Subchapter, Section 4, makes it applicable to all elections in which any issue is submitted to a vote. This would seem to be conclusive upon the matter.

To J. T. Pritchett. Inquiry: Is absentee voting permissible in a special school election? (A.G.) Yes, under the recent decision of our Supreme Court in the case of Phillips v. Slaughter, 209 N. C. 543.

**F. School officials.**

**25. School committeemen—personal liability.**

To J. C. Sedberry. (A.G.) I am not aware of any provisions of law which would authorize a Board of County Commissioners to pay attorney's fees for defending individual members of a District School Committee who may be sued for tortious or wrongful conduct as committeemen.

Under usual circumstances the law would not authorize the payment of such fees, as the alleged wrongful acts would necessarily be charged against the Defendants as having been done in violation of the duties imposed upon them by law.

**51. Teachers—duty to notify teachers not re-elected.**

To J. O. Wells. Inquiry: If a teacher not re-elected is not notified within 30 days of the close of the school term, as provided by Section 12 of the School Machinery Act of 1935, may she hold over in her position?

(A.G.) The law requires the School Committee to notify teachers not re-elected, but since there is nothing in the law as to the consequences which may follow failure to so notify, this Department has held that the law is merely di-

*Although the Attorney General's duties are limited to representation of the State in court actions and legal counsel to its departments and officials, Mr. Seawell (above) and his staff, as a special courtesy and service, render advisory opinions to local officials on any subject pertaining to the duties of their offices. The opinions, which are summarized in* POPULAR GOVERNMENT *each month, have proven one of the most valuable and popular services available to local officials from Raleigh.*

rectory, that is, enacted for the purpose of notifying such teacher as a matter of convenience to the teacher, and that the teacher has no redress for failure to notify. None certainly would be had against the Committee, and I should say none against the individuals composing it, unless it could be shown that notice was omitted through bad faith.

**G. Poll taxes, dog taxes, fines and forfeitures accruing to schools.**

**50. Objects for which such funds may be spent.**

To John C. Lockhart. Inquiry: Is it legal to use school funds derived from dog taxes to pay appraisers appointed by the Board of County Commissioners for services in determining the value of sheep or calves killed by dogs?

(A.G.) C. S. 1681 provides that damages arising from injury to person or property by any dog may be paid out of the proceeds of the dog tax, upon the ascertainment of such damage by three freeholders. Board v. George, 182 N. C. 414, holds that it is proper to pay the expenses of the assessment out of this money.

**V. Matters affecting county and city finance.**

**A. Refinancing.**

**7. Loan contracts with State.**

To W. K. Gray. Inquiry: Please construe Chapter 411, Public Laws of 1935, relating to amounts due the State Literary Fund and Building Revolving Fund on account of loans made to the several counties and the application thereon of amounts due the said counties from contracts made with the State Highway and Public Works Commission?

(A.G.) The obligations made for loans to Counties and Boards of Education out of the literary fund and the building revolving fund are in the form of installment notes, and the contracts made with the Highway Commission call for installment payments. I am of the opinion that it is the intention of the law to consider only such installments in both cases as have actually become due by accrual under the respective obligations, and that the term does not include installments which are not yet due or payable under the respective contracts.

In view of this interpretation, I am further of the opinion that the law does not prohibit the pledging by the County of installments not yet become due and payable under the contract with the State Highway and Public Works Commission.

**B. Defaults.**

**10. Funds applicable to defaulted interest.**

To H. L. Carpenter. Inquiry: If a town is in default on interest on several issues of bonds, how should it allocate funds on hand for this purpose but not sufficient to pay the total? (A.G.) The fund should be used to pay the interest first accrued, as long as it lasts.

**25. Statute of Limitations.**

To Albert Phillips. Inquiry: What is the Statute of Limitations in the case of past due bonds of municipalities? (A.G.) C. S. 437 provides that action must be begun within 10 years from the time the right of action accrued, that is, within 10 years from the due date and default of the sealed instrument. This would apply to coupons which are under seal; otherwise, the three-year Statute would apply.

**L. Local budgets and audits.**

**10. Approval by Local Government Commission.**

To G. R. Poole. Inquiry: Does any provision in the North Carolina law require that municipal or county audits must be let by competitive bids?

(A.G.) No. The Statute goes no further than to require that contracts for such audits must be reduced to writing and approved by the Local Government Commission.

