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LEGISLATION GENERAL ASSEMBLY 1933

Prepared by
HENRY BRANDIS, Jr.
Associate Director The Institute of Government

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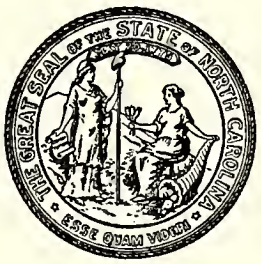

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EDWARDS & BROUGHTON CO., RALEIGH

PREFACE

It is with no little trepidation that the writer anticipates the presentation of this monograph to the public. In attempting to cover territory co-extensive with that covered by the recent legislature he has naturally ventured into many pastures in which his surroundings were passing strange and unfamiliar, and his observations are necessarily not always the most astute. His only justification is that all things must have a beginning; and this monograph is the beginning of a service which The Institute of Government believes will, in time, become of great value to the State. The Institute believes that in each future legislative year with a complete staff beginning work on the first day of the legislative session, it will be able to present within a short time after adjournment, a volume infinitely superior to this monograph, carrying to the citizens and public officers of the State a complete analysis of the significant handiwork of their legislature, reduced to its simplest terms and placed against the perennially lively background of human and civic affairs.

The aim of this monograph is fairly simple. It is to interpret (or, where there is no interpretation to be offered, merely to summarize) the changes made in the statute law of the State by the 1933 legislature, and to present some of the problems which result from those changes. To present all of the problems and to place each law against a proper background, historical and current, is beyond both the space limitations of the monograph and the time available to the writer.

The question of emphasis was therefore raised; and it was decided to place most emphasis upon local tax and financial legislation, public school legislation and state tax and financial legislation, as it is believed that these matters, among those given great attention by the recent legislature, attract the widest public interest and lie most heavily upon the civic conscience. The matter of changes in criminal laws, which might well have been expected to be placed on a parity with the

matters named, was, by comparison, given much less attention by the legislature.

Only laws affecting the entire state, or the greater part of it, are discussed in the monograph. Local legislation was summarized for each county and these summaries, the writing of which delayed the writing of the monograph, have been distributed to local newspapers for publication. Among the general laws, only the statute submitting the proposed new constitution and the statute revising parts of the election law have been omitted. The former is being made the subject of separate studies by The Institute which will be published in the spring of 1934, and the latter is being incorporated into a guidebook for election officials, which will be distributed before the general election in 1934.

The organization of the monograph and the selection of titles for the various chapters may well be the subject of some criticism. However, the writer has striven to classify the material as simply and as logically as the diverse character of the legislation will permit. In so doing he has departed, in numerous instances, from the conventional classifications for laws which are employed in the more familiar legal reference works. If this proves confusing to some readers, it is hoped that the Table of Contents will come to their assistance.

This year's monograph is written primarily for the layman who has an interest in the changing provisions of the laws under which he lives, as distinguished from the lawyer who must win his daily bread by his ability to interpret each word and phrase of the legislative language. The lawyer may find the work useful as a handbook or an index to statutory changes, with some treatment of the background of prior laws, but he will not find in it the finished product of complete research, ready for transposition to learned argument and exhaustive briefs. In future years, when the work has ceased to be an individual effort and represents the composite work of The Institute's entire staff, this defect will, in part at least,

be remedied; and prior laws (and particularly prior case law) will receive a treatment considerably more adequate.

The one matter, however, which the writer most earnestly wishes to impress upon whatever small reading public he may acquire, is that criticism of this monograph is sincerely requested. Only on the basis of criticism may future editions be made to realize to the fullest their potential utility. Criticisms and comments may be mailed to and will be welcomed by The Institute of Government, Chapel Hill, N. C.

The writer would indeed be an ingrate if he closed this introduction without acknowledging the assistance accorded him by others, particularly by state officials. The courtesy with which he has been treated has been to him the source of a pleasure no less abiding than sincere. For assistance in obtaining access to the statutes (in their pristine state) and in making avilable other valuable information he wishes to thank Hon. J. C. B. Ehringhaus, Governor; Hon. Stacey W. Wade, Secretary of State; Hon. Chas. M. Johnson, State Treasurer; Hon. A. T. Allen, State Superintendent of Public Instruction; Hon. Dennis G. Brummitt, Attorney General; Hon. A. J. Maxwell, Commissioner of Revenue; Mr. A. A. F. Seawell, Assistant Attorney General; Mr. W. E. Easterling, Secretary of the Local Government Commission; Mr. O. S. Thompson, Assistant Commissioner of Revenue; Mr. McLaughlin, Mr. Beddingfield and Miss Adams, of the Revenue Department; Mr. LeRoy Martin, Principal Clerk of the Senate and Executive Secretary of the School Commission; Mr. Thad Eure, Principal Clerk of the House of Representatives; Mr. C. F. Gaddy, of the office of the School Commission; Mr. J. W. Harrelson, former Director of the Department of Conservation and Development; Mrs. W. T. Bost, of the State Board of Charities and Public Welfare; Mr. Edmund B. Norvell Principal Clerk of the Enrolling Office; Mr. Frank L. Dunlap, Assistant Director of the Budget; and Mr. Clifford E. Smith, Calendar Clerk of the House, who assisted in the digesting of statutes.

Of the above, Messrs. Seawell, Maxwell, Allen, Easterling, Martin, Dunlap and Gaddy were also kind enough to read and criticize portions of the monograph before publication. The writer wishes also to acknowledge with sincere appreciation the assistance, afforded by reading and criticizing the manuscript, of Mr. Charles Ross, Attorney for the Highway and Public Works Commission, Mr. R. Bruce Etheridge, Director of the Department of Conservation and Development, and Mr. Guy B. Phillips, Superintendent of the Greensboro City Schools. Finally, the writer has received much assistance from Albert Coates, Director, and Dillard Gardner, Associate Director of The Institute of Government.

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INTRODUCTION

The public officers and private citizens of North Carolina have joined together in building THE INSTITUTE OF GOVERNMENT, for continuous comparative studies of the structure and workings of government in the cities, the counties and the state of North Carolina—the results of these studies to be (1) set forth in guidebooks, (2) illustrated in demonstration offices, (3) taught in schools of governmental officers, (4) made available in supplementary texts and source materials for the use of teachers and students of civics and government in the schools and (5) in study and discussion programs for all groups of citizens, (6) transmitted periodically to all groups of officers, citizens and students through the JOURNAL OF POPULAR GOVERNMENT.

The Legislator's division of The Institute of Government was organized in May, 1932, with the Lieutenant Governor of North Carolina as President, the Speaker of the House of Representatives as Vice President, and the Director of The Institute of Government as Secretary. *Its membership* is open to all past and present members of the General Assembly of North Carolina and to City Aldermen, County Commissioners and Federal representatives as affiliates.

