



IN THIS ISSUE



THE STATE CAPITOL  
(Cover Picture)

WARTIME LEGISLATIVE LEADERS

NORTH CAROLINA GENERAL  
ASSEMBLY

State's Oldest Democratic Institution

TAX LISTING DAY IS HERE

V PLUS 5%: THE VICTORY TAX

ELECTION TURN-OVER

U. S. CITIES AND TOWNS DIG IN

ATTORNEY GENERAL'S RULINGS...  
PREFACE AND DIGEST



# POPULAR GOVERNMENT



# POPULAR GOVERNMENT

VOLUME 8  
NUMBER 8

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT  
UNIVERSITY OF NORTH CAROLINA

DECEMBER  
1942

## WAR TIME LEADERS



Nash



Vance



Bickett



J. Melville Broughton



Martin



Clark



Gardner

### NOTES ON WAR GOVERNORS, LIEUTENANT GOVERNORS AND SPEAKERS

#### I

North Carolina had three Governors during the Revolution: Richard Caswell of Lenoir County, 1777-1780; Abner Nash of Craven, 1780-1781; Thomas Burke of Orange, 1781-1782. Governor Nash is pictured above.

Three Governors served during the Civil War: John W. Ellis of Rowan, 1861; Henry T. Clark of Edgecombe, 1861-1862; Zebulon B. Vance of Buncombe, 1862-1864. The picture of Governor Vance is shown above.

Thomas W. Bickett of Franklin County was Governor during the World War we entered in 1917 and J. Melville Broughton of Wake is the War Governor of the World War we entered in 1941.

#### II

Five men served as Speakers of the Senate during the Revolution: Samuel Ashe of New Hanover; Whitmel Hill of Martin; Allan Jones of Northampton; Abner Nash of Craven; and Alexander Martin of Guilford. The picture of Alexander Martin is shown above.

Two men served as Speaker of the Senate during the Civil War: Henry T. Clark of Edgecombe; and Giles Mebane of Alamance. The picture of Henry T. Clark is shown above.

O. Max Gardner of Cleveland was Lieutenant Governor and President of the Senate during the World War we entered in 1917 and R. L. Harris of Person is the present Lieutenant Governor and President of the Senate.

#### III

Three men served as Speaker of the House of Commons during the Revolution: Abner Nash of Craven; John Williams of Granville; Thomas Benbury of Chowan. The picture of Abner Nash is shown here.

Four men served as Speaker of the House during the Civil War: William T. Dortch of Wayne; Robert B. Gillam of Granville; Richard S. Donnell of Beaufort; Nathan Fleming of Rowan. William T. Dortch is pictured.

Walter Murphy of Rowan served as Speaker of the House of Representatives during the World War we entered in 1917.



R. L. Harris



Nash



Dortch



Murphy

The Speaker of the 1913  
House of Representatives  
will be chosen early in  
January.

# The North Carolina General Assembly

## State's Oldest Democratic Institution

*"I do solemnly swear that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office, so help me, God."*

On Wednesday after the first Monday in January 1943, fifty senators and a hundred twenty Representatives will converge in the State Capitol, take the foregoing oath, convene as the General Assembly of North Carolina, and thus become another link in the chain of a legislative tradition reaching back through two hundred seventy-eight years to the well springs of our history.

In 1663 "Charles the Second, by the Grace of God, King of England, Scotland, France, and Ireland. Defender of the Faith, etc." granted the province of Carolina to eight of his "right trusty, and right well beloved Cousins and Counsellors," with the power to establish a government therein. Pursuant to this grant these Lords Proprietors appointed a Governor and instructed him and his Council—"by and with the consent of the free men of the province, to make "good and wholesome laws."

### *From Unicameral to Bicameral*

In the beginning "the Governor, the Council, and the delegates of the people" sat together in a unicameral Assembly. Shortly the Governor was excluded from the Assembly. Later the Council members were dropped from the roll. Gradually the Governor and members of the Council, meeting to consider and approve or disapprove of Assembly measures, crystallized into the Upper House. The Constitution of 1776 recognized this separation in a provision "that the legislative authority shall be vested in two distinct branches, both dependent on the people, to wit, a Senate and a house of commons" (house of representatives since 1868), and "that the senate and house of commons, assembled for the



HOUSE OF REPRESENTATIVES SITS AS COMMITTEE OF THE WHOLE  
IN 1941 GENERAL ASSEMBLY

purpose of legislation, shall be denominated the general assembly."

### *Oldest Democratic Institution*

From 1663 to 1729 the Governors of North Carolina were chosen by the Lords Proprietors; from 1729 to 1776 by the Crown; from 1776 to 1835 by the General Assembly; and since 1835 by the people. Members of the Governor's Council throughout Colonial days were chosen in part by the Lords Proprietors, the Governor, and the Assembly, and those members who with the Governor came to be the upper house or senate, after 1776 were chosen by the people. The House of Representatives, consisting of the "free men of the province" in the Assembly of 1665, and of representatives chosen by the free men of the province from that day to this, thus becomes a symbol of the beginning and the unbroken continuity of the democratic tradition in North Carolina.

*From "Free, white and twenty-one" to "Free and twenty-one."*

From the beginning that tradition has grown from more to more. Under the Constitution of 1776, written under the spell of the Declaration of Independence: no *free man* could go to the Senate unless he was also a *freeholder* of three hundred acres of land and no *free man* could go to the House unless he was also a *freeholder* of one hundred acres; no *free man* could vote for a Senator unless he was also a *freeholder* of fifty acres and no *free man* could vote for a Representative unless he was a *freeholder* and had paid his taxes for the preceding year; no woman could vote for Senator or Representative no matter how much property she owned.

Around the middle of the last century the property qualification for voters and officeholders disappeared

*(Continued on page six)*

# FAITH, WORK AND PLAY IN WARTIME

Continuing a Series of Articles by the Dean of Administration  
of the University of North Carolina

R. B. HOUSE

A Chapel Hill housewife in the older days had "some words" with her cook and fired her. She spent the night in remorse for having lost her temper and her cook. Next morning to her delight the cook appeared in the kitchen and began to get breakfast.

"Why did you come back?" the lady asked.

"Lor'." replied the cook, "I learned a long time ago not to pay no attention to what folks says when they's excited."

Of course the cook did pay attention to what the lady said and recognized it as merely an emotional ebullition, something not justified by the facts and not capable of surviving under more thoughtful scrutiny.

Even in normal times people get excited under stress and give tongue to their excitement. In these war times we are all excited all the time. We need to scrutinize carefully the words we blurt out and make a distinction between these inevitable expressions of feeling and the ideas and purposes necessary to sound action.

Saint James tells us that it is harder to control the tongue than to take a city. Many a city has been lost in this war by careless talk. We are cautioned about this all the time. Many a city has been lost also by subversive and dissentious talk about great issues. We are cautioned about this kind of talk. I am making a point about a third kind of talk which may not in itself destroy the nation, but which does sap individual and institutional energy just as a termite saps the foundation of a house. This talk consists of hasty words that are passed as people talk and work and play together under the stress of war psychology. Fighting is in the air and our mood is truculent. We tend to carry into every conversation, business conference, and assembly tensions created in us by news from the battle zones. Conversation develops into argument, conferences develop heated issues. Conferees "get into personalities," pressure groups or attitudes tend to put things over. We get into fights, sometimes thoughtless enough to destroy what we are working on, always serious enough to hypnotize the opponents for days and weeks.

The more angry people get in these personal clashes, the more they claim to stand on principle and to despise the weakness of compromise. But principles do not fight; they produce unity of sentiment, thought, and action. Principles are universal. It is sentiment, passion, imagination parading as reason, which fights. The fact is that we are confused because we do not see clearly and know surely what we are dealing with. We are angry at our own lack of knowledge and we transfer this anger to the person who opposes us. Each person has an impulse to solve the problem; but each is still in the excited stage. Each is imagining much but think-



ing little. Each, like all imaginative people, thinks he is ready for action, when he is merely beginning to think. Emotion in the face of a problem is simply an announcement that we would do well to study the elements of the problem. Before it can impel us to study, emotion pops off in imaginative words just as steam pops off from a safety valve on a boiler.

(1) Since these words are imaginative we would understand better their function in relieving tension if we studied imaginative words in their more developed state. An oath, for instance, is a quick emotional release. But a prayer, a hymn, a lyric poem is a more complete release of tension because it is a more complete development of

imaginative expression than an oath. I read not long ago the diary of a young cavalryman in the Civil War. He mentions several hundred books which he read in the field, most of them poetry and fiction. I suggest that we would keep our tempers better if we read more.

(2) Imaginative words are not without intellectual content. They are the first steps in thought and study. All civilizations have begun all of their written work in poetry. But the materials brought up hot, molten, fluid in poetry have been analyzed, cooled, and put to use in terms of history, geography, philosophy, and science. For instance, we hear the term "second front" on everybody's tongue. It may be a plan or a purpose in authoritative military circles. But to us laymen it is a phrase, an imaginative phrase. We want to take care that it does not become a slogan to force us into disaster. It does, however, indicate an unsolved problem. We could inform ourselves more about it; for instance, about the geography of a second front.

At the Woman's College of the University of North Carolina the other day I heard Dr. Bowman, President of Johns Hopkins, talk about the geography of this global war. I could sense in myself a dense ignorance of geography. But I noticed something more important. Concentration on the science of geography in relation to the war tended to alleviate my emotional tension over political and military problems. I felt less inclined to go off half-cocked over a second front. If we could learn more, keep on studying, get information and think about it, we could keep a better emotional balance. Nature abhors a vacuum. If we don't fill our minds with sound stuff our imaginations will fill them with phantasms.

(3) Our emotions are important. Our words are incentives to action. But if we understood the functions of words better, we could stick to our points until they developed, and we could fight without falling out.

When we come to think of it, we realize that it is absolutely impossible to look directly at current events and

*(Continued on page ten)*

# Tax Listing Day Is Here Again

## I

### As Old as the Commonwealth, If Not As Old as the Hills

*Tax listing day, if not as old as the hills, is at least as old as the Commonwealth.* For, in 1665, the Lords Proprietors authorized "equal taxes and assessments equally to rayse Moneyes or goods upon all Lands (excepting the Lands of us the Lords Propriators before settling) or persons within the severall precincts Hundreds Parishes Manors or whatsoever other denizens shall hereafter be made and established in ye said Countyes as oft as necessity shall require and in such manner as to them shall seems most equall and easye for ye said Inhabitants in order to the better supporting of the publick Charge of the said Government, and for the mutuall safety defense and security of ye Countyes."

On January 1, 1943, around twenty-five hundred persons, with the title of "List Takers and Assessors," will start through every town and township of the one hundred counties of the State of North Carolina, equipped with large sheets of paper bearing the legend of the principal types of real and personal property native to the soil and section, together with certain blank spaces for the name, address and occupation of each taxpayer, the amount and value of each type of property he owns, his signature to an oath that he has given a fair list at a fair value.