**T. Fire insurance.**

**5. Purchase.**

To J. E. Steed. (A.G.) I know of no law which makes it mandatory upon the County Commissioners to divide up the insurance on public buildings between local insurance agents.

**10. Policies in mutual companies.**

To Welch Bowman. Inquiry: Is it permissible for a county or city to insure public property in a mutual fire insurance company? (A.G.) Yes, under the recent ruling in the case of Fuller v. Lockhart, 209 N. C. 61.

**VII. Miscellaneous matters affecting cities.**

**J. What constitutes necessary expenses.**

**10. Airports.**

To J. W. Jennette. Inquiry: Does a city have the right to purchase out of city funds, without a vote of the people, real estate for the development of an airport?

(A.G.) Chapter 87, Public Laws of 1929, authorizes municipalities to acquire and construct airports and to issue bonds therefor upon reference to a popular vote. This Act also declares the "purpose" to be public.

In my opinion, if a municipality has a surplus or unappropriated fund on hand, it may devote it to this purpose, but if it is contemplated to enter into any obligation which will result in taxation or to pledge the credit of the town in any way, this must be submitted to a popular vote. Article VII, Section 2, Constitution.

**VIII. Matters affecting chiefly particular local officials.**

**B. Clerks of the Superior Court.**

**1. Costs and fees.**

To J. P. Fletcher. (A.G.) A proceeding under Chapter 43 of the Consolidated Statutes, Sections 2284 to 2304, relating to insane and incompetents, is in the nature of a special proceedings, and the costs are apportioned as in civil cases. See C. S. 1248. There is no provision in the Consolidated Statutes rendering the county liable for costs in these cases in case the Plaintiff or petitioner in such an action is unable to pay them.

To J. S. Dockery. Inquiry: The Commissioner of Banks through the local liquidating agent is preparing his final report as contemplated under C. S. 218 (c), subsection 18, and has requested the Clerk to advise him as to the amount of compensation or commissions are chargeable on the report. The Clerk is doubtful as to the application of Chapter 379, and has asked me to write for your advice on the subject.

(A.G.) The report of the Commissioner of Banks required by this section is not such a report as would justify or require an audit by the Clerk of Superior Court as of a final account under Section 6, Chapter 379, Public Laws of 1935, and the Clerk will not, therefore, be entitled to fees upon the audit of the same.

In my opinion, the requirement of this section is merely intended to afford the public permanent access to a record of the acts of the Commissioner of Banks, and no action on the same is required by the Clerk, but on the contrary its filing automatically ends the liquidation and discharges the Commissioner.

**51. Application of costs to unpaid taxes.**

To A. F. Ghormley. (A.G.) In my judgment, amounts due for per diem and mileage due for jury service on special venire is like any other compensation for jury service and does not come within the definition of costs in the contemplation of Chapter 248, Public Laws of 1933, so that taxes may be retained out of it. I am convinced that on account of the phrasing of the Act it applies only to ordinary bills of cost in criminal actions which are presented to the County Commissioners for payment.

**82. Decedents' estates — administrator's and guardian's bond.**

To W. H. Young. Is it proper, when the final report in an administration or guardianship is made, for the Clerk to return a cash bond, when the bond is liable for several years after these reports have been filed?

(A.G.) Passing over the question of whether or not a deposit of cash may be received in lieu of an administrator's or guardian's bond, I do not think that cash deposited by way of security in such a matter could be returned upon the filing of the final account. The account itself is subject to appeal, and also for a certain period, to exceptions which might alter the situation altogether. Besides that, there might be persons non sui juris whose interests might be prejudiced by an immediate surrender of the cash, and there might be undisclosed liabilities in the course of the administration giving a right to the injured person to sue, which might not accrue until after discovery of the wrongdoing. As to when such deposit should be returned to the administrator or guardian, I could say nothing that would not be entirely arbitrary.

**D. Registers of Deeds.**

**5. Probate and registration.**

To W. D. Kizziah. Inquiry: (1) May a Register of Deeds record an instrument apparently made by a corporation but having a defect in the execution, as the omission of the seal and the signature of the secretary? (2) Is it necessary for an instrument, probated and registered in one county, to be probated again in a second county in which it is registered?

(A.G.) (1) In my opinion, you can not regard defects of execution as bearing upon your duty to record a paper, as this would lead to great confusion. If you find the certificate of acknowledgment correct, it would be proper for you to register the instrument. (2) Probate is also required in the second county. The Clerk, however, in this probate acts upon the certificates attached to the instrument upon which the original probate was had, and not upon the mere fact of registration in the other county.