Its purposes are: (1) To instruct newly elected members of the General Assembly in legislative organization, practice and procedure (the first conference for this purpose was held in September, 1932, and the second in January, 1933); (2) to promote understanding of State and local governmental problems through conferences of city aldermen, county commissioners and State legislators within the territorial limits of their respective counties prior to the convening of each session of the General Assembly (these conferences were first urged as a legislative policy in December, 1932); (3) to analyze all bills as they are introduced in the General Assembly and send them in digested form to all groups of public officers and

to all governmental units affected thereby (this service will be inaugurated in the General Assembly of 1935); (4) to analyze the legislation of each General Assembly, classify it according to its bearing on all State and local governmental subdivisions and all groups of city, county and State officials, and interpret it to all groups of public officers charged with its administration (this practice was inaugurated in the 1933 sessions of The Institute of Government with 1,000 officers and citizens from 98 of the 100 counties of the State in attendance, in summaries of local legislations distributed to local governmental units, in the present analysis of general legislation); (5) to inaugurate a systematic codification and revision of the laws (this work is well under way in the field of criminal procedure and is being planned in other phases of the law); (6) to coördinate the efforts of city, county State and Federal legislators who for over 100 years have been legislating for the same people in overlapping governmental units without coming together in the practice of concerted effort (this practice was inaugurated in joint conferences of city aldermen, county commissioners, State legislators and Federal representatives in June, 1933).

We invite criticism of the work done and the program presented as a basis for improvement in the future.

A. H. GRAHAM, *President,*
R. L. HARRIS, *Vice President,*
Legislators' Division, The Institute of Government.

CHART SHOWING STATUS OF COUNTIES WITH RESPECT TO GENERAL TAX

Laws passed in 1933 and showing special tax legislation passed for the various counties. Laws applying only to particular cities (of which there are scores) not included; likewise laws not directly connected with taxes (such as debt settlement laws and general laws regarding refunding) are not included. (Numbers in parentheses indicate the number of the Chapter which accomplished the result indicated. If the number is not followed by any letters, it refers to the Public Laws. If it is followed by "P.L.L." it refers to the Public-Local Laws. If there is no number the result indicated was accomplished by the Chapter cited at the top of the particular column.)