### Underpinning of Government

The figures these list takers and assessors write into those blanks will underwrite or undermine government in the counties, cities and towns of North Carolina for the fiscal year beginning July 1, 1943, and ending June 30, 1944. For the taxes derived by these local units of government from real property, personal property and polls, listed as of January, will add up to fifty to ninety percent of their total tax revenues. Not since the 1860's, not in the world war we entered in 1917, not even in the depression years of the early 1930's has the work of the list takers and assessors been freighted with more fateful consequences for the immediate future of local govern-



By  
**ALBERT  
COATES**

Director,  
Institute of  
Government

mental units than it will be during the listing period beginning under war-time conditions in the month of January, 1943.

*Poll tax revenues* may fall off through the absence of thousands of men who have left home for war industries or the armed services. *Personal property tax revenues* may fall off through loss of inventories, wear and tear depreciation of goods and chattels on hand and the inability to get more to replace them. *Real property tax revenues* may fall off through the disappearance of hundreds of little businesses caught in the whirl of rationing and priorities. If and when the bottom drops

out of these values, the bottom may drop out of local governmental units.

The listing and assessing process in every year is part and parcel of the democratic process. That democratic process fails when one man's property is listed and another's is not listed; or when one man's property is listed at a higher or lower value than his neighbor's. Tax listing officials hold this part of the democratic process in their keeping. Their failure in any year is bad enough; this year it might be tragic.

## II

### Tax Listing Brought Home to Taxpayer

*It is the taxpayer's duty* to list his own property. It is his duty to list it on his own initiative and swear to the honesty of his listing. Plea of ignorance or forgetfulness of this duty will not excuse him from a penalty equal to 10% of his total taxes for late listing, nor from the payment of accumulated taxes and penalties for five years if he gets by without listing for this long, nor from appropriate criminal punishment if he swears falsely.

*It is the tax lister's duty*, says the statute, *to see that the property is*



OFFICERS OF TAX SUPERVISORS' ASSOCIATION MEET WITH INSTITUTE STAFF MEMBERS

*Seated (left to right): John H. Coward, J. S. Benner, L. N. Mills, W. Z. Pennland, the President and former Presidents of the Tax Supervisors Division of the Institute of Government. Standing (left to right): Peyton B. Abbott, Clifford Pace, J. C. Ellis, Virgil Joyce, J. H. Vaughan, R. S. Averitt, Albert Coates.*

listed, and listed at its fair value. Before entering upon his duties, he must take the following oath:

"I, \_\_\_\_\_, List Taker and Assessor for \_\_\_\_\_ Township, \_\_\_\_\_ County, North Carolina, do hereby solemnly swear (or affirm) that I will discharge the duties of my office according to the laws in force that govern said office; so help me, God.

To this end the law requires him to put up tax listing notices ten days before tax listing day in five or more public places in his township.

Many list takers and supervisors go further in their efforts to bring the tax listing duty home to taxpayers: 1) by putting up notices in hundreds of places in addition to the five required by law; 2) by newspaper advertising; 3) by radio advertising; 4) by door-knob cards similar to those used by Western Union; 5) by mailing notices or abstracts to non-resident owners of property within the county; 6) by preliminary letters to business firms requesting that statements of assets and liabilities be submitted with tax lists; and 7) by telephone calls and circular letters in the closing days of the listing period.

Efforts, such as these, to bring the tax listing duty home to the taxpayer may well begin before, and continue throughout, the tax listing period. Many counties save the added time and expense of extending the listing period through the foregoing methods coupled with strict enforcement of the penalty for late listing.

### III

#### When Tax Lister Sits Down with Taxpayer

List takers meet taxpayers half-way: usually at the courthouse in the county-seat township, and at specially designated places suited to the taxpayers' convenience in other townships. To avoid long waiting-lines in townships with incorporated towns having more than one list taker, taxpayers are often routed by alphabet to different tables, and taxpayers with long and complicated listings are received separately. In some counties special list takers are provided for industrial plants. Night-time listings are often arranged to suit the convenience of tax-

payers in cities and industrial centers. Many list takers receive lists from taxpayers at their own homes and sometimes go to the homes of taxpayers.

When tax lister sits down with taxpayer to fill in the tax abstract:

- (1) he should be particularly careful to get the taxpayer's full name, address (including R. F. D. route, street address, or post office box), occupation — for schedule B taxes, and age—for poll tax returns—in case of males;
- (2) he should cover the abstract item by item, except in individual cases where it is obviously useless to do so, and note the taxpayer's response on the abstract, both in order to call to his attention items he might otherwise forget and as a backstopping record for the list taker if the taxpayer later seeks to avoid the penalty for unlisted property;
- (3) he should require, and is guilty of a misdemeanor if he fails to require, the taxpayer to swear to and sign the following oath: "I, \_\_\_\_\_, do solemnly swear (or affirm) that the above and foregoing list is a full, true and complete list of all and each kind of property which it is the duty of the above named taxpayer to list as owner or fiduciary, as said list indicates, in \_\_\_\_\_ Township, \_\_\_\_\_ County, North Carolina; and that I have not in any way connived at the violation or evasion of requirements of law in relation to the assessment of property; so help me, God.

(Signature)

When tax lister and taxpayer do not agree on the listings and assessments: 1) the list taker's decision controls and is entered on the abstract, and 2) the taxpayer may appeal: from the list taker's decision to the County Board of Equalization and Review; from the decision of the County Board of Equalization and Review to the State Board of Assessment; from the decision of the State Board of Assessment to the Courts.

The taxpayer who can list and won't list may be made to list. The list taker is authorized:

- (1) to visit, inspect, and investigate the value of any property to be assessed and to examine the taxpayer under oath;
- (2) to subpoena any person for information under oath when he has reasonable grounds for believing he has knowledge bearing on the discovery or valuation of property subject to taxation in his township;
- (3) to require all taxpayers engaged in business to submit detailed inventories and to require itemization of any personal property included in the tax list;
- (4) to call, through the tax supervisor, upon the State Board of Assessment for information, in records filed by local taxpayers with the State Board or Revenue Department, which may help to secure an adequate listing and assessment;
- (5) to call, through the tax supervisor, upon the Governor to request that officials charged with administration of state tax laws be given access to federal income tax returns.

### IV

#### Discovering Unlisted Property and Polls

Who is responsible? Some counties employ a full time Tax Supervisor and a staff of assistants. Others designate some other county official to take on the added duties of Tax Supervisor — usually, the County Accountant — sometimes the Register of Deeds. County Commissioners may employ clerical assistance to the supervisor and "expert" assistance to help in assessing specific types of property, and "competent men" to search for unlisted property. The statute requires Commissioners, Supervisors and List Takers "to be constantly on the lookout for property and polls which have not been listed for taxation."

Many methods of discovering unlisted property are available:

- (1) search of prior years tax books and comparison with current year's listings;
  - (2) examination of property transfers in Register of Deeds' office;
  - (3) examination of building permits in cities and towns and
- (Continued on page eight)

# V Plus 5%: The Victory Tax

Beginning January 1, 1943, until after cessation of hostilities, every officer, agent and employee of the State and of every county, city and town, or instrumentality thereof, will be required to pay a tax equal to five per cent of his gross income in excess of a specific exemption of \$624 per year. By virtue of the Revenue Act of 1942, every county, city and town becomes a federal tax collector, without being placed on the federal payroll.

Of primary interest to county, city and town officials who control the payment of salaries and wages are the provisions of the act relating to the collection of the tax at the source by withholding it at the time of the payment of salaries and wages. Such officials have definite duties to perform with respect to such taxes; penalties are provided for their failure to properly discharge those duties. Outlined here are the principal features of the victory tax as they affect "withholding agents"—officers charged with the payment of wages.

**Rate of Tax**—With respect to deductions from wages, the tax is 5% of all salaries, wages, fees, commissions and bonuses paid to any employee, including elected officials, in excess of a specific exemption of \$624 per year.

**Specific Exemption**—A proportionate part of the annual specific exemption is deducted for each payroll period, depending upon the length of the payroll period, before deducting and withholding the 5% tax. Thus:



By  
**PEYTON B. ABBOTT**  
Staff Member  
Institute of  
Government

taxable wage. If wages are paid for any payroll period not covered in the above schedule, or in the case of irregular wage payments not covering a definite pay period, the annual exemption of \$624.00 is to be divided by 365 and multiplied by the number of days covered by the wage payment, including Sundays and holidays.

Example: A wage payment in the amount of \$400.00 covers a period of 80 days, counting Sundays and holidays.  $\$624 \div 365 = \$1.7096 \times 80 = \$136.77$ , the specific exemption to be deducted.  $\$400$  (amount of the wage paid) less  $\$136.77 = \$263.23$ , the amount of the taxable wage. 5% of this figure or  $\$13.16$  is the amount of the tax to be withheld.

Where payroll periods are definite, the specific exemption for such period must be applied to each wage period, and unused portions of exemptions cannot be carried forward to subsequent wage periods.

**Optional Table**—Employers may at their option withhold from salaries and wages of employees who are paid upon a weekly, biweekly, semimonthly or monthly basis the amount of tax shown in the table set out on the following page. This table dispenses with the necessity of deducting the specific exemption for the pay period and applying the 5% tax rate.

**Tax Returns and Payment by the Withholding Agent**—On or before the last day of the month following each quarter, the withholding agent must prepare and file with the Collector of Internal Revenue, on a form to be furnished by the Collector, a return showing the tax withheld and collected for the preceding quarter.

**Receipts To Be Given Employees**—On or before January 31 of each year, receipts showing the period covered, the total amount of salary or wages earned by the employee during that period, and the total amount of taxes withheld, must be furnished the employee. Failure to furnish the employee a correct receipt makes the withholding agent liable to a criminal penalty provided in the Revenue Act, in addition to a civil penalty collectible by the employee.

**Post War Credit or Refund**—After the cessation of hostilities, each taxpayer will be entitled to a post-war credit or refund of a portion of the victory tax paid for each calendar year the tax was in effect. In the case of a single person, or a married person not living with his or her spouse, the refund or credit is fixed

If the Payroll Period is	WEEKLY	BI-WEEKLY	SEMI-MONTHLY	MONTHLY	QUARTERLY	SEMI-ANNUALLY	ANNUALLY
The Specific Exemption to be Deducted for the Period is	\$12.00	\$24.00	\$26.00	\$52.00	\$156.00	\$312.00	\$624.00

The above schedule of payroll period deductions is statutory and must be followed by the employer, in withholding and collecting the tax from employees having such payroll periods. If the payroll period is less than a week, the total of the wages paid during each calendar week is considered a weekly wage from which the \$12.00 weekly exemption may be deducted in arriving at the

Example: During the month of January, an employee who is on a monthly payroll earns \$35.00. No tax is payable, as he has a specific exemption for the period of \$52.00. In February he earns \$200. A specific exemption of only \$52.00 may be deducted, and it may not be increased by adding the \$17.00 he did not use in January.

at 25% of the taxes paid, or \$500, whichever is less. For the head of a family, it will be 40% or \$1,000, whichever is less. In the case of married persons making separate returns, the refund will be 40% or \$500, and married persons making joint returns, 40% or \$1,000. There is further provided a credit or refund—2% of the tax paid or \$100, whichever is less—for each dependent.