**L. Local law enforcement officers.**

**25. Prohibition—Wine Law.**

To D. T. Scarborough. Inquiry: Please advise what wines may be legally sold under the 1935 Wine Act?

(A.G.) Chapter 393, Public Laws of 1935, permits, under the conditions named in said chapter, the manufacture and sale of domestic wines having an alcoholic content such as may be secured through ordinary fermentation. This means wines manufactured in this State from native grown fruits or berries, having only the alcoholic content stated above, and manufactured under such rules and regulations as the Commissioner of Agriculture, with the approval of the Governor, has made.

This law does not permit the importation and sale of wines above 5% in alcoholic content made in other states.

**26. Prohibition—beer.**

To D. T. Scarboro. Inquiry: May an incorporated town prohibit the sale of wine and beer of more than 5% alcoholic content?

(A.G.) The Domestic Wine Act, Chapter 393, Public Laws of 1935, permits the sale of domestic wine, under the conditions set out in the law, of the alcoholic strength produced by ordinary fermentation. A town can not repeal this law, and the only remedy would be by special legislation pertaining to the town.

As to beer, the law permits the sale of beer having alcoholic content of 5% and no more. No ordinance of the town is necessary to prohibit the sale of beer of greater alcoholic content, as it is already unlawful.

**30. Slot machines.**

To G. L. Peterson. (A.G.) We have repeatedly ruled that the enactment of Chapter 282, Public Laws of 1935, in no wise repealed Chapter 37, and that the exemption of the counties named in the latter part of the Act has the effect of making Chapter 37 effective in the counties exempted in Chapter 282. Insofar as your county is concerned, Chapter 37, Public Laws of 1935, is in full force and effect.

To W. V. Harris. Inquiry: May a person convicted of drunken driving in county court continue to drive pending appeal to Superior Court, or should his license be revoked?

(A.G.) We call your attention to Subsection (d), Section 18, Chapter 52, Public Laws of 1935, which provides in effect that pending an appeal the court from which appeal is taken shall make such recommendation to the Department of Revenue as it wishes relative to suspension of the license until the appeal shall have been finally determined. We are of the opinion that the Department can, upon its own motion, under the provisions of Sections 11 and 12 of the above Chapter, suspend an operator's license pending an appeal and final determination of the cause.

**39. Motor vehicle laws.**

To J. Avery Cartage. Inquiry: Does North Carolina provide a statutory agent upon whom summons and other procedure may be served in civil actions resulting from motor vehicle accidents involving citizens from other states. (A.G.) Yes, the State Commissioner of Revenue.

**P. Judges of Recorders' and County Courts.**

**20. Jurisdiction.**

To F. C. Hunter. Inquiry: Does the County Recorder have the right to take up a driver's license on conviction for drunken driving, but while appeal is pending to Superior Court?

(A.G.) Section 12 provides that the Department of Revenue may revoke the license of any operator or chauffeur upon receiving record of his conviction when such conviction has become final. Section 18 provides for a notation upon the license of the conviction, and in cases in which there is mandatory revocation of the license under Section 12, the court is directed to require surrender of the license to the Court to be forwarded to the Department of Revenue.

**27. Criminal appeals.**

To John A. Mayo. Inquiry: A Defendant is convicted in Recorder's Court, waives his right of appeal and is sent to a Highway Camp, but changes his mind within the 10-day period provided for an appeal. May he perfect his appeal after such waiver?

(A.G.) We have this matter, which is an important one needing to be clearly determined by our Court, under consideration with the State Highway Commission at the very present. In the case of State v. Lackey, 191 N. C. 571, our Court directly held that a Defendant convicted for a misdemeanor might waive any jury trial or appeal to the Superior Court. This case would perhaps put the matter at rest but for the recent decision in State v. Camby, 209 N. C. 50, in which the Court held that a Defendant indicted for a misdemeanor might not waive a jury trial and held the conditional plea statute unconstitutional. This last case leaves the matter in some doubt. An effort will be made to get the question raised and decided, possibly through habeas corpus before one of the justices of the Supreme Court. Until this is done, however, we are unable to furnish any conclusive opinion on the subject.