NAME OF COUNTY	Chapter 183, Public Laws (Allowing settlement of 1931 and prior taxes either by installment or, without penalties, or by such payment at a discount; allowing redemption of foreclosed real estate on the installment plan; allowing postponement of further foreclosure of 1931 and prior taxes until October 1, 1934; and barring collection of certain 18 municipal diversion of $4k. Public Laws, results of which are too indefinite to place on a chart.) Blank indicates Chapter 183 is applicable in the particular county.	Chapter 146, Public Laws (Tax Foreclosure Act of 1933.—Repealed by 160, Public Laws. This column shows status before the repeal. Blank space indicates Chapter 146 was applicable in the particular county before its repeal)	Chapter 160, Public Laws (Repealing 146, and reviving prior foreclosure laws, postponing tax sales for three months in '33 and '34, limiting interest on certificates to 6% per annum, limiting costs in foreclosures to $8.00, and postponing foreclosures. Blank indicates Chapter is applicable).	Chapter 859, Public Laws (Limiting penalty on '32 and subsequent taxes to ½ of 1% per month. Blank indicates Chapter is inapplicable).	Chapter 204, Public Laws (Machinery Act. Blank indicates Act entirely applicable except for penalty exceptions shown in preceding column).	Chapter 445, Public Laws (Revenue Act. Blank indicates Act is applicable).	Chapter 562, Public Laws (School Machinery Act. Blank indicates tax provisions of Act are applicable)	Statutes authorizing special tax levies (License taxes authorized are indirect exceptions to the Revenue Act. Blank indicates no special statute authorizing tax levies in 1933).	Statutes authorizing acceptance of bonds or vouchers for taxes (No laws applying only to towns and cities included. Blank indicates no such 1933 law affects the county).	Miscellaneous special statutes affecting local taxes (Some of these laws effect indirect exceptions to laws charted in columns 2, 3, 4, 5, 6 and 7, but do not expressly amend the laws in those columns unless indicated in those columns. Blank indicates no 1933 law of this type affecting the county).	Statutes permitting the shifting of the duty of collecting taxes from one local officer to another. (Blank indicates no such statute in 1933).	Total number of 1933 statutes containing special tax provisions. by way of exception. 0 otherwise.
ALAMANCE	Applicable, but discounts allowed only for payment before November 1, 1933 (402).	Inapplicable—prior laws revived, but tax sales in '33 postponed one month, and foreclosure dates specified (388).	Applicable, but probably subject to special provisions in preceding column		Revaluation by actual reappraisal required			10¢ for courts, jail, jail prisoners (405, P. L. L.)			Allowed to create office of Tax Collector, separate or combined with another (511, P. L. L.)	5
ALEXANDER		Inapplicable—prior laws revived, but sales in '33 postponed one month (397)	Applicable, but probably subject to special provisions in preceding column	Applicable				15¢ for costs of revaluation, courts, jail, jail prisoners (444, P. L. L.)			Tax Collector abolished—duties to Sheriff, beginning with '23 taxes (163, P. L. L.)	4
ALLEGHANY	Optional with local authorities							10¢ for courts, jail, jail prisoners (405, P. L. L.)				2
ANSON		Optional (402)									Ex-Sheriff to collect 1928-30 taxes until 1/1/35 (276, P. L. L.)	3
ASHE			Applicable, but not to repeal any local '33 laws	Applicable						No penalties on '32 taxes until 7/1/33, 4% thereafter (293, P. L. L.)		5
AVERY				Applicable						(A)—Taxes to be levied only on basis of taxpayers' ability to pay (398, P. L. L.). (B)—Sales in '33 postponed to November (509, P. L. L.). (C)—Borrowing; save to refund, limited to 50% of current levy (73, P. L. L.)		2
BEAUFORT	Optional with local authorities, but if adopted, no discounts allowed and costs to be paid (314).			Applicable				$10.00 annual license for purchasers of ungianed rotten (483, P. L. L.)			Sheriff to retain delinquent taxes for collection at regular fees (517, P. L. L.)	3
BERTIE				Applicable						Payment of '31 and prior taxes on a 5-year installment plan, with 6% interest, and costs limited to $2.00 (232, P. L. L. Probably superseded by 181)		2
BLADEN				Applicable					(A)—Ordinary vouchers acceptable for current taxes (68, P. L. L.). (B)—Salary vouchers acceptable for all taxes (501, P. L. L.)			3
BRUNSWICK											Any County officer may be required to collect delinquent taxes (47, P. L. L.)	1
BUNCOMBE	Applicable, but special alternative allowed—payment on 4-year plan, with interest at 6% from 7/1/33 (280)			Applicable	Revaluation by actual reappraisal required				Bonds acceptable for 50% of '31 and prior taxes (280)	(A)—Revaluation of hospital property and remission of excess taxes for 3 prior years directed (188, P. L. L.). (B)—Board of Financial Control appointed (189, P. L. L.)		5
BURKE	Optional with local authorities (424)	Inapplicable—prior laws revived, but sales in '33 postponed one month (397)	Applicable, but probably subject to special provisions in preceding column									2
CABARRUS								$100.00 per vehicle annual license on ice peddlers from outside the county (536, P. L. L.)				1
CALDWELL	Optional with local authorities (424)	Inapplicable—prior laws revived, but sales in '33 postponed one month (397)	Applicable, but probably subject to special provisions in preceding column							Tax sales for 1927-32 validated (329, P. L. L.)		2
CAMDEN	Optional with local authorities			Applicable								2
CARTERET				Applicable					Vouchers acceptable for '31 and prior taxes (174, P. L. L.)	1931 and prior taxes payable at discount before 12/1/33, with costs and penalties waived (175, P. L. L. Probably superseded by 181)		3
CASWELL				Applicable				5¢ for poor, health work, courts (202, P. L. L.)	Vouchers and jury tickets acceptable for all taxes (45, P. L. L.)	Penalties on '32 taxes collected before 7/1/33 remitted (408, P. L. L. Probably superseded by 509)	Accountant to help Sheriff with taxes on Sheriff's request (422, P. L. L.)	5
CATAWBA	Optional with local authorities (181). If adopted, costs to be paid (316)									Optional to reduce penalties on '32 taxes to ½ of 1% per month, beginning 2/1/33, with no penalty for June (554, P. L. L.)	Duties transferred from Sheriff to Accountant on 10/1/33 (145, P. L. L.)	4
CHATHAM	Applicable, but local authorities may eliminate discount provisions (536)			Applicable					Bonds and notes maturing in current year for current taxes, and future maturities for delinquent taxes (506, P. L. L.)	Sales of '31 taxes, held in Feb. '33, validated (362, P. L. L.)		4
CHEROKEE				Applicable			Taxes to supplement State funds prohibited			(A)—Tax Commission created (239, P. L. L.). (B)—Dog tax repealed (90). (C)—Sales of '29-'31 city taxes prior to 10/1/33 authorized (56, P. L. L.)		5
CHOWAN				Applicable						Same as entry in this column for Bertie		2
CLAY				Applicable						Dog tax repealed (301)		2
CLEVELAND	Optional with local authorities (351)	Optional with local authorities (305)	Applicable, but subject to local modifications in 305							Postponement of sales in '33 to November authorized (509, P. L. L.)		3
COLUMBUS	Applicable, but $2.00 costs must be paid where foreclosure begun; attorney receives $2.00 per suit (458)	Applicable, but Accountant to perform Clerk's duties (487)		Applicable						Foreclosed tracts of 2,000 acres or more to management trustee, with 5% commissions (554, P. L. L.)		4
CRAVEN			Applicable, but not to repeal local '33 laws	Applicable	Provision requiring actual reappraisal repealed by 372				Vouchers of Board of Education or any special tax school district acceptable for all taxes (173, P. L. L.)	(A)—Plan for settlement of '31 and prior taxes before 2/1/34 (111, P. L. L. Probably superseded by 181). (B)—Criminal costs paid by county need not be credited on back taxes (426)		7
CUMBERLAND		Optional with local authorities (468. This repealed 397, which made 148 inapplicable)		Applicable					Vouchers acceptable for all taxes (12, P. L. L. and 15, P. L. L.)	(A)—Penalties on '32 taxes paid before 10/1/33 abolished or credited on '33 taxes (458, P. L. L. and 530, P. L. L. Both superseded by 509). (B)—Sales in '33 postponed 4 months (542, P. L. L.). (C)—1927-31 sales validated (543, P. L. L.)	Must appoint Collector for current and may for delinquent taxes (166, P. L. L. and 532, P. L. L.)	11
CURRITUCK				Applicable		Taxes to supplement State funds prohibited		10¢ for courts, jail, jail prisoners (405, P. L. L.)			May appoint Collector for dog, delinquent poll and other delinquent taxes (27, P. L. L.)	4
DARE	Applicable, but no discounts allowed (305. This repealed 460, which had excepted Dare from 181)	Applicable (305. This repealed 460, which had excepted Dare from 148)										3
DAVIDSON	Inapplicable (226)	Inapplicable—prior laws revived, but sales in '33 postponed 1 month, and '31 and prior foreclosures before 3/1/34 (397)	Applicable, subject to provisions in preceding column					$100.00 per vehicle annual license tax on ice peddlers from outside the county (536, P. L. L.)				4
DAVIE				Applicable								1
DUPLIN				Applicable								1
DURHAM	Optional with local authorities	Inapplicable—prior laws revived, but sales in '33 postponed 1 month (397 and 425)	Applicable, probably subject to provisions in preceding column							Excepted from law validating sales held at improper times in '31 and '32 (177)		4
EDGECOMBE	Applicable, but costs must be paid in advance (371, P. L. L.)										Collection duties from Sheriff to Collector on 4/1/33 (253, P. L. L.)	2
FORSYTH	Inapplicable	Inapplicable (290. By 148 itself it was optional in Forsyth)			Not permitted to adopt alternative scale of penalties and discounts (289)					Authority for Central Board of Assessors to supervise revaluation (287, P. L. L.)		5
FRANKLIN												0
GASTON	Optional with local authorities. Special alternative provided (255, P. L. L.)	Inapplicable—prior laws revived, but sales in '33 postponed 1 month and '31 and prior foreclosures before 3/1/34 (397. By 148 itself it was optional in Gaston)	Applicable, subject to provisions in preceding column					5¢ for cost of Superior Courts (431, P. L. L.)	Vouchers acceptable for all taxes and other obligations due county (99, P. L. L.)			2
GATES										(A)—Law similar in general to 181, but with numerous exceptions (255, P. L. L., amended by 323). (B)—Attorney's fee to be taxed under 148 (266. Impliedly repealed by 397)		7
GRAHAM				Applicable						(A)—Same as entry in this column for Bertie. (B)—Newspaper advertisement eliminated in foreclosures (201, P. L. L.)	May appeal Sheriff or anyone else to collect for constables failing to furnish bond (418, P. L. L.)	4
GRANVILLE	Optional with local authorities (181), but if adopted may require 6% interest from certificate date and may eliminate discount (304)	Inapplicable—prior laws revived, but with option to postpone sales in '33 for 6 months, with penalty changes and changes in foreclosure dates (457)	Applicable, but probably subject to provisions in preceding column					(A)—10¢ for courts, jail, jail prisoners (405, P. L. L.) (B)—$50.00 annual tax on some private fishing license sellers (402, P. L. L.)		Sales of 1929-31 city taxes before 10/1/33 authorized (66, P. L. L.)		3
GREENE										County payments on criminal costs need not be credited on delinquent taxes (420)		4
GUILFORD	Optional with local authorities	Inapplicable—prior laws revived, but sales in '33 postponed 1 month, and '31, and prior foreclosures before 11/1/33 (407. By 148 itself it was optional in Guilford)	Applicable, subject to provisions in preceding column, and with foreclosures pending 4/8/31 excepted	Applicable						Time to foreclose certificates extended to 11/1/33 (67, P. L. L. Superseded by 181 and 366)	Collector appointed as of 10/1/32 (67, P. L. L.)	2
HALIFAX	Optional with local authorities (471)	Inapplicable (470)								Authority to levy taxes for funding and refunding bonds as decided prior to 3/15/33 prescribed, despite subsequent laws (356)	County and one or more cities may maintain joint tax collecting agency (231, P. L. L.)	6
HARNETT									Bonds or notes maturing in current year for current debt service taxes, future maturities for all delinquent taxes (452, P. L. L.)			3
HAYWOOD				Applicable								1
HENDERSON				Applicable				$100.00 per year plus 10% of receipts from horse racing (563)		(A)—25% partial payments allowed (193). (B)—Sales of 1929-'31 city taxes before 10/1/33 authorized (66, P. L. L.). (C)—Tax supervisor provided for (223, P. L. L.). (D)—Petition for relief re Great Smokies Park (419 and Res. 27)	Collector's office abolished, duties to Sheriff as of 10/1/33 (2, P. L. L. and 107, P. L. L.)	9
HERTFORD	Optional with local authorities (329. By 181 itself Hertford was excepted)		Applicable, but not to repeal local '33 laws						Bonds due or maturing in current year for all debt service taxes (371, P. L. L.)			2
HOKE				Applicable						Same as entry in this column for Bertie, except statute still in force if 181 not adopted in Hertford	Township collectors or agents to be appointed by Commissioners (39, P. L. L. and 259, P. L. L.)	6
HYDE	Inapplicable			Applicable						May postpone sales in '33 to October (545, P. L. L. Possibly superseded by 509)		2
IREDELL										(A)—Same as entry in this column for Bertie, save statute still in force in Hyde. (B)—May fix interest at 6% to 8%, beginning Feb. 1, on '32 and subsequent taxes (294, P. L. L.). (C)—Only one drainage levy for one purpose (536, P. L. L.). (D)—Newspaper advertising in tax foreclosures eliminated (201, P. L. L.)		5
JACKSON	Applicable (502. This repealed 377, which made 181 optional in Jackson)									Penalties on '32 taxes fixed at ½ of 1% per month beginning 2/1/33, with no penalty for June (554, P. L. L.)		1
JOHNSTON	Applicable, with all costs not actually paid by county waived (459)			Applicable				(A)—10¢ for courts, jail, jail prisoners (405, P. L. L.). (B)—County-wide levy for Dillsboro Township road bonds (190, P. L. L.)		Sales of 1929-31 city taxes before 10/1/33 authorized (66, P. L. L.)		6
JONES				Applicable								2
LEE				Applicable				10¢ for courts, jail, jail prisoners (405, P. L. L.)	Vouchers acceptable for any taxes (45, P. L. L.)	Same as entry in this column for Jackson	Collector to be appointed to take over Sheriff's tax duties. (256, P. L. L.)	5
LENOIR			Applicable, but not to repeal local '23 laws	Applicable					Bonds matured or maturing in current year acceptable for all taxes (559, P. L. L.)			3
LINCOLN	Optional with local authorities			Applicable	Revaluation by actual reappraisal required				Bonds or notes for any taxes (271, P. L. L.)	May compromise taxes or tax suits and sell land purchased under foreclosure (271, P. L. L.)	Any officer may be required to make up tax receipts (235, P. L. L.)	4
McDOWELL	Applicable, with exception that '26 and prior taxes not barred (399)			Applicable	Applicable (272. This repealed provision requiring at least 33⅓% horizontal cut in values)							4
MACON				Applicable				(A)—10¢ for courts, jails, jail prisoners (405, P. L. L.). (B)—County-wide levy for township road bonds (117, P. L. L. and 242, P. L. L.). (C)—Same for beach school bonds (172, P. L. L.). (D)—$100.00 per year and 10% of race-track receipts (372)		May postpone sales in '33 to August (477, P. L. L. Probably superseded by 509)		8
MADISON	Applicable, but 50% of income from property must be applied to taxes (436, P. L. L.)		Applicable, but not to repeal local '33 laws	Applicable (But compare 369, P. L. L.)	Revaluation by actual reappraisal required			Levying county-wide taxes to pay township road or bridge bonds prohibited (500, P. L. L.)	Jury fees of delinquent taxpayers must be credited on taxes (62)	(A)—5 years to pay delinquent taxes (167, P. L. L. Probably superseded by 181). (B)—Penalties on '28 and later taxes abolished (369. Probably partially superseded by 509). (C)—Appraisers and Board of Equalization appointed (240, P. L. L. and 577, P. L. L.). (D)—Postponement of sales ratified (334, P. L. L.). (E)—Dog tax repealed (301)	Collectors collecting for 1928-31 continue collecting for those years (564, P. L. L.)	12
MARTIN				Applicable				(A)—5¢ county-wide for road bonds of townships No. 2, 8, 9, 13, 14, 15, 16 (252, P. L. L.). (B)—2¢ to pay cost of West Fowler trial (390, P. L. L.)				4
MECKLENBURG	Inapplicable (427)	Inapplicable (427)	Inapplicable, due to 276, P. L. L. and amendatory laws		Applicable (242. This repealed provision requiring actual reappraisal)		Taxes to supplement State funds prohibited			Postponement of sales during 1929-32 ratified (38, P. L. L.)		4
MITCHELL	Applicable, but 50% of any income from property must be applied to taxes (436, P. L. L.)				Minimum horizontal reduction in values of 33⅓% required	Excepted from provisions re peddlers' licenses		(A)—6¢ on property and 15¢ on the poll for Tubercular Hospital (394, P. L. L.). (B)—License levied by cities on building and loan associations limited to $100.00 (419, P. L. L.)		(A)—One-sale foreclosure system similar to 148 created (276, P. L. L., 296, P. L. L., 323, P. L. L. and 427). (B)—Excepted from drainage levy law (504). (C)—Excepted from law validating sales held at improper times (177). (D)—May refund Julia Morris estate taxes (605, P. L. L.)	Treasurer-Tax Collector created and appointed (276, P. L. L. and 323, P. L. L.)	12
MONTGOMERY								10¢ for courts, jail, jail prisoners (434, P. L. L.)		(A)—Sales held on improper days ratified (405, P. L. L.). (B)—Entertainments sponsored by American Legion exempt from license taxes (576, P. L. L.)		4
MOORE	Optional with local authorities			Applicable (But see 558, P. L. L.)						One month's postponement of sales in '33 authorized (570, P. L. L. Probably superseded by 509)	Collector created to take duties from Sheriff in October, 1933 (479, P. L. L.)	3
NASH	Applicable, but no discounts allowed and '32 taxes must be paid in full (389 and 423. By 181 (itself it was optional in Nash)	Applicable, but Accountant to perform Clerk's duties (556)			May contract with hospitals re charity work and taxes (571)					Authority to suspend penalties on '32 taxes and refund those already collected (588, P. L. L.)		3
NEW HANOVER	Optional with local authorities									Penalties abolished on '32 taxes through May, '33—no refunds (389 and 423)		5
NORTHAMPTON				Applicable				$100.00 per year and 10% of receipts from horse racing (563)			City-County Collector created for County, Wilmington, Carolina Beach (191, P. L. L.)	4
ONSLOW												0
ORANGE	Inapplicable	Inapplicable—prior laws revived, but sales in '33 postponed 1		Applicable								1

DAVIE			Applicable									1
DUPLIN			Applicable									1
DURHAM	Optional with local authorities	Inapplicable—prior laws revived, but sales in '33 postponed 3 months (397 and 433)	Applicable, probably subject to provisions in preceding column							Excepted from law validating sales held at improper times in '31 and '32 (177)		4
EDGECOMBE	Applicable, but costs must be paid in advance (371, P. L. L.)										Collection duties from Sheriff to Collector on 4/1/33 (253, P. L. L.)	2
FORSYTH	Inapplicable	Inapplicable (290). By 143 (itself it was optional in Forsyth)			Not permitted to adopt alternative scale of penalties and discounts (239)					Authority for Central Board of Assessors to supervise revaluation (257, P. L. L.)		5
FRANKLIN								5¢ for cost of Superior Courts (431, P. L. L.)	Vouchers acceptable for all taxes and other obligations due county (59, P. L. L.)			2
GASTON	Optional with local authorities. Special alternative provided (353, P. L. L.)	Inapplicable—prior laws revived, but sales in '33 postponed 1 month and '31 and prior foreclosures before 3/1/34 (197). By 143 (itself it was optional in Gaston)	Applicable, subject to provisions in preceding column							(A)—Law similar in general to 181, but with numerous exceptions (355, P. L. L., amended by 525). (B)—Attorney's fee to be taxed under 143 (296). Impliedly repealed by 397)		7
GATES				Applicable						(A)—Same as entry in this column for Bertie. (B)—Newspaper advertisement eliminated in foreclosures (201, P. L. L.)	May appoint Sheriff or anyone else to collect for constables failing to furnish bond (418, P. L. L.)	4
GRAHAM								(A)—10¢ for courts, jail, jail prisoners (405, P. L. L.) (B)—$50.00 annual tax on some private fishing license sellers (402, P. L. L.)		Sales of 1926-'31 city taxes before 10/1/33 authorized (66, P. L. L.)		3
GRANVILLE	Optional with local authorities (133), but if adopted may require 6% interest from certificate date and may eliminate discount (304)	Inapplicable—prior laws revived, but with option to postpone sale in '33 for 6 months, with penalty changes and changes in foreclosure dates (437)	Applicable, but probably subject to provisions in preceding column							County payments on criminal costs need not be credited on delinquent taxes (426)		4
GREENE				Applicable						Time to foreclose certificates extended to 11/1/33 (67, P. L. L. Superseded by 181 and 660)	Collector appointed as of 10/1/32 (67, P. L. L.)	2
GUILFORD	Optional with local authorities	Inapplicable—prior laws revived, but sales in '33 postponed 1 month, and '31, and prior foreclosures before 11/1/33 (407. By 143 (itself it was optional in Guilford)	Applicable, subject to provisions in preceding column, and with foreclosures pending 4/8/'31 excepted							Authority to levy taxes for funding and refunding bonds as decided prior to 3/15/33 preserved, despite subsequent laws (556)	County and one or more cities may maintain joint tax collecting agency (251, P. L. L.)	6
HALIFAX	Optional with local authorities (471)	Inapplicable (470)							Bonds or notes maturing in current year for current debt service taxes, future maturities for all delinquent taxes (452, P. L. L.)			3
HARNETT				Applicable								1
HAYWOOD				Applicable				$100.00 per year plus 10% of receipts from horse racing (563)		(A)—25% partial payments allowed (193). (B)—Sales of 1926-'31 city taxes before 10/1/33 authorized (66, P. L. L.) (C)—Tax supervisor provided for (228, P. L. L.). (D)—Petition for relief re Great Smokies Park (419 and Res. 27)	Collector's office abolished, duties to Sheriff as of 10/1/35 (2, P. L. L. and 107, P. L. L.)	9
HENDERSON			Applicable, but not to repeal local '33 laws						Bonds due or maturing in current year for all debt service taxes (371, P. L. L.)			2
HERTFORD	Optional with local authorities (329). By 181 itself Hertford was exempted)			Applicable						Same as entry in this column for Bertie, except statute still in force if 181 not adopted in Hertford	Township collectors or agents to be appointed by Commissioners (39, P. L. L. and 259, P. L. L.)	6
HOKE				Applicable						May postpone sales in '33 to October (545, P. L. L. Possibly superseded by 560)		3
HYDE	Inapplicable									(A)—Same as entry in this column for Bertie, save statute still in force in Hyde. (B)—May fix interest at 6% to 8%, beginning Feb. 1, on '32 and subsequent taxes (294, P. L. L.). (C)—Only one drainage levy for one purpose (558, P. L. L.). (D)—Newspaper advertising in tax foreclosures eliminated (201, P. L. L.)		5
IREDELL										Penalties on '32 taxes fixed at ½ of 1% per month beginning 2/1/33, with no penalty for June (554, P. L. L.)		1
JACKSON	Applicable (302. This repealed 377, which made 181 optional in Jackson)			Applicable				(A)—10¢ for courts, jail, jail prisoners (405, P. L. L.). (B)—County-wide levy for Dillsboro Township road bonds (166, P. L. L.)		Sales of 1926-31 city taxes before 10/1/33 authorized (66, P. L. L.)		6
JOHNSTON	Applicable, with all costs not actually paid by county waived (459)			Applicable								2
JONES				Applicable				10¢ for courts, jail, jail prisoners (405, P. L. L.)	Vouchers acceptable for any taxes (48, P. L. L.)	Same as entry in this column for Jackson	Collector to be appointed to take over Sheriff's tax duties. (356, P. L. L.)	5
LEE			Applicable, but not to repeal local '33 laws	Applicable					Bonds matured or maturing in current year acceptable for all taxes (559, P. L. L.)			3
LENOIR				Applicable	Revaluation by actual reappraisal required				Bonds or notes for any taxes (271, P. L. L.)	May compromise taxes or tax suits and sell land purchased under foreclosure (271, P. L. L.)	Any officer may be required to make up tax receipts (235, P. L. L.)	4
LINCOLN	Optional with local authorities			Applicable	Applicable (372. This repealed provision requiring at least 33⅓% horizontal cut in values)							4
McDOWELL	Applicable, with exception that '26 and prior taxes not barred (389)			Applicable				(A)—10¢ for courts, jails, jail prisoners (405, P. L. L.). (B)—County-wide levy for township road bonds (117, P. L. L. and 242, P. L. L.). (C)—Same for local school bonds (172, P. L. L.). (D)—$100.00 per year and 10% of race-track receipts (373)		May postpone sales in '33 to August (477, P. L. L. Probably superseded by 556)		5
MACON			Applicable, but not to repeal local '33 laws	Applicable (But compare 369, P. L. L.)	Revaluation by actual reappraisal required			Levying county-wide taxes to pay township road or bridge bonds prohibited (500, P. L. L.)	Jury fees of delinquent taxpayers must be credited on taxes (62)	(A)—5 years to pay delinquent taxes (167, P. L. L. Probably superseded by 181). (B)—Penalties on '28 and later taxes abolished (369. Probably partially superseded by 559). (C)—Appraisers and Board of Equalization appointed (240, P. L. L. and 577, P. L. L.). (D)—Postponement of sales ratified (334, P. L. L.). (E)—Dog tax repealed (301)	Collectors collecting for 1925-31 continue collecting for those years (554, P. L. L.)	12
MADISON	Applicable, but 50% of income from property must be applied to taxes (436, P. L. L.)			Applicable				(A)—5¢ county-wide for road bonds of townships No. 2, 8, 9, 13, 14, 15, 16 (252, P. L. L.). (B)—5¢ to pay rent of West Fowler trial (390, P. L. L.)				4
MARTIN					Applicable (242. This repealed provision requiring actual reappraisal)		Taxes to supplement State funds prohibited			Postponement of sales during 1929-32 ratified (58, P. L. L.)		4
MECKLENBURG	Inapplicable (427)	Inapplicable (427)	Inapplicable, due to 276, P. L. L. and amendatory laws		Minimum horizontal reduction in values of 33⅓ required	Excepted from provisions re peddlers' licenses		(A)—6¢ on property and 10¢ on the poll for Tubercular Hospital (394, P. L. L.). (B)—License levied by cities on building and loan associations limited to $100.00 (419, P. L. L.)		(A)—One-sale foreclosure system similar to 148 created (276, P. L. L., 296, P. L. L., 323, P. L. L. and 427). (B)—Excepted from drainage levy law (504). (C)—Excepted from law validating sales held at improper times (177). (D)—May refund Julia Morris estate taxes (505, P. L. L.)	Treasurer-Tax Collector created and appointed (276, P. L. L. and 323, P. L. L.)	13
MITCHELL	Applicable, but 50% of any income from property must be applied to taxes (426, P. L. L.)							10¢ for courts, jail, jail prisoners (434, P. L. L.)		(A)—Sales held on improper days ratified (465, P. L. L.). (B)—Entertainments sponsored by American Legion exempt from license taxes (576, P. L. L.)		4
MONTGOMERY										One month's postponement of sales in '33 authorized (570, P. L. L. Probably superseded by 560)	Collector created to take duties from Sheriff in October, 1933 (429, P. L. L.)	2
MOORE	Optional with local authorities			Applicable (But see 588, P. L. L.)						Authority to suspend penalties on '32 taxes and refund those already collected (588, P. L. L.)		3
NASH	Applicable, but no discounts allowed and '32 taxes must be paid in full (389 and 422). By 181 (itself it was optional in Nash)	Applicable, but Accountant to perform Clerk's duties (356)			May contract with hospitals re charity work and taxes (271)					Penalties abolished on '32 taxes through May, '33—no refunds (359 and 423)		5
NEW HANOVER	Optional with local authorities			Applicable				$100.00 per year and 10% of receipts from horse racing (563)			City-County Collector created for County, Wilmington, Carolina Beach (191, P. L. L.)	4
NORTHAMPTON												0
ONSLOW				Applicable								1
ORANGE	Inapplicable	Inapplicable—prior laws revived, but sales in '33 postponed 1 month (397)	Applicable, probably subject to provisions in preceding column									2
PAMLICO	Applicable, but '26 and prior taxes not barred			Applicable						Penalties on '32 and prior taxes cancelled (247. Superseded as to '32 taxes by 559)		3
PASQUOTANK				Applicable				$100.00 per year and 10% of receipts from horse racing (511)		(A)—Same as entry in this column for Bertie. (B)—Sales held at improper time ratified (249, P. L. L.)	Sheriff must collect dog taxes (90, P. L. L.)	5
PENDER	Applicable, with '26 and prior taxes on which foreclosures pending subject to all provisions (369)				Revaluation by actual reappraisal required (295)							2
PERQUIMANS				Applicable								1
PERSON				Applicable								1
PITT	Applicable, but no discounts allowed on drainage district assessments (513)	Excepted from requirement to notify Heirs (496)	Applicable, but not to repeal local '33 laws	Applicable						Penalties on '32 taxes abolished through June—those collected to be repaid (408, P. L. L. Probably superseded by 559)		5
POLK	Optional with local authorities							$100.00 per year and 10% of receipts from horse racing (563)		(A)—Tax listings by improper persons validated (440, P. L. L.). (B)—Simplified foreclosure for cases in which listing defective (486, P. L. L.)	Collector and deputy to be appointed to take duties from Sheriff (170, P. L. L. and 528, P. L. L.)	6
RANDOLPH									Bonds or notes matured or maturing during year for current debt service taxes, and future maturities for delinquent taxes (348, P. L. L.)	(A)—'32 taxes payable 10% monthly, beginning May, '33 (152, P. L. L. and 347, P. L. L.). (B)—'31 taxes payable 20% on 10/1/33 and 10% monthly, without penalties (522, P. L. L. and 587, P. L. L.)		5
RICHMOND	Optional with local authorities, but if adopted '26 and prior taxes not barred											1
ROBESON				Applicable					Bonds or notes matured or maturing during current year for all taxes and foreclosed land (567, P. L. L.)		Tax Asst. to Manager to take delinquent collection from Register and current from Sheriff on 3/1/33 (11, P. L. L.)	3
ROCKINGHAM	Optional with local authorities				Revaluation by actual reappraisal required							2
ROWAN		Inapplicable—prior laws revived, but sales in '33 postponed 1 month (397)	Applicable, probably subject to provisions in preceding column	Applicable				$100.00 per year and 10% of receipts from horse racing (548)		(A)—May authorize abolition of school taxes by election (181, P. L. L. Superseded by 562). (B)—25% installment payments allowed (193). (C)—May cancel taxes on Duke Hospital property (229, P. L. L.)		6
RUTHERFORD								(A)—10¢ for revaluation, courts, jail, prisoners, hospitals (479, P. L. L.). (B and C)—County-wide levy for local school building and property debts (254, P. L. L. and 411, P. L. L.), and for township road bonds (345, P. L. L.)				4
SAMPSON								Special levy for cost of revaluation (583, P. L. L.)		(A)—Installment payments allowed (233, P. L. L.). (B)—Penalties on '31 and prior taxes may be waived of reduced and foreclosures begun before 1/1/35 (498, P. L. L. Repealed by 574, P. L. L.)		4
SCOTLAND	Installment plan for '31 and prior taxes optional—no discounts allowed—otherwise applicable (218)			Applicable								2
STANLY		Optional with local authorities (462)										1
STOKES				Applicable				5¢ for courts, jail, jail prisoners (54)				2
SURRY	Optional with local authorities									(A)—May postpone sales in '33 six months (585, P. L. L. and 586, P. L. L.). (B)—May sell '30 and '31 taxes any first Monday in '33 (507, P. L. L.). (C)—Sales at improper times ratified (578, P. L. L.)		5
SWAIN			Applicable, but not to repeal local '33 laws	Applicable				County-wide levy for Alwain Bond District and Forney's Creek Township road bonds (116, P. L. L. and 226, P. L. L.)		(A)—25% installment payments allowed (193). (B)—1929-31 city taxes may be sold before 10/1/33 (66, P. L. L.). (C)—Dog tax repealed (149). (D)—Petition for relief re Smoky Mt. Park (419 and Res. 27)		9
TRANSYLVANIA				Applicable					Bonds due or maturing in current year for any debt service taxes (303, P. L. L.)	Need not foreclose property not worth cost (238, P. L. L.)	Statute designating Sheriff as collector repealed (30, P. L. L.)	4
TYRRELL								10¢ for courts, jail, jail prisoners (405, P. L. L.)		Collections of debt service taxes for '29 and '30 may be used for general fund (207, P. L. L.)		4
UNION	Optional with local authorities (291)			Applicable	Horizontal cut in values of at least 33⅓% required			5¢ for revaluation, courts, jail, jail prisoners (470, P. L. L.)		May suspend penalties on '32 taxes and refund those collected (581, P. L. L.)	May abolish Collector and restore duties to Sheriff (104, P. L. L.)	4
VANCE				Applicable	Revaluation by actual reappraisal directed, but provision impliedly repealed by 559, P. L. L., allowing horizontal cut.							3
WAKE		Still applicable in Wake	Inapplicable	Applicable						(A)—Monthly installments allowed (297, P. L. L.). (B)—To list unlisted stocks back to 1923 (370, P. L. L.)		4
WARREN				Applicable				10¢ for revaluation, courts, jail, jail prisoners (235, P. L. L.)				2
WASHINGTON											May appoint Collector to take duties from Sheriff (541, P. L. L.)	1
WATAUGA											Collector appointed to take duties from Sheriff (254, P. L. L.)	1
WAYNE		Optional with local authorities (462)	Applicable, but not to repeal local '33 laws	Applicable				County-wide levies for county refunding bonds (37, P. L. L.) and Mt. Olive and Fork Township school bonds (193, P. L. L.) authorized	Bonds and notes maturing in current year for current taxes, and future maturities for delinquent taxes (324, P. L. L. and 529, P. L. L.)	Sales held at improper times ratified (5, P. L. L.)	Collector to be appointed to take Sheriff's duties (5, P. L. L.)	8
WILKES	Optional with local authorities			Applicable								2
WILSON								$25.00 annual license for purchasers of unginned cotton (435, P. L. L.)	Vouchers for all taxes (552, P. L. L.)	County payments on criminal costs need not be credited on taxes (501)		3
YADKIN				Applicable							Ex-Sheriff to collect 1918-1929 taxes until 1/1/35 (62, P. L. L.)	2
YANCEY	Applicable, but 50% of income from property must be applied to taxes—may take bonds for payments under 181 (409, P. L. L.)		Applicable, but not to repeal local '33 laws	Applicable					(A)—Bonds for payments under 181 (409, P. L. L.). (B)—Jury tickets for delinquent taxes (250, P. L. L.)	(A)—Board Revaluation and Review appointed, and powers and duties fixed (221, P. L. L., 340, P. L. L., 417, P. L. L. and 472, P. L. L.). (B)—Sales in '33 and '34 postponed 3 months (407, P. L. L.).	Register to prepare tax scrolls, etc. (126, P. L. L.)	10

LOCAL ECONOMY AND FINANCE

I. Ad Valorem Taxes and the Cost of Local Government.

The major portion of the revenue of local governments is derived from ad valorem taxes. Thus any increase or decrease in the cost of those governments is reflected in the tax rate. With this in mind, the writer believes that it is impossible to separate the laws dealing with such taxes and the laws indirectly affecting those taxes by affecting governmental costs without destroying the logic of their presentation. Consequently both types of these laws will be discussed in this chapter, and an attempt will be made to present them as essentially one type of legislation.

To speak of "general laws" on the subject of local ad valorem taxes is becoming more and more incorrect. Hardly a single major statute dealing with this important phase of local government was passed by the 1933 General Assembly which did not, as finally ratified or as subsequently amended, except one or more (almost invariably more) counties from all or a part of its provisions. In addition to these "general laws," innumerable laws were passed affecting only specified counties. Chief of these was Chapter 559, Public Laws, affecting fifty-seven counties. This Chapter will, of course, be discussed, but it will be impossible here to deal with the great majority of the local bills, and only a few of the more representative ones will be mentioned. Suffice it to say that either by way of exception to general laws or by way of special legislation, individual counties were given special mention with respect to local taxes approximately 370 times. Consequently, though some of the exceptions will be mentioned, it will be impossible for the casual reader of this chapter to be certain that legislation discussed here has any application to the situation in any particular place without checking the laws particularly applying to that place. Such a check may be made, in a preliminary way, by examining the summaries of

local legislation affecting each county recently distributed to local newspapers by the Institute of Government. It may also be made by consulting the chart appearing at the end of this chapter as a key to local tax legislation. Further, it should be kept in mind that the laws which were passed were amended many times, often by amendments written with lead pencils on the backs of crumpled envelopes sent up from the floor and adopted without undergoing close scrutiny to ascertain whether their provisions were harmonious with the other provisions of the particular laws involved or with the provisions of other legislation. No better example of this method of hasty passage of hastily worded amendments may be found than in Chapter 560, Public Laws, an extremely important tax statue which will subsequently be discussed. At least three-fourths of the provisions of this Chapter were added by amendments in the form of proviso clauses, with the result that the statute is a jungle of disconnected provisions scattered at random throughout its three principal sections. The result of this, coupled with the fact that existing tax laws were not always kept in mind in passing new ones and the fact that legislative policy changed materially several times during the session, is that the present tax laws are by no means crystal clear. Many of the obscurities have been made the subject of rulings by the Attorney General and by the Local Government Commission, but these rulings, while extremely helpful to administrative officials, are at best but tentative interpretations; and the field for tax litigation during the next few years is fertile.

For convenience of discussion, the writer has divided the laws dealing with ad valorem taxes and the cost of local government into three general classes; i.e., those dealing with the listing of taxes and valuation of taxable property, those dealing either directly or indirectly, with the rate of tax, and those dealing with the collection and foreclosure of taxes.

A.—THE LISTING OF TAXES AND THE VALUATION OF TAXABLE PROPERTY

Machinery Act—The valuation of real property for county taxes.

Tax listing and assessing are controlled by the biennial Machinery Acts. This year's Machinery Act is Chapter 204, Public Laws, and, as it covers some 72 pages of the printed statutes, it is not the writer's purpose to summarize it here. On the whole, it is not greatly different from prior Machinery Acts. Its most important single feature was its direction that the so-called "quadrennial" revaluation of real property be made in 1933. On this particular occasion it was a "sextennial" revaluation, as the last previous one was made in 1927. The 1931 General Assembly, which normally would have directed this revaluation, neglected to provide for it.

Ordinarily such a revaluation would mean that, throughout the State, each parcel of real property would be inspected and appraised by township assessors. However, this year, in the interest of economy, the great majority of the counties were permitted, through their Boards of Commissioners, to choose between this method of actual reappraisal and the alternative of making a uniform decrease or increase in all values as they already appeared on the tax books. It is hardly necessary to point out that the part of this provision referring to uniform increase in valuations was largely surplus phraseology.

It apparently was found, in some instances, that when the new valuations were fixed the total valuation was so low that the county general fund levy, limited by the State Constitution to 15c on each $100.00 of valuation, would not produce sufficient revenue properly to operate the county government. To remedy the situation it was suggested, in one or two of these instances, that the Board of Equalization and Review (in most counties composed of the County Commissioners) should restore a part of the values taken off the books,

thus arriving at a total sufficient to produce the desired revenue. The Attorney General, however, in a letter to W. E. Easterling, Secretary of the Local Government Commission, on July 19, 1933, ruled that, under the Machinery Act, the Board could not lawfully make such a restoration purely for revenue purposes, as the Act contemplates that the Board make adjustments in valuations only on the basis of the actual value of the parcels involved, and in the interest of equalizing values between the various parts of the county.

All counties, however, were not allowed by the Act to choose between actual revaluation and a horizontal cut in values. As originally passed, the Act required Commissioners in Mecklenburg, Tyrrell and Lincoln counties to make at least a 33 1/3 per cent reduction in realty values; and required Alamance, Buncombe, Rockingham, Craven, Lenoir, Macon, Martin and Vance counties to appoint assessors and make an actual appraisal. By subsequent amendments Pender was added to and Craven and Martin were removed from this second group, and Lincoln was removed from the first.

In counties where the horizontal reduction in realty values was directed or was adopted under the local option allowed, the question of what constituted real estate and what constituted personal property became considerably more important than it formerly was. The most common subject of controversy along this line seems to have grown out of the fact that power poles and wires had formerly been carried on tax books in many counties as personal property. The Attorney General has, however, on several occasions, expressed himself to be of the opinion that such property, being permanently attached to the land, is real estate, and consequently is subject to all uniform reductions in real estate valuations.

Machinery Act—Real estate valuation in cities.

Once the new values for real estate have been fixed by the county authorities, they must be accepted for tax purposes by all cities and towns in the county. Only cities and towns lying in more than one county are permitted to fix their own

values. This has been found necessary as experience has shown that the presence of the mysterious and invisible county line often causes remarkable disparity in the valuations placed upon adjoining lands; nor is it possible for the State Board of Assessment to consider and eliminate all such discrepancies. Hence these cities and towns, placed in what would otherwise be a position in which discrimination between taxpayers helping to support the same city government would be inevitable, are allowed to follow their own convictions regarding what constitutes "true value in money." This "true value in money" is the sound but indefinite yardstick prescribed by the State's Constitution to measure all tax valuations. County authorities are permitted to adopt the values fixed by the city authorities in these border cities, but are not required to do so and may, if they wish, adopt different valuations for county tax purposes. If it is permissible to apply to taxation the concept of truth as unity, it seems that there can be only one "true value in money" for any one piece of property, and that wherever county and city valuations differ, somebody has technically violated the Constitution. The practical exigencies of the situation, however, render a judicial holding to this effect extremely improbable.

Machinery Act—Property exempt from taxation.

Only a few other provisions of the Machinery Act can be mentioned at this time, and they deal with exemption or relief from taxes. In listing real property which is not taxable, the 1933 legislature included a new provision exempting land and buildings owned or held for the benefit of churches, religious societies, charitable, educational, literary or benevolent institutions (though not actually occupied by them), when the income from the property is used either solely for religious, charitable, educational or benevolent purposes or to pay interest on the bonded indebtedness of such institutions. The purpose of this new provision seems to be to place religious, charitable, educational and benevolent institutions on the same basis, and to make certain that the use of income to pay bonded indebted-

ness will not render the property of these institutions taxable.

The Legislature also granted long agitated tax relief to private hospitals in the State by permitting them to credit on county or city taxes the value of charity work done by them for indigent residents of the particular county or city. The value of any such work may be credited only against taxes on property used solely for hospital purposes, and may not be credited on both county and city taxes. The credit must be allowed by the counties, but is discretionary with the cities. In most instances this will exempt such hospitals at least from county taxes.

Other laws affecting listing and assessing.

Only two other general statutes dealt with tax listing and assessing and neither were of major importance. The first, Chapter 255, Public Laws, authorized all counties except Mecklenburg and Yancey to proceed with tax listing in April, as the work in many counties had already been begun in that month, despite the Machinery Act's provision requiring the 1933 listing to begin in May. The second, Chapter 356, Public Laws, provided that the procedure set up in the 1933 Machinery Act, for appeal to the Superior Court in cases involving the assessment of property escaping taxation in previous years, should also apply to similar cases arising under the 1929 and 1931 Machinery Acts.

B.—Laws Affecting the Tax Rate

Effect of reduced assessments on tax levies.

It has been seen that, by giving the option of a horizontal cut, a cheap method of securing lower tax valuations was provided. Under laws in force when the 1933 General Assembly convened, lowering valuations could, by itself, lower the amount of ad valorem taxes actually to be paid in at least four ways, three of which are similar in principle: (1) The State Constitution limits the total ad valorem tax to be levied by the State and the County for general purposes to 15c on

each $100.00 of value. As the state levied no ad valorem tax except for schools, and as that was expressly excepted from the 15c limitation, that limitation meant and still means that the county is entitled to the full 15c levy. Many counties have been accustomed to levying the full 15c. It is obvious that wherever this maximum was already being levied on the old valuation, any decrease in that valuation necessarily reduces the amount of taxes to be paid. (2) The Constitution empowers the legislature to authorize special tax levies by counties for special purposes, in addition to the 15c levy, and this power has been exercised with reasonable frequency, particularly by the 1931 Legislature. Quite a few such levies were authorized in various counties in 1933. Nevertheless, most of the laws authorizing such special levies fixed a maximum rate for the levy, and hence, wherever this maximum was already being levied, lower valuations reduce the amount of tax. (3) Similarly, section 2677 of the Consolidated Statutes limits the ad valorem tax which may be levied by cities and towns, in the absence of special charter provisions, to 50c on each $100.00 of valuation, exclusive of debt service taxes. Consequently, wherever this maximum was being levied, reduction in values also lowers city taxes. (4) Assuming for the moment that a county or city desires to raise the same amount of revenue for a certain purpose after the revaluation as before, if real property values have been reduced 33 1/3%, it will be necessary to increase the tax rate for that purpose by from 40% to 50%, dependent on the shrinkage in personalty values. Contemplation of such a jump in the tax rate is calculated to be highly unpleasant for tax-levying authorities. The psychological effect of lower valuations is, then, of considerable importance in reducing taxes.

It is apparent, however, that merely reducing valuations does not solve the problem. For the time being, in fact, such a reduction may merely complicate the problem by reducing general fund revenues to a point where the county is unable to operate on current revenues and hence builds up an operat-

ing deficit which accentuates its debt problem and makes the levy of a higher tax rate in the future, either for debt service or for special purposes authorized by the legislature, almost inevitable. That is, of course, unless the county intends to repudiate its obligations and fight all litigation designed to enforce them; and for present purposes we must assume to the contrary.

Materially to reduce the amount of ad valorem taxes actually levied, and to give the reduction some degree of permanence, either taxes must be removed from property and the burden placed elsewhere, or governmental costs must be reduced. The legislature apparently did what it thought it could along both of these lines.

Laws designed to reduce property taxes by shifting the burden elsewhere.

Its most direct accomplishment, as everyone now knows, was achieved by the highly controversial, bitterly contested School Machinery Act. This Act is discussed in detail elsewhere. Its only significance here lies not in the fact that the state undertook an 8 months' term, nor in the fact that total school maintenance costs were reduced to a point where the wisdom of the economy is contested by many, but in the fact that it removed practically the entire burden of school maintenance from property and materially limited the right to replace on property any part of that burden without a vote of the people. It accomplished this by abolishing the state's own 15c levy for schools and by abolishing all local school maintenance taxes on property except those levied for vocational agriculture and home economics, those levied for maintenance of plants, and those levied by express authority of a popular vote to supplement funds furnished by the state. It further prohibited the levy of any such taxes, even by consent of a popular vote, for the support of a ninth month of school, by any unit in default on its debts.

Other statutes which may possibly be construed as efforts along this line are Chapters 322 and 353, Public Laws. The

first of these authorized all cities and towns operating sewer systems, in the discretion of local authorities to maintain them, and pay debt service on debts incurred in establishing them, by charging for sewer service—a power formerly possessed only by a comparatively few municipalities under special charter provisions. The charges will not be liens on the property. The second authorizes water and sewer systems to be operated jointly, with the water rates being fixed at a figure which will pay maintenance and debt service costs for the combined system. While adoption of either of these statutes would lessen ad valorem taxes on some property, it would also increase the amount to be paid in other forms by the owners of improved property, and the chief effect would be a redistribution of the burden between property owners. Further, when coupled with Chapter 321, Public Laws, these statutes may result in no reduction in taxes for owners of unimproved property and in further increase in total payments by owners of