## The North Carolina General Assembly

(Continued from page one)

from the law: around the turn of the century the tax paying prerequisite disappeared; in the early years of the present century the sex qualification disappeared. A citizen no longer has to be "free, white and twenty-one" to vote for members of the General Assembly—it is enough to be "free and twenty-one."

### Numbers

The numbers in the General Assembly have grown from the twelve delegates of the 1660's, to 35 in the Senate and 77 in the House in 1777, to fifty in the Senate and a hundred twenty in the House since 1835.

The Constitution of 1776 gave one Representative each to the Towns of Edenton, New Bern, Wilmington, Salisbury, Hillsborough and Halifax and this representation continued until the Constitutional Convention of 1835 took it away.

### The Legislative Authority

Senators and Representatives under the Constitution of 1776 were more than legislators: they elected the Governor, Judges of the Supreme Courts of Law and Equity, Judges of Admiralty, Members of the Council of State, Generals and Field Officers of the militia and all officers of the regular army of the State; and under the amendments of 1835 they elected the Attorney General. The General Assembly was more than a co-ordinate part of the state's government—it was the dominant part.

Most if not all of these electoral powers disappeared by 1868, and since that time the General Assembly has found enough to do in the exercise of "the legislative authority" vested in it by the Constitution.

### From Peripatetic to Permanent

From 1665 for over a hundred years the General Assembly wandered from place to place: from Al-

bemarle down the coast to Edenton, to Bath, to New Bern, to Wilmington, and then inland to Halifax, to Tarboro, to Fayetteville, to Smithfield, to Wake Courthouse, until it made its permanent home in Raleigh in 1794. Within this Capitol City it has met: in the Wake County Courthouse, in the first State Capitol, in the old Governor's Mansion and in the present Capitol building.

### Revolution, Civil War and World Wars

In the exercise of this authority to make "good and wholesome laws" first granted in 1663 and exercised since 1665, representatives of the free men in the province, the colony and the State of North Carolina, have guided the destinies of this Commonwealth through Revolution, Civil strife and World War. They will need the wisdom of the centuries and the insight of the seers to guide them as they enter upon the duties of their office in 1943.

## Optional Wage Bracket Withholding Table

FOR WEEKLY PAY-ROLL PERIOD			FOR BIWEEKLY PAY-ROLL PERIOD			FOR SEMIMONTHLY PAY-ROLL PERIOD			FOR MONTHLY PAY-ROLL PERIOD		
If the wages are over	But not over	The Amount of tax to be withheld shall be	If the wages are over	But not over	The Amount of tax to be withheld shall be	If the wages are over	But not over	The Amount of tax to be withheld shall be	If the wages are over	But not over	The Amount of tax to be withheld shall be
\$ 12	\$ 16	\$0.10	\$ 24	\$ 30	\$0.10	\$ 26	\$ 30	\$0.10	\$ 52	\$ 60	\$0.20
16	20	.30	30	40	.50	30	40	.40	60	80	.90
20	24	.50	40	50	1.00	40	50	.90	80	100	1.90
24	28	.70	50	60	1.50	50	60	1.40	100	120	2.90
28	32	.90	60	70	2.00	60	70	1.90	120	140	3.90
32	36	1.10	70	80	2.50	70	80	2.40	140	160	4.90
36	40	1.30	80	100	3.30	80	100	3.20	160	200	6.40
40	50	1.60	100	120	4.30	100	120	4.20	200	240	8.40
50	60	2.10	120	140	5.30	120	140	5.20	240	280	10.40
60	70	2.60	140	160	6.30	140	160	6.20	280	320	12.40
70	80	3.10	160	180	7.30	160	180	7.20	320	360	14.40
80	90	3.60	180	200	8.30	180	200	8.20	360	400	16.40
90	100	4.10	200	220	9.30	200	220	9.20	400	440	18.40
100	110	4.60	220	240	10.30	220	240	10.20	440	480	20.40
110	120	5.10	240	260	11.30	240	260	11.20	480	520	22.40
120	130	5.60	260	280	12.30	260	280	12.20	520	560	24.40
130	140	6.10	280	300	13.30	280	300	13.20	560	600	26.40
140	150	6.60	300	320	14.30	300	320	14.20	600	640	28.40
150	160	7.10	320	340	15.30	320	340	15.20	640	680	30.40
160	170	7.60	340	360	16.30	340	360	16.20	680	720	32.40
170	180	8.10	360	380	17.30	360	380	17.20	720	760	34.40
180	190	8.60	380	400	18.30	380	400	18.20	760	800	36.40
190	200	9.10	400	420	19.30	400	420	19.20	800	840	38.40
200		9.40	420	440	20.30	420	440	20.20	840	880	40.40
	plus 5% of the excess over \$200		440	460	21.30	440	460	21.20	880	920	42.40
			460	480	22.30	460	480	22.20	920	960	44.40
			480	500	23.30	480	500	23.20	960	1,000	46.40
			500		23.80	500		23.70	1,000		47.40
				plus 5% of the excess over \$500			plus 5% of the excess over \$500			plus 5% of the excess over \$1,000	



# U. S. Cities and Towns Dig In

North Carolina's local officials share with those of other states a number of problems created or aggravated by the war. Most widely discussed are matters relating to the maintenance of local revenues, the manpower shortage, and post-war planning.

## Maintaining Local Revenues —

Among local officials, the matter of maintaining necessary services in the face of a present or anticipated decline in revenues is a matter of prime concern. There is abundant occasion for viewing with alarm the added burdens of extending essential services to areas containing military establishments, defense works, or both. But there are decreasingly fewer occasions for pointing with pride to new improvements, new building, or just ordinary equipment replacement that helps maintain tax values on the books. So the problem of making ends meet becomes acute.

More of a hope than a solution is the characteristic of many proposals advanced. In North Carolina, for instance, local officials hope the General Assembly will return to them a larger percentage of the intangible tax. Elsewhere, fights to obtain a larger share of the profits from state liquor stores and gasoline taxes continue. Arguments to fit the times: as to liquor store profits, sales in military and defense areas greatly increase the burden of policing, and the profits arising from the sale of liquor should increasingly be applied to the relief of that burden; as to gasoline taxes, the argument is that with greatly curtailed private driving, a larger percentage of the whole is done in the cities and towns, and much less on state highways, and, therefore, a larger percentage of gasoline tax revenues should go to cities and towns for maintenance.

Probably more concrete is the McNary bill (S. 2308), which has passed the Senate and is now in the Public Lands Committee of the House. This Act provides for the taxation of property acquired by the federal government for military purposes since January 1, 1942, where the power to tax has not been waived. A



By PEYTON B. ABBOTT  
Staff Member, Institute of Government

realization that since Pearl Harbor the Federal Government has acquired a tremendous amount of real estate for military purposes will bring home the fact that this bill would afford considerable relief to many a local governmental unit.

Another concrete aid in answering the financial problem is the new FPHA policy with regard to making payments to local units in lieu of taxes. The policy is to extend the requirements of the Lanham Act as to making payments in lieu of taxes to other war housing projects, whether owned outright by the federal government or constructed by local housing authorities with federal loans. More liberal payments by low-rent slum clearance projects are also made possible.

**Personnel Problems**—The usual lag in adjusting public payrolls to off-set increased living costs, and the competition for manpower offered by the armed forces and booming war industries, make it increasingly difficult for many local governmental units to retain the services of necessary trained personnel. Efforts are being made to make equitable wage adjustments without adding to inflationary tendencies by granting blanket increases.

An interesting experiment in providing a flexible salary plan is the program adopted by Whitefish Bay, Wisconsin, called a "Cost of Living Bonus." \$100 is taken as the portion of wages most vitally affected by rising costs of necessary commodities. An impartial cost of living index is applied to this basic figure, the index of the National Industrial Conference Board being used by

Whitefish Bay. The salary scale in effect on April 1, 1941 is taken as normal. On that date the N. I. C. B. index stood at 101.9. Each month, as soon as the preceding month's index is available, checks are handed to each employee equivalent to the number of points the index has risen above 101.9. For example, the index for July, 1942, was 113.5. This was 11.6 points above the April, 1941 index and each employee received a bonus check in the amount of \$11.60. The village board reports that for the first nine months of the plan's operation, the average monthly bonus check was \$9.17, and that the plan has proven adequate.

Some doubt as to the right of local governments to make salary adjustments is raised by the order of Economic Stabilization Director Byrnes, which expressly made the wage freezing order applicable to wages and salaries paid by the United States, the various states and their political subdivisions, except where the salary or wage is fixed by statute. However, no doubt appears to exist in the mind of New York's LaGuardia, President of the U. S. Conference of Mayors, who called a special meeting of Mayors and City Managers when the War Labor Board in November recommended intervention in a dispute between Newark's department of public works and its employees. A statement, signed by 79 Mayors and City Managers, asserts that there is nothing in the federal statute or the executive order creating WLB which gives the board jurisdiction over "municipal employees, their wages, their employment, their dismissal, or their relations with officials of their respective city governments." However, the War Labor Board on December 15 ruled that it was without jurisdiction in the Newark, N. J., dispute. The ruling also covered disputes involving New York City, and Omaha, Nebraska.

In the meantime, WLB and the Commissioner of Internal Revenue, recognizing that maladjustments, inequalities and inequities do exist in governmental wages, have an-

*(Continued on page nine)*

## Tax Listing Day Is Here Again

(Continued from page four)

- surveys and canvasses in rural areas;
- (4) examination of telephone directories, city directories, lists of parents of school children, lists of registered voters, lists of employees, etc.
  - (5) examination of lists of motor vehicle registrations obtained from the State Department of Revenue, supplemented by city license tag lists;
  - (6) check of all inventories, accounts and other papers filed with the Clerks of Court which might reveal unlisted property;
  - (7) checking of reports by business organizations to the State Revenue Departments, and of Federal income tax returns;
  - (8) canvass of business houses, license tax lists and sales tax lists;
  - (9) canvass of service stations;
  - (10) reports from warehouses, growers and marketing associations, consignees and brokers;
  - (11) systematic examination of abstracts to see if types of property are omitted which the particular taxpayer might normally be expected to list;
  - (12) Newspaper articles and miscellaneous sources. The ingenuity and resourcefulness of officials is the only limitation on the variety of trails leading to undiscovered property.

### V

#### Specific Problems for 1943 Tax Listers

#### REAL PROPERTY

##### What Real Property Must Be Listed in 1943?

The law requires all persons owning real property as of January 1, 1943, to list it for taxation in the township where it is situated during the regular listing period.

##### What Real Property Must Be Assessed in 1943?

*In 1943 real property may be assessed only under the following circumstances:*

- (1) when the property was not assessed at the last quadrennial assessment;
- (2) when improvements have been added or removed or destroyed, to a value of more than \$100 (in such cases the improvement only is to be valued);
- (3) when acreage has been subdivided into lots on streets already laid out and open, when such lots have been sold or offered for sale;
- (4) when some "extraordinary circumstances" have occurred since the last quadrennial assessment to increase or decrease the value of such real property, such circumstances being "those of unusual occurrence in trade or business";
- (5) when the property was last assessed at a value which is manifestly unjust by comparison to the values placed on other similar property in the county;
- (6) when there has been a clerical error.

##### Does the Privilege of Revaluing Property in Other Than Revaluation Years. When "Extraordinary Circumstances of Unusual Occurrences in Trade or Business" Increase or Decrease Tax Values. Permit List Takers and Assessors to Consider Fluctuations in Value Due To War Time Conditions in 1943?

In the opinion of most County Tax Supervisors, it does not, and for the following reasons:

- (1) The law calls for the revaluation of property every four years. The values fixed in those years ordinarily stand until the next quadrennial assessment year; if values rise during the intervening years the taxpayer gains and the county loses the benefit of the rising values, and if values fall, the county gains and the taxpayer loses; and thus a rough balance of values as between the taxpayer and the government is achieved.
- (2) The "extraordinary circum-

stances" which permit revaluation in other than revaluation years include such things as fire, flood or hurricane and exclude the fluctuations in values which are the normal incidents of wars and depressions.

- (3) To reach a contrary conclusion would be to break down the quadrennial assessment policy of the state, and turn every year during wars and depressions into a revaluation year with its attendant heavy expense which in turn would be borne by the taxpayers.

#### PERSONAL PROPERTY

##### What Personal Property Must Be Listed and Assessed in 1943?

All personal property must be listed and assessed according to its ownership as of January 1, 1943, according to its true value in money.

*Methods of listing and assessing personal property.* In some counties, list takers and assessors are sent out with the instruction to use "sound judgment" or "common sense" in arriving at the value of personal property. "Sound judgment and common sense" in these cases have uniformly led to unequal assessments on the same types of property in different townships. In recent years more and more tax supervisors have undertaken to arrive at a common yardstick for all list takers and assessors to employ in valuing the principal types of personal property. To illustrate this practice in listing and assessing different types of property:

*Stocks of merchandise.* There is a growing tendency to base the valuation of stocks of merchandise on some percentage of inventory value as shown by the taxpayer's statement of assets and liabilities. Percentages used in various counties, whether used for all businesses or varied according to type, range from around 60% to around 90%, with from 66 2/3% to 75% being apparently the most popular range. Of course, the percentage basis must not be allowed to become arbitrary and absolutely inflexible.

*Machinery.* Some counties which treat all machinery as personal property assess it on a cost less depreciation basis. At least one county bases its depreciation schedules on the Federal income tax schedules. In other

counties the depreciation schedule is a local one, usually based on whatever information the Supervisor may have as to the average usable life of the machine.

*Motor Vehicles.* Until recent years all motor vehicles were assessed either in the discretion of the list takers or in accordance with some local schedule of depreciation; but the tendency of the last several years has been toward a system of assessing all passenger cars and light trucks in accordance with the trade-in values shown in one of the standard lists of such values, the one commonly used being a pamphlet published by the National Used Car Market Report.

There is specific statutory authority in some counties for the use of such a system. However, the same type of system can be used in other counties if it results in fair valuations and is not employed in an arbitrary manner.

*Cotton, tobacco and other farm products.* Several different methods are employed. (1) The Supervisor or a committee agrees upon valuations to be assigned to all types of products commonly on hand on January 1 and any scattering of other products is left to the list takers. In such cases the valuations selected usually bear some definite relation to market price, but seldom exceed four-fifths of actual market price. (2) List takers are instructed to ascertain for themselves the market price of such products on April 1 and value them accordingly. In such cases, however, list takers seldom list the property at full market price. (3) Where the products were purchased in a market somewhat lower than the current market, they are sometimes listed at cost.

#### Property Subject to the \$300 Exemption

*The statute exempts:* "wearing apparel, household and kitchen furniture, the mechanical and agricultural instruments of farmers and mechanics, libraries and scientific instruments, provisions and live stock, not exceeding the total value of \$300."

*The 15% rule.* The so-called "15% rule" started in Forsyth County to take care of valuation of property falling under the \$300 exemption be-

fore live stock was included in the exempted class.

In Forsyth the method began when each member of the County's revaluation board appraised the property subject to the exemption in a number of homes with which he was familiar. The results were compared with the tax valuations of the realty for the same homes, and it was found that the average appraisal value for personalty subject to the exemption ranged around 15% of the realty value for the home (house and lot in the City, and house and one acre in the country), with the personalty valuation ranging as high as 30% of the realty value in a few cases. The same averages obtained generally for both urban and rural homes, because the farm machinery and implements at the rural homes offset the more valuable household and kitchen furniture in the urban homes, and because the rural houses were valued at lower figures.

Using this survey as a basis, it was decided, as an administrative rule, to allow no taxpayer owning his own home to return his personalty subject to the exemption (other than live stock) at less than 15% of the home's realty value. However, each such taxpayer was given the privilege of refusing the 15% minimum and demanding an actual appraisal to be made at the expense of the county.

*Live stock (including poultry).* In some counties when the "15% rule" is not followed different methods of fixing live stock and poultry values are in use: (1) A committee of rural list takers is appointed to work out a schedule of prices prior to the meeting of all list takers. (2) The Supervisor fixes a schedule of minimum values for registered cows, grade cows, horses, mules, hogs and pigs after consultation with dairy owners, live stock dealers and several rural list takers. (3) A schedule of values for cattle, horses and mules is fixed by a committee of farmers selected by the Supervisor. Maximum and minimum values are fixed, and the list takers are given discretion within the range. (4) Various list takers are sent to live stock dealers and offer to buy or sell horses, mules and cows, and values are fixed on this basis. (5) All live stock and poultry values are left to be fixed by the list takers.

*Household and kitchen furniture.* The common method of handling furniture, where the 15% rule is not used, is to leave the valuation to be fixed by agreement between the list taker and the taxpayer, which usually means that the taxpayer's declaration of value is accepted, and valuations are uniformly low.

"*Equal assessments equally to raise moneys to support the publick charge of the government*" is the traditional policy of the Commonwealth. Tax Supervisors are bringing this policy out of the realm of theory and putting it into practice as they increasingly furnish list takers and assessors with yard sticks of value for all types of property and thus rescue valuations of particular properties from the whim or fancy or caprice of individual list takers. Both list takers and taxpayers increasingly welcome this tendency in the interest of fair appraisal.

## U. S. Cities and Towns Dig In

(Continued from page seven)

nounced a procedure for adjusting wages within certain limits. This procedure is set out in WLB's General Order No. 12. In general, wage rate increases are limited to 15% above the level prevailing on January 1, 1941. Provision is made for adjusting manifest inequalities.

#### Post-War Planning

H. R. 7782, "to provide for post-war planning and other purposes," introduced by New York's representative Alfred F. Beiter, has been referred to the House Ways and Means Committee. This Act would provide an appropriation not to exceed \$25,000,000 for federal agencies and a sum not to exceed \$75,000,000 for advances to state and local agencies to cover costs of making surveys, investigations and preparing plans. Advances for specifications and surveys for specific projects are to be repaid when funds become available. Where local units receive advances for the preparation of comprehensive programs, they must pay at least 25% of the total costs. Prior to approval of advances, recommendations must be obtained from the federal agency concerned, such as the Federal Works Agency, the Federal Security Agency and the National Housing Agency.

# Election Turnover

On Monday, December 7, 1942, in one hundred county courthouses in North Carolina, county officials from the highest to the lowest raised their right hands, placed their left hands on the Bible, and swore to uphold the Constitution and perform to the best of their ability the duties of the office to which they had been elected or appointed.

For many of these officials, the term which they have just begun is merely a continuation of the old. Fifteen of the one hundred counties had no changes at all in the major elective and appointive offices. In the remaining eighty-five counties, deaths, resignations, the armed services, the war industries and political battles caused a turn-over ranging from one or two offices to practically all.

Completely new boards of county commissioners were elected in nine counties—Alleghany, Ashe, Avery, Bladen, Brunswick, Graham, Watauga, Wilkes and Yancey. From one to three new commissioners were elected to boards in fifty-two counties ranging in territory from Currituck, Dare and Pasquotank in the east to Clay and Mitchell in the west. In short, one hundred fifteen new county commissioners were elected out of a total of a little over four hundred, and new county chairmen were elected in thirty counties.

New sheriffs were elected in twenty-six counties, ranging from Hyde in the east to Cherokee in the west.

Exactly one-fourth of the counties, ranging from New Hanover in the east to Macon in the west, elected new clerks of the Superior Court. Nine new registers of deeds were elected, mainly in the western counties.

Questionnaires returned by over seventy counties indicate that new county commissioners have appointed new county attorneys in twenty-four counties, new tax collectors in twenty-two counties, new tax supervisors in twenty counties, and new county accountants in nineteen coun-



MECKLENBURG COUNTY COMMISSIONERS TAKE OATH OF OFFICE ON DECEMBER 7, 1942

ties, with others to be heard from in the next few days.

Of the four hundred eight county commissioners now in office, three hundred eighty-one are Democrats and twenty-seven are Republicans. Of the one hundred sheriffs, eighty-seven are Democrats and thirteen are Republicans. Eighty-eight of the one hundred clerks of the Superior Court are Democrats and eleven are Republicans. And of the one hundred registers of deeds, ninety-three are Democrats and seven are Republicans.

## Faith, Work and Play in Wartime

(Continued from page two)

get a clear, total picture of what is going on. Our knowledge is obliged to be partial, our uncertainty is great, and, therefore, our emotional tension is exceedingly high. It is the function of great literature to present total pictures of great events whether they be in terms of fiction, of history, of philosophy, or in any other pattern which somehow manages to give a complete view. Tolstoy's great novel, *War and Peace*, has been almost recreated as the best

seller in these war times both because he is a great Russian and because he has written a great novel. As strange as it may seem, certain pages of *War and Peace* give a clearer total view of what is going on in Russia today than a headline in today's paper. Plato's *Republic* in simple terms is a scheme for the improvement of humanity. Strange as it may seem, Socrates and his disciples give a clearer total view of the issues involved in improving humanity than one could get in a forum on contemporary problems. Milton's *Paradise Lost* is a cosmic poem presenting the clash of angels and the process of destruction and regeneration in the human heart. Strange as this may seem, one can get a clearer picture of the internal and external conflict of invisible forces in this great poem than in a contemporary sermon. Now the headline, the forum, and the sermon are all indispensable. We should keep up with current events, but we need to see them in comparison with some universal standard. In this way we bring the light of spiritual comprehension into the darkness of contemporary worry and anxiety. Our emotions are quieted and set to work and in this way they vitalize our thought and our action.

# Attorney General's Rulings Introduction

By **CLIFFORD PACE**

Staff Member, Institute of Government

The inquiries which have recently flowed into the Attorney General's office from every corner of the state reveal that, after a year of fighting, the war is affecting in some way, either directly or indirectly, the work and problems of the officials in every city hall and county courthouse in North Carolina. City and county commissioners and attorneys, clerks of court and registers of deeds, sheriffs and police officers—every class of officials—have asked how to handle a wide variety of problems, some of them peculiar to a time of war, others no more than old headaches with new complexities.

**1. Leaves of Absence for City and County Officials**—Standing out among the problems which counties and cities as governing units have had to face is the loss of officials, both appointive and elective, through departures for the armed services. When it becomes apparent that a county or city office is going to be vacated by the incumbent's being drafted or volunteering, both the governing unit and the man holding the office have something at stake. A man elected in 1940, for example, for a four-year term, is interested in securing a leave of absence from his office rather than tendering a final resignation, in the hope that the war may be over before his term expires. A county or city may frequently feel at least a moral obligation to keep the official's job open for him, at the same time having no desire to lose a faithful and efficient servant permanently. Consequently, when this situation first arose, there were several questions which had to be answered. Could the governing unit grant a temporary leave of absence to the official, or would he automatically forfeit his office upon entrance into the armed services? What sort of status would the person appointed to act in the departed official's stead acquire? Should the governing unit continue to pay all or any salary to the departed official, or should the full salary go to the

person appointed to administer the duties of the office on a temporary basis?

The General Assembly of 1941 anticipated these questions and the difficulties which they would cause, and provided the machinery by which the solution could be reached. Chapter 121 of the Public Laws of 1941 provides, in general: that any elective or appointive city or county official may obtain a leave of absence from his duties for military or naval service by applying to the governing body of the county or city; that the official shall receive no salary during the period of leave; that the period of leave may be extended by the governing body, upon application, except that no leave or extension thereof shall operate to extend the term of office or any official beyond the period for which he was elected or appointed; and that the governing body of the city or county may, if deemed necessary, appoint an acting official or substitute for the period of the official's leave, such appointee to have all the authority, duties and emoluments of the official. The Attorney General's office has cited this act, in its answer to several inquiries directly covered by the act, to the effect that such leaves can be granted upon application of the official and that he can receive no compensation while he is on the leave of absence.

However, the Attorney General has further ruled that this law would have to yield to the extent of any conflict with our constitutional provisions against double office holding; so that, if a county or municipal official who is an officer within the meaning of Article XIV, Section 7, of the North Carolina Constitution, should accept a commission in the armed services, he would thereby vacate his office notwithstanding a leave of absence granted under this act. So there is, in the opinion of the Attorney General, that much limitation on the right of the official to receive, and the governing body to grant, a leave of absence—the right is only extended to the enlisted man or the non-commissioned officer.

**2. Prohibition of the Sale of Beer and Wine**—An old problem, affecting more especially the cities than the counties, which the war has emphasized and brought more clearly into focus than ever before is the regulation of the sale of beer and wine. Some towns are havens for the men in adjacent army camps, others are sites for war industries which pay well and bring to the towns an increase in population. In these towns and many others, the uninhibited weekend sale of wine and beer adds tremendously to the law enforcement headaches of already overtaxed police forces. The upsurge of this problem has produced several requests for rulings by the Attorney General, the city authorities apparently proceeding on the belief that if the sale could be prohibited on Saturday night and Sundays, not only would the local lock-ups have fewer weekend customers but the maintenance of law and order in general would be made easier.

In answer to the following inquiry—"Would a city council have the right to pass an ordinance prohibiting the sale of beer and wine within the corporate limits of the city from six o'clock Saturday evening until seven o'clock Monday morning?"—the Attorney General issued a rather exhaustive ruling which covered the general law on this matter:

"A city can adopt an ordinance prohibiting the sale of beer and wine from twelve o'clock midnight, Saturday, until twelve o'clock midnight, Sunday; this office has issued such an opinion in numerous other cases. But it is doubtful whether or not an ordinance would be legal which would attempt to regulate the hours of sale of beer and wine on days other than Sunday. I am not aware of any statute expressly authorizing municipalities generally to regulate by ordinance the hours in which wine may be sold; such an ordinance, if held valid, would have to be sustained as an exercise of the general police power of the city. Section 2787, subsection 7, Michie's North Carolina Code of 1939 Annotated, provides that municipal corporations shall have the power: 'To pass

such ordinances as are expedient for maintaining and promoting the peace, good government, and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions.' It seems arguable that it would be a proper exercise of the powers conferred by this section for a municipality to pass an ordinance of the type suggested; nevertheless, I would hesitate to advise categorically that such an ordinance would be valid. Upon the basis of the cases in 134 N. C. at 363, 118 N. C. at 1221, and 131 N. C. at 814—it is impossible to predict with certainty the treatment that such an ordinance would receive at the hands of the courts. I think, however, that they do cast some doubt upon the power of municipalities to regulate hours for the sale of beer and wine without express statutory authority."

To this general question have been added certain variations in other inquiries. For instance, if a city can regulate the sale of beer and wine within the city, can it go beyond the corporate limits and prohibit the

Sunday sale there? The Attorney General ruled that town commissioners cannot pass an ordinance regulating the sale of beer and wine outside the corporate limits of a town unless the town charter or an act of the Legislature specifically authorized such an ordinance. Further, can a board of county commissioners pass ordinances prohibiting the sale of wine and beer in general? The Attorney General ruled that a board of county commissioners, not having any legislative power, cannot pass ordinances prohibiting the sale of wine and beer on Sunday or at any other time, unless the commissioners of a particular county have been authorized by legislative act.

**4. Sheriff's Liability for Acts of Auxiliary Police**—Of the many new legal problems which Civilian Defense has produced, perhaps none is more pertinent or important to North Carolina officials than this: if the necessary auxiliary policemen appointed by a county coordinator of civilian defense are approved by the county sheriff and made deputies, to act throughout the county, will the sheriff and his bondsman be

liable for acts done by them in a Civilian Defense capacity? The Attorney General ruled, in reply to a request for a ruling on this question, that "the sheriff would be liable for the acts of the deputies; if the commission were confined to certain duties, he would be liable within the scope of the commission." This ruling indicates that Civilian Defense activities have now become, in many respects, the full equivalent of the old-line governmental activities and should make it increasingly important that competent and capable men be chosen for duty as auxiliary police.

The Bulletin Service on the following pages indicates many other current questions with which city and county officials are having to deal; these problems have already arisen in many localities and have been deemed of sufficient importance to merit a ruling by the Attorney General's office. They are presented by POPULAR GOVERNMENT with the thought that they are likely to arise in other communities and that these rulings may prove helpful to local officials if and when the problems do arise.

## Late Rulings of the Attorney General

### I. AD VALOREM TAXES.

#### A. Matters Relating to Tax Listing and Assessing.

##### 1. Exemptions—religious and educational organizations.

To Harley B. Gaston. Inquiry: Would rental property owned by a Y.M.C.A. be subject to ad valorem taxation? (A.G.) It is my opinion, under the provisions of the North Carolina Constitution, Article V, Sections 3 and 5, and the provisions of the Machinery Act of 1939, Section 600 (5), and under the decisions of the Supreme Court of North Carolina construing these provisions, that the property owned by the Y.M.C.A. and not actually occupied by it but used as rental property in competition with private enterprise would be subject to ad valorem taxation. *Odd Fellows v. Swain*, 217 N. C. 594; *Harrison v. Guilford County*, 218 N. C. 718; *Hospital v. Guilford County*, 218 N. C. 673; *Rockingham County v. Elon College*, 219 N. C. 342; *Guilford College v. Guilford County*, 219 N. C. 347; *Sparrow v. Beaufort County*, 221 N. C. 222.

#### B. Matters Affecting Tax Collection.

##### 10. Penalties, interest and cost.

To Garland S. Garriss. Inquiry: What are the penalties and interest which a town may charge on past due taxes?

(A.G.) It is provided in Subsec. 5 of the Machinery Act of 1939, as amended, that there shall be added a penalty of one-half of one per cent per month, or fraction thereof, until the taxes are paid or until

they are converted into a tax sale certificate, this penalty to begin on April 2 following the date the taxes are due and payable and to be in addition to the two per cent penalty which has already accrued prior to April 2.

It is provided in Sec. 1716 (b) that the taxing unit has the right to foreclose real property by any method authorized by law and that in either case interest at the rate of eight per cent per annum shall accrue on the amount bid by said unit from the date of the sale. Therefore, the rate of interest after the taxes are put in the form of a tax sale certificate would be eight per cent per annum.

##### 30. Tax foreclosure—law applicable.

To Orville L. Williams. Inquiry: Should there be no bidders at a sale made or advertised to be made by the commissioner named in a tax foreclosure judgment, what is the minimum bid authorized to be made for and in behalf of the county to protect its interest by the purchase of the land at such sale, and is a county required to bid the amount of the taxes, interest and cost due as represented by the judgment when there is no other competitive bidder?

(A.G.) I do not know of any statute which requires the county to bid any certain amount at a tax foreclosure sale. I am of the opinion that the county would be justified in placing a bid in any amount deemed advisable by it not in excess of the amount of the taxes plus interest and cost.

##### 31. Tax collection and foreclosure—procedural aspects.

To J. P. Bunn. Inquiry: Where a taxpayer dies a resident of North Carolina, leaving no children or known heirs, can service be made by publication under Section 1719 (e) of the Machinery Act of 1939, as amended?

(A.G.) It seems to me that it was the intention of the Legislature in enacting Section 1719 (e) to make its provisions sufficiently broad to take care of this situation.

To O. B. Crowell. Inquiry: What is the effect of Section 1719, subsec. (a), Ch. 310, P. L. 1939, entitled "Foreclosure of tax liens by actions in nature of actions to foreclose a mortgage"?

(A.G.) In my opinion, this section has the effect of permitting an action to foreclose a tax certificate for 1938 and subsequent years, to be instituted any time after six months of the sale of such tax certificate.

Inquiry: Can a municipality which has advertised delinquent taxes and has purchased at its sale and caused the tax collector to issue to the municipality a certificate of sale, ignore such certificate of sale and bring suit under the provisions of Sec. 7990 of the North Carolina Code?

(A.G.) Sec. 1719, subsec. (c), Ch. 310, P. L. 1939, provides that taxing units may proceed under this section, either on the original tax lien or the lien acquired at the tax sale hereinbefore provided for,

with or without a certificate of sale. Therefore, I am of the opinion that a municipality may proceed to bring suit either on the tax certificate or under the provisions of section 7990.

### 33. Statute of limitations.

To S. L. Johnson. Inquiry: How far can a municipality go back to collect real property taxes? (A.G.) C. S. 8034 (g) provides that all tax liens held by counties and municipalities and other governing agencies for the year 1926 and years prior thereto, whether evidenced by original tax certificates, or tax sales certificates, and upon which no foreclosure proceedings have been instituted, are declared to be barred and uncollectible; provided, that no part of this section shall be construed as applying to liens for street and/or sidewalk improvements. I am of the opinion, therefore, that all real property taxes for the year 1927 and subsequent years can be collected.

To Loomis F. Klutz. Inquiry: Is there any statute of limitations on foreclosure actions brought under the provisions of C. S. 7990?

(A.G.) There is no statute of limitations on foreclosure actions brought under the provisions of C. S. 7990. There is also no statute of limitations on foreclosure actions brought under Sec. 1719 of the Machinery Act of 1939, insofar as 1938 and subsequent taxes are concerned. As to the taxes for the year 1937 and prior years, it is my thought that foreclosure actions should be brought under the provisions of C. S. 7990 rather than Section 1719 of the 1939 Machinery Act. By this method, you will be able to eliminate any question of the application of the statute of limitations.

### 35. Tax foreclosure—costs and fees

To J. Vance Rowe. Inquiry: What is a newspaper entitled to charge for publishing a notice in connection with a tax foreclosure suit?

(A.G.) Section 2586 of Michie's North Carolina Code of 1939 Annotated provides that the publication of all advertising required by law to be made in newspapers published in this state shall be paid for at not to exceed the local commercial rate of the newspaper selected. It is further provided that no newspaper shall accept or print any legal advertising until such newspaper shall have first filed with the Clerk of Superior Court of the county in which it is published a sworn statement of its current commercial rate for the several classes of advertising regularly carried by said publication.

It is my opinion that the above Section would govern the amount to be charged by a newspaper for publishing a notice in connection with a tax foreclosure sale.

## II. POLL TAXES AND DOG TAXES.

### A. Levy.

To J. C. Beckwith. Inquiry: Does a person who has been convicted of a felony and has served a sentence in the State Penitentiary, thereby losing his right of citizenship, have to pay poll tax?

(A.G.) I am of the opinion that such a person would be required to pay poll tax.

### 2. Exemptions—veterans—how obtained.

To E. B. Hall. Inquiry: Is there any law that releases a World War veteran from having to pay city poll tax?

(A.G.) I do not know of any provision of our statutes which would relieve a World War veteran from having to pay city poll tax.

### 7. Amount of levy.

To Thorp & Thorp. Inquiry: Does a city have the right to levy what is designated as a street tax, in view of the following situation: the city charter authorizes a poll tax of \$3.00; the next section of the charter authorizes a "street tax" of \$3.00 on every male between 18 and 45, "to be paid in lieu of working the public streets, provided, that the poll tax hereinbefore provided for shall not be collected from such persons as shall pay said street tax," and the Constitution limits the poll tax which a city may levy to \$1.00?

(A.G.) A Court might possibly hold that the tax here is in reality a poll or capitation tax. In case the court should be of the opinion that the tax designated as a street tax is in reality a poll or capitation tax, it would be in direct conflict with Art. V, Sec. 1 of the Constitution. It is my thought that it would be advisable for you to secure some clear legislative authority which would divorce the street tax from the capitation tax before your Board of Aldermen should undertake to levy this tax.

## III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES.

### A. Levy of Such Taxes.

#### 3. Exemption—blind persons.

To J. J. Gray. Inquiry: Is a blind person required under the law to purchase a municipal privilege license?

(A.G.) Public Laws 1933, Ch. 53, provides that certain blind persons operating legitimate businesses of any kind to make a living for themselves and their dependents, if any, may be relieved from the necessity of paying for any privilege license. This exemption shall not extend to any one who is not a blind person as defined in this Act or to a person whose income amounts to \$1200 or more net per annum or to a person whose husband or wife has an income amounting to \$1200 or more net per annum.

#### 8. Collecting agencies.

To Fred S. Martin. Inquiry: What officer in a County should collect the privilege taxes?

(A.G.) Sec. 100 (h) of the Revenue Act of 1939, as amended, provides that "all county or municipal taxes levied by the Board of County Commissioners of any county, or by the Board of Aldermen or other governmental body of any municipality within this state, under authority conferred in this act, shall be collected by the Sheriff or tax collector of such county, and by the tax collector of such city, and the county or municipal license shall be issued by such officer." It is my opinion that it is necessary that the Commissioners levy the tax authorized under Schedule B of the Revenue Act before the sheriff or tax collector would have any authority to collect same.

#### 14. Privilege license—beer and wine.

To A. W. Ray. Inquiry: May persons who transact the business of selling beer from trucks in a Town be required to pay a privilege tax to the Town for the privilege of engaging in this business?

(A.G.) C. S. 2677, providing that municipalities may annually lay a tax on all trades, professions, and franchises carried on or enjoyed within the city unless otherwise provided by law, seems to me to furnish ample authority for the collection of a municipal privilege tax from a distributor engaged in the business of selling beer from a truck to retailers in the city. I advise, however, that such distributors would be carrying on business in the city

and liable for the tax only if the sales were negotiated, the contract made, and the delivery made in the city. Otherwise, the contract would be considered to have been made outside the city and the distributor would not be carrying on a trade within the city within the meaning of the statute.

#### 39. License tax on coal dealers.

To J. J. Gray. Inquiry: May a municipality levy a privilege tax upon the business of operating a coal yard from which coal is sold at retail?

(A.G.) Section 112 of the Revenue Act specifically authorizes cities and towns to levy a license tax not in excess of that levied by the State upon "every person, firm or corporation engaged in and conducting the business of selling and/or delivering coal or coke at retail. . . ." Reference to that statute will reveal the amount of tax which a city can levy upon the business.

To Theo Easom. Inquiry: Does a municipality have the authority to levy by ordinance a privilege license upon persons engaged in the activity classified as "merchant tailoring," outlined as follows: various persons within the municipality take orders for tailored suits upon the basis of samples which they carry; if a customer orders a suit, he is measured, and these persons fill out the necessary blanks and send them to the tailoring firm outside the state; the finished suit is sent to the person taking the order, who then delivers it to the customer and deducts a commission from the price paid, remitting the balance to the tailoring firm?

(A.G.) Whether such persons are liable to pay a privilege tax depends upon whether they are "carrying on or enjoying a trade, profession and franchise within the city." I am of the opinion that the persons to whom you refer are engaged in a trade within the city and that they may be validly subjected to a municipal privilege tax. There is sufficient activity on the part of these persons within the city to sustain the tax.

## IV. PUBLIC SCHOOLS.

### A. Mechanics of Handling School Funds.

To W. Y. Wilkins, Jr. Inquiry: Should fines, penalties, forfeitures and taxes be apportioned and distributed to the county and city administrative units when collected, and applied to the current expense school fund of those two units according to the per capita enrollment existing at the time of collection, or should they be so apportioned and distributed according to the per capita enrollment existing at the time of the levy?

(A.G.) I am of the opinion that this distribution should be made according to the per capita enrollment of the two units in the year for which the fines, etc., accrued or were levied. These items become due in the year in which the fines, etc., accrue or the year in which the taxes are levied, and the city and county administrative units become entitled to their proportionate shares thereof according to their per capita enrollment existing in that year—the year of accrual or levy. See subsec. (2) sec. 15, School Machinery Act 1939.

To Charles M. Johnson. (A.G.) It is my opinion that where the Board of Trustees of the Teachers and State Employees Retirement System has acted upon a voluntary application for retirement on account of age and has placed the applicant on the retired list and installment benefits have started, the retirement from active service of the applicant is complete and the person so retired could not thereafter be employed as a teacher or State employee and paid by the State.

**G. Poll Taxes, Dog Taxes, Fines and Forfeitures Accruing to Schools.**

**19. Fines in criminal actions.**

To F. B. Jones. Inquiry: Can a cash bond forfeited by a defendant who has violated a town ordinance in a criminal action have deducted from it court costs, including mayor, officers, witnesses and State fees, and the minimum penalty for the violation of the ordinance?

(A.G.) It is my opinion that such deductions cannot be made, and the entire amount of the forfeited bond would have to be paid over to the county school fund.

**VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES.**

**P. Costs Payable by the Counties.**

**16. Court Costs—costs for which the county is liable.**

To Julius Banzet. Inquiry: What is the liability of counties for costs in criminal actions under the provisions of Sec. 1259 of Michie's N. C. Code of 1939 Annotated, which provides, in general, that if there is no prosecutor in a criminal action and the defendant is acquitted or convicted and unable to pay the costs or a nolle prosequi is entered or judgment arrested, the county shall pay the clerks, sheriffs, constables, justices and witnesses one-half their lawful fee, with the exception that in capital cases and in prosecutions for forgery, perjury, or conspiracy they should receive full fees?

(A.G.) This office has previously said in regard to this statute that, although it uses the phrase, "if there is no prosecutor," this does not refer to the prosecuting attorney but to the prosecuting witness. It is entirely possible that it was the intention of the Legislature in enacting this statute that same be construed in connection with Section 1271 which provides that the prosecutor shall be liable for costs in certain cases and authorizes the court to determine the prosecutor. I would also like to point out the provision contained in Section 1259 to the effect that no county shall pay any costs unless the same are approved, ordered and adjudged against the county, as provided in Ch. 23. And I would further refer you to Section 1288, which provides that in no action or proceeding in which a justice of the peace has final jurisdiction commenced or tried in a court of a justice of the peace, mayor, county or recorder's court, shall the county be liable to pay any costs.

**VII. MISCELLANEOUS MATTERS AFFECTING CITIES.**

**C. Police and Fire Protection.**

**10. Fires outside city limits.**

To W. B. Campbell. (A.G.) In my opinion there is ample statutory authority for the contemplated action of a city in fur-

nishing fire protection service to certain areas outside the city limits in which defense projects are located, and in which persons employed in these projects are housed. Ch. 188, P. L. 1941, which amends C. S. 2804. Inasmuch as a city will be furnishing fire protection under the express authority of the statute, I am of the opinion that its rights and immunities in connection with this service will be the same as if the service were being furnished within the city limits. Therefore, I advise: (1) That the city firemen and city fire equipment, after passing beyond the city limits into the area to be served, will continue to have the same governmental immunities that they would have if operated within the city; (2) That firemen engaged in this service will be entitled to pension benefits to the same extent as if they were performing services within the city; and (3) That firemen injured in the course of furnishing service to this area outside the city limits will be entitled to the benefits of the Workmen's Compensation Act.

To O. M. Mull. Inquiry: Can a city prevent the sale of beer and wine on Sunday and on Saturday night?

(A.G.) A city can prohibit sale of beer and wine on Sunday, but it is doubtful if the sale can be prohibited on Saturday night.

**N. Police Powers.**

**20. Regulation of trades and businesses.**

To Harding and Lee. Inquiry: May a city by a valid ordinance regulate the amount of fares charged by operators of taxicabs and may it limit the number of taxicabs operating in the city?

(A.G.) Under Consol. Stats., Sec. 2623, Subsec. 6, municipal corporations are authorized "to grant upon reasonable terms franchises for public utilities." Whether the business of operating taxicabs constitutes a public utility has never been decided in North Carolina. This office has previously pointed out, in a memorandum prepared on this subject, that it is virtually impossible to predict how our court will hold, although there has been a disposition in other states to treat taxicabs as public utilities. It was suggested that the only way a city could be sure of its authority was by bringing a test case and having the matter determined by the courts.

If taxicabs are public utilities within the meaning of C. S. 2623, I am of the opinion that the city could prohibit their operation without a franchise and that the charging of certain rates and limitations as to the number of vehicles to be operated could be made conditions upon which franchises might be granted. Where a city does not undertake to require franchises for the operation of taxicabs, this office has ruled that the number of vehicles operated can be limited by ordinance.

**VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS**

**A. County Commissioners.**

**3. Meetings.**

To Thomas J. White. Inquiry: Are the County Commissioners required to publish the minutes of their meetings in the newspaper? Under C. S. 1310 the Clerk of the Board of County Commissioners keeps a

record or minutes of proceedings of the Board, and these records are open to the general public for examination.

(A.G.) There is no general statute of this State requiring publication of the minutes of meetings of Boards of County Commissioners, and publication in a newspaper is not necessary unless there is some special or local act applicable to a particular county.

**11. Power to establish roads.**

To Louis C. Allen. Inquiry: If the Board of County Commissioners passes a resolution recommending to the State Highway and Public Works Commission the building of a new road outside of a municipality, would the county be liable for damages for the taking of property?

(A.G.) Since the Board of County Commissioners merely recommends and petitions the State Highway and Public Works Commission to construct a road outside of a municipality, and takes no part in the construction of such road but merely petitions and requests such construction, it is my opinion that such Board of County Commissioners would not be responsible for any damages for property taken in the construction of such roads.

To N. W. Shelton. Inquiry: Can a member of a County Board of Commissioners serve as a bus driver, teacher, or janitor of a school or can he be employed to do repair work or receive compensation for services or goods (a) from county funds? (b) from funds allotted by the State School Commission for any of the above purposes?

(A.G.) I am of the opinion that it would be a violation of Sec. 4388 of the Consolidated Statutes, which prohibits a commissioner of a public trust contracting for his own benefit, for a member of a County Board of Commissioners to serve in any of the positions mentioned, if any part of the compensation received by such commissioner in any of said employments is paid from county funds, since he would be a member of the board which levies and collects taxes and passes upon appropriations for the payment of the salaries of the jobs mentioned in the inquiry. The same would apply to funds allotted by the State School Commission if the Board of Commissioners passes and approves the school budget which provides for the employment of such employees and fixes their salaries.

Inquiry: If such member of a board has been employed in one of the positions referred to prior to the appointment, would it prevent him continuing to serve?

(A.G.) I am of the opinion that it would. While there may not be an absolute bar to a member of a board of county commissioners contracting with the county board of education, it certainly is not a good policy for a member of the county board of commissioners to contract with the board of education relative to any matter in which he might have a personal interest and from which he would derive some pecuniary benefits.



**30. Legislative powers.**

To Henry A. McKinnon. Inquiry: Can a Board of County Commissioners pass ordinances prohibiting the sale of wine and beer?

(A.G.) A Board of County Commissioners, not having any legislating power, cannot pass ordinances prohibiting the sale of wine and beer on Sunday or at any other time, unless the Commissioners of a particular county have been authorized by legislative act.

**34. Jury list.**

To Thomas P. Pruitt. Inquiry: Is C. S. 3214, which provides that at least twenty days before each regular or special term of the Superior Court the board of commissioners of the county shall cause to be drawn from the jury box the names of the jurors to serve at the next term of the Superior Court, directory or mandatory?

(A.G.) There are several cases cited under this section which hold the section to be directory rather than mandatory. The case of *State v. Teachy*, 138 N. C. 424, specifically holds that this statute is considered directory in so far as it relates to the action of the commissioners as to the time and place of drawing the jury, and as to revising the jury list. It is, therefore, my opinion that this statute is directory rather than mandatory.

**To C. R. Chaplin. Inquiry: Is the Clerk of the Superior Court considered a judge of a court of record?**

(A.G.) There is no statutory law on this question, nor have the courts of our State specifically decided the point. It is my opinion that on some occasions the Clerk of the Superior Court would be acting as a court of record, while on others, he would not be considered as a court of record. Under the provisions of the Selective Service Act and the so-called rationing boards act, the Clerk of the Superior Court is not considered a court of record.

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

To A. Leonidas Hux. Inquiry: Should an executor or guardian who enlists or is drafted in the armed forces of the U. S. and stationed outside the State appoint a process agent, under Sec. 175, Michie's N. C. Code of 1939 Annotated, and, upon failure to do so, would the Clerk of the Superior Court be authorized to remove such executor or guardian and appoint a successor?

(A.G.) It is my opinion that an executor or guardian who entered the armed forces of the U. S. and is stationed outside the State of N. C. should appoint a process agent, under the provisions of this statute, and upon failure to do so within the time prescribed in the statute, the clerk of the superior court would be authorized to remove him and appoint an administrator with the will annexed, or a new guardian, as the case may be.

**19. Duties with reference to adoptions.**

To George W. Fletcher. Inquiry: Does a court have the right to enter a final order in an adoption proceeding where the person sought to be adopted has reached his or her majority after the petition is filed but before the time for entry of the final order?

(A.G.) C. S. 191 (5) provides: "Within two years of the interlocutory order, but not earlier than one year from the date of

such order, the court shall complete the proceeding by an order granting letters of adoption or, in its discretion, by an order dismissing the proceeding, and the effect of any adoption so completed shall be retroactive to the date of application." It is my thought that, under these provisions, the court would have a right to enter a final order in an adoption proceeding even though the person had become 21 years old prior to the entry of the final order but after the petition had been filed.

To Ben D. McCubbins. Inquiry: In adoption proceedings is the consent to adoption required to be recorded in the office of the Clerk of the Superior Court?

(A.G.) By reference to section 191 (9), Michie's North Carolina Code of 1939 Annotated, you will find that the consent to adoption is not one of the papers required to be recorded in an adoption proceeding.

**24. Duties with reference to insane persons.**

To J. E. Swain. Inquiry: Is a judgment entered by a Clerk of the Superior Court committing a person to the Insane Hospital for treatment under the provisions of the statutes a final judgment or a judgment for temporary confinement of the incompetent for treatment?

(A.G.) In so far as the court is concerned, it is my opinion that a Clerk's judgment is a final judgment and the release of the incompetent from the State Hospital would have to be made by the officials of the State Hospital and not by an order of the Clerk. If a person were properly and legally committed to the State Hospital at Morganton, a Clerk's order of commitment would be final, and the person would remain a ward of the Hospital, even though paroled to someone else until properly released from the Hospital upon the finding by its officials that he was a proper subject to be released.

**C. Sheriffs.****4. Liability on bond.**

To O. Lee Horton. Inquiry: Where a county rural policeman is involved in an automobile accident while returning from delivering a delinquent child to a training school under order of court, would the county be liable for damages to the injured party if the officer were found to have been negligent, and would the sheriff be liable for the negligence of the officer?

(A.G.) In my opinion, the county could not be held liable for damages to the injured party. Counties are instrumentalities of government and are not liable in tort unless such liability is created by statute; there is no such statute in North Carolina. The liability of a sheriff for the negligent acts of a deputy is governed by the law applicable to the relation of principal and agent. If the rural policeman were the agent of the sheriff in fact, and he was acting in the scope of his authority the sheriff would be liable; otherwise, he would not.

To W. T. Hyams. Inquiry: If the necessary auxiliary policemen appointed by the county coordinator of civilian defense are approved by the sheriff, to act throughout the county, and made deputies, will the sheriff's bondsman be liable for acts done by them in a civilian defense capacity, and is this the proper procedure to take in such cases?

(A.G.) The sheriff would be liable for the acts of the deputies. If the commission were confined to certain duties, he would be liable within the scope of the commission. As to the proper procedure in such cases, you should consult the O.C.D.

**10. Executions.**

To Jack R. Edwards. Inquiry: Is a sheriff required to make levy on the personal property of a judgment debtor when execution is issued to him and a fee of fifty cents paid, but the \$5.00 for the allotment of personal property exemption and homestead exemption is not paid?

(A.G.) The sheriff is not required to act in matters which require the payment of fees until such fees are paid. Under our homestead exemption laws, the officer holding an execution is required to allot the real property exemption of the judgment debtor, but the personal property exemption is appraised and allotted only upon demand of the judgment debtor. Therefore, where only personal property is involved, the advancement of the fee should be required only where the judgment debtor demands allotment and appraisal of his personal property exemption.

**D. Register of Deeds.****9. Marriage licenses and certificates.**

To N. R. Kinlaw. Inquiry: Must non-residents who apply for a license to marry in this state comply with the North Carolina law as to a blood test and health certificate?

(A.G.) The original Act requiring physical examination and blood tests of applicants for marriage license, Ch. 314 of the Public Laws of 1939, provided in Section 4 that the Act should not apply to applicants for marriage by nonresidents who were residents of a state or states which did not require the provisions of this law. The General Assembly of 1941, by virtue of Ch. 218 of the Public Laws of 1941, amended Chapter 314 of the Public Laws of 1939 by striking out all of Section 4 of said Act. The law, as now written, requires compliance by nonresidents, as well as residents.

To Joe M. Cox. Inquiry: In issuing a marriage license, may a register of deeds accept a health certificate signed by a U. S. Army physician?

(A.G.) C. S. 2500 (j) provides that the health certificate must be executed by a reputable physician licensed to practice in

**To Joe M. Cox. Inquiry: When should an arresting officer allow a person who is drunk or intoxicated to give bail or communicate with counsel or friends?**

(A.G.) C. S. 4548 (a) provides that it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him and, except in capital cases, to have bail fixed in a reasonable sum, and that the person so arrested shall be permitted to give bail or bond, and to permit the person arrested to immediately communicate with counsel and friends, and the right to so communicate shall not be denied.

It is my opinion that the provisions of the statute relative to having bail fixed in a reasonable sum and the right of communication should be strictly followed in all cases. However, where the person arrested is so intoxicated that he is not in possession of his normal mental faculties, he should not be released until he is in possession of his normal mental faculties, unaffected by intoxicants.

North Carolina. Therefore, such certificate executed by a non-resident doctor not licensed to practice in North Carolina would not be sufficient. However, C. S. 6622 provides that physicians and surgeons in the U. S. Army and Navy are not required to be licensed in this State and may practice their profession in the discharge of their duties, and I see no reason why registers of deeds should not accept their certificates.

To Albert Ellis. Inquiry: Do the State courts of North Carolina and, in particular, a city or county recorder's court, have jurisdiction to try cases in which civilians are charged with criminal offenses committed on military reservations in a city or county in the State where the lands constituting the reservation have been leased by the United States or the title to the lands has been acquired in fee simple by the United States?  
 (A.G.) The language of C. S. 8059, which gives the consent of the state to acquisition of such lands by the United States, would certainly include land acquired for the purpose of a military reservation, and this office has construed it to include land acquired for such a purpose by lease as well as in fee simple. In my opinion, the military reservations in question were acquired pursuant to this statute, and by the express provision of the statute, exclusive jurisdiction is ceded to the U. S. except that the State reserves the right to serve civil and criminal process. Therefore, the State courts would have no jurisdiction over criminal offenses committed by civilians on these reservations, and offenders must be tried in the Federal or military courts.

**L. Local Law Enforcement Officers.**

**99. Fees.**

To James B. Combs. Inquiry: Is a constable or deputy sheriff who works on a fee basis entitled to a witness fee in addition to the arrest fee when the defendant is convicted upon the testimony of such constable or deputy sheriff alone?

(A.G.) I see no reason why a constable or deputy sheriff who works on a fee basis would not be entitled to a witness fee in a case where such constable or deputy sheriff was sworn and examined at the trial of a defendant and the defendant convicted and adjudged to pay the costs. However, I wish to call your attention to C. S. 1287, which provides that no county, prosecutor, or defendant shall be liable to pay any witness unless the witness' name is certified to the clerk by the solicitor, or included in the order of the court, etc.

To D. A. Baxley. Inquiry: Is it necessary for the Chief of Police of a town to reside within the corporate limits of the town?  
 (A.G.) Unless the city charter provides otherwise, I am of the opinion that the Chief of Police would have to be a qualified voter and resident of the municipality. See Sec. 2616, Consolidated Statutes.

**M. Health and Welfare Officers.**

**3. County Welfare Supt.**

To Graham Ponder. Inquiry: What interpretation should be placed on Subsection 3 of Sec. 5017 of Michie's N. C. C. A. of 1939? This statute sets out the powers and duties of the County Superintendent of Public Welfare as follows: "3. To have the care and supervision of indigent persons in the county and to administer funds provided by the County Commissioners for such purposes."

(A.G.) It is my thought that the Legislature, in enacting this section, intended to empower County Superintendents of Public Welfare to assist Boards of County Commissioners in the care and supervision of the poor in various counties, and, under the supervision of the Boards of County Commissioners, to assist in the administration of the funds provided by the County Commissioners for the support of the poor. It is my further thought that this was a measure to promote cooperation and not one to deprive the County Commissioners of their statutory authority to supervise the care of the poor.

To Henry C. Strickland. Inquiry: In order to cooperate with Selective Service Boards, may county health officers compel draftees who are infected with venereal diseases to undergo treatment?  
 (A.G.) C. S. 7193 provides in part that state, county and municipal officers are directed and empowered, when in their judgment it is necessary for the protection of public health, to make examination of persons reasonably suspected of being infected with venereal disease and to detain such persons until results of the examination are known; to require such persons to report to a reputable physician for treatment and continue treatment until cured, or to submit to treatment at public expense until cured and, in their judgment when necessary for protection of public health, to place infected persons under quarantine. Under this statute it is my opinion that the county health officer may compel registrants under the Selective Service Act to undergo treatment. I understand that under authority of C. S. 7195 the State Board of Health has prepared certain rules and regulations governing enforcement of C. S. 7193 and has also prepared certain forms to be served on infected persons. Under C. S. 7198, any person infected with a venereal disease who fails or refuses to comply with an order of the health officer requiring him to be quarantined or to submit to treatment is guilty of a misdemeanor, and may be punished accordingly.

**P. Officials of Recorders and County Courts.**

**15. Jurisdiction and powers.**

To J. T. Pritchett. (A.G.) This office has ruled that the military forces have prior right against a defendant charged with violating a State law during a period of war and while the defendant is a member of the military forces. Captain Leon E. McCarthy, Judge Advocate of the 78th Division in charge of Camp Butner, N. C., has furnished this office with a memoran-

dum of the rules applicable in cases of defendants in military service who are charged with criminal offenses, as follows: "It is the policy of the War Department, under the 74th Article of War, to decline in time of war to turn over to civil authorities one who is subject to military jurisdiction and charged with a civil offense, except when the offense is a most serious one, such as a felony recognized as an offense which would serve to disqualify the offender for military service and association with upright and honorable men, and when the commanding officer believes that the available evidence is sufficient to establish a prima facie case."

**S. Mayors and Aldermen.**

**4. Jurisdiction of Mayor's court.**

To T. C. Jordan, Jr. Inquiry: What notice is it necessary to give a person under the provisions of the beer and wine law before his license can be revoked?

(A.G.) Section 514 of the Revenue Act of 1939, as amended, provides for the revocation of a wine or beer license upon certain conditions, one of which is that the licensee be given an opportunity to be heard in his defense. There is no particular provision in this section of the Revenue Act as to what notice a licensee is entitled before the hearing. Reasonable notice is defined to be such notice or information of a fact as may fairly and properly be expected or required in the particular circumstances. Of course, the licensee should be permitted to secure and present whatever evidence he might have which would tend to refute the evidence to the effect that his license should be revoked.

Inquiry: Does a mayor, in session with the city board of commissioners to hear evidence and pass on the revocation of a beer license issued by the municipality, have the power to punish for contempt?

(A.G.) The provisions of Section 983 of Michie's North Carolina Code of 1939 Annotated, which is entitled "Courts and Officers Empowered to Punish," do not include municipal boards. Of course, while a mayor is sitting as a court in the trial of criminal cases, he would have authority to punish for contempt. But I have grave doubt as to his right to hold a person for contempt in a hearing before the board of commissioners of a town when such board is engaged in passing upon the question as to whether his beer or wine license should be revoked.

**XII. STATE TAXES.**

**A. Levy of Such Tax.**

**3. Tax on trades.**

To Edwin Gill. Inquiry: What is the liability of a taxpayer for a privilege license under Section 160 of the Revenue Act upon the following facts: Taxpayer operates a marble yard in City A; he keeps a display yard in City B, where he keeps an agent to receive orders; when an order is taken, he erects the monuments in City B but he does no manufacturing or processing of the products in City B?

(A.G.) I am of the opinion that the taxpayer is liable for a privilege tax on account of the maintenance of the City B yard. If he may not be said to be selling monuments in City B he is clearly offering them for sale and erecting them. The statute does not require that all the elements enumerated be present in any one case. If any one or more of the elements are present, liability for the tax accrues.

---

---

# JEFFERSON STANDARD LIFE INSURANCE COMPANY

JULIAN PRICE, President

GREENSBORO, NORTH CAROLINA

---

---

## *How Much is Enough?*

"How much is 'enough' life insurance?" Because family needs differ, that question can best be answered with the advice and cooperation of a trained life underwriter.

### *THE FAMILY DEFENSE SPECIAL*

#### MORE PROTECTION --- LESS MONEY

TODAY, life insurance is purchased primarily to replace lost income. What monthly income will your present life insurance give your family? Figure it out—then ask yourself: Will my life insurance insure the "life" of my family?

If your answer is "no," let our representative explain a policy designed to meet the present-day need for more income at less cost — THE FAMILY DEFENSE SPECIAL.

Under this plan a \$10,000 policy will provide an income of \$96.10 per month for ten years guaranteed. . . . And the investment is only 80c per month per \$1,000 (age 35) for the first five years, and the regular Ordinary Life rate thereafter. (Issued only to Preferred Risks—minimum \$2,500.)

Investigate the FAMILY DEFENSE SPECIAL—you can have **enough** protection. Give your family more income at less cost.

Assets \$109,000,000



Capital, Surplus and Contingency Fund over \$9,000,000.



\$128,000,000 paid in policy benefits since organization in 1907.



185,000 policyholders own \$465,000,000 Jefferson Standard Life Insurance.



Our ability to make highly satisfactory investments, particularly over the past ten years, HAS ENABLED US TO PAY 5% INTEREST on funds held in trust for policyholders and beneficiaries. Jefferson Standard policy dollars ARE larger.

---

#### HOW LONG WILL \$4000 LAST? . . . .

At 3% interest, \$4,000 in life insurance will give your family an income of \$100 per month for only 12 months.

---

BUY WAR BONDS & STAMPS

---

---

**JOHN W. UMSTEAD**, Agency Organizer for North Carolina

OFFICE: 136 East Franklin Street Chapel Hill

---

---

By the way, the only barber  
in the world who  
smokes Camels, is in  
Raleigh, N. C.

HERE'S ANOTHER WAY to give  
hours—*days*—of Camel's milder,  
tastier smoking pleasure—the  
Camel Holiday House containing  
four boxes of the popular flat fifties  
(200 cigarettes). This gay gift package  
(below), with space for your  
Christmas message, makes any  
other wrapping unnecessary.

TO MILLIONS of smokers, to  
many of your friends, Christmas isn't  
quite complete without a gift  
of Camels. Make it complete with  
a carton (left)—the famous Camel  
Christmas Carton of 10 packs  
of 20's that says "Merry Christmas"  
in every flavorful puff. It's ready  
to give, handsomely packaged, with  
space for your holiday greeting.

HE'LL BE PROUD to receive,  
you'll be proud to present this  
Christmas-packaged pound  
canister of mild, tasty, cooler-  
burning Prince Albert Smoking  
Tobacco (below). The National  
Joy Smoke always gets a joyous  
welcome—so rich-looking in  
its Christmas jacket—richer-  
tasting in his pipe!



Yours for a  
good Christmas—  
and the very best  
in smoking pleasure

**CAMELS.** It's fun to give Camels for Christmas because you know your gift will be so genuinely welcome—doubly welcome to those lads of yours in the service...over here—or over there. For cigarettes are their favorite gift—Camel, their favorite cigarette. Remember *all* your friends this Christmas with Camels.

**PRINCE ALBERT.** Give him Prince Albert if he smokes a pipe. Give him the big pound of P. A. that spells smoking joy far into the New Year. Whether he's at camp, at sea, or at home, he'll welcome the National Joy Smoke. For mild, cool, tasty smoking, there's no other tobacco quite like Prince Albert.