**T. Justices of the Peace.**

**10. Jurisdiction.**

To M. T. Pridgen. (A.G.) A Justice of the Peace has no final jurisdiction in cases where a person has been charged with reckless driving, operating an auto without a driver's license, and other violations of the Motor Vehicle Law, which are made misdemeanors by the Statute.

**Z. Constable.**

**5. Residence and qualifications.**

To O. B. Crowell. Inquiry: An elected constable retains his residence in the town, but is engaged in business outside the corporate limits and is rarely available for the discharge of his duties as constable. May the town board declare the office vacant and appoint a successor?

(A.G.) No, but if he is unable to discharge his duties and still will not relinquish the place, he might be removed under C. S. 3208 for willful or habitual neglect or refusal to perform the duties of his office, upon a charge made in writing before a Judge of the Superior Court. See also C. S. 3209 et seq.

**IX. Double office holding.**

**4. School superintendents and principals.**

To J. M. Baley, Jr. Inquiry: Please advise if the positions of County Superintendent of Schools and member of the Board of Election Officials are both offices within the meaning of the Constitutional prohibition? (A.G.) Yes.

**30. Member of board of elections.**

To F. R. Leagans. Inquiry: Article 4, Chapter 165, Public Laws of 1933, provides that "no person shall serve as a member of the County Board of Elections who holds any **elective** public office or who is a **candidate** for any office in the primary or election." Would this disqualification apply to a Justice of the Peace who is not elected but is appointed by the Legislature?

A.G.) It is quite possible that a court would hold that the office of Justice is appointive in your case and that you are not disqualified. However, in view of the complications which grow out of the fact that the office is filled by both election and appointment, I believe it would be advisable for you not to serve if you wish to retain the office of Justice.

**15. County A.B.C. Board.**

To C. L. Skarren, Jr. Inquiry: I shall appreciate your opinion as to whether Sec. 7, Article 14, is applicable to a member of an A.B.C. Board seeking a seat in the House of Representatives?

(A.G.) We are of the opinion that both are offices and may not be held by the same person at the same time.

**65. Rabies inspectors.**

To H. P. Taylor. Inquiry: Would it be safe and proper to appoint as rabies inspector a licensed veterinarian who happens to be a member of the Board of County Commissioners?

(A.G.) Yes, in my opinion, if the appointment is to be made by the County Health Officer. However, appointment by the Board of County Commissioners would conflict with C. S. 4388.

**X. Primaries.**

**A. Qualifications and rights of voters.**

**2. Residence.**

To Mrs. A. W. Dew. (A.G.) The residence and domicile of a woman, for purposes of registration and voting, follow that of her husband. The registration period is from the fourth Saturday until the second Saturday before each election. The general election is to be held on Tuesday after the first Monday in November.

To H. H. Clark. Inquiry: Are members of the C. C. C. Camps who have been in the county the required period eligible to register and vote in the primary election in June?

(A.G.) I think not, unless there is direct and sufficient proof of intent to change their residence for such duration as to qualify for membership to vote. Members of such camps are admitted thereto for the purposes for which they were created under federal authority, and ordinarily retain their residence in the counties from which they came.

**C. Matters affecting candidates.**

**8. Filing fee.**

To R. C. Maxwell. Some candidate has raised a question as to whether the filing fee required of candidates in the June primary is an infringement of Article I, Section 10, of the State Constitution, declaring that "all elections ought to be free."

(A.G.) In my opinion, the Statute providing for the filing fee in question is valid and constitutional, and does not in any respect violate the provisions of the Constitution referred to.

To J. D. Grimes. Inquiry: C. S. 6022-3 prescribe one filing fee for candidates for the Legislature or County offices and a smaller fee for township offices. Are Judges of Recorders' Courts county or township offices for purposes of this section?

(A.G.) While the matter is not free from doubt, I am convinced that the better opinion is that the words "township officers," as used in C. S. 6023, is not meant to include a Judge of the Recorder's Court.

Even though his jurisdiction may be limited to such township, they certainly would not, under your letter, apply to the two Judges of Recorder's Courts with jurisdiction beyond the limits of the township.

**XI. General and special elections.**

**F. Special election for member of General Assembly.**

To S. F. Horton. Inquiry: Kindly advise the method for electing a member of the State Legislature to fill out the unexpired term of a deceased member?

(A.G.) The vacancy is filled by an election called by the Governor, after notification by the Chairman of the County Board of Elections or the Sheriff, in accordance with C. S. 5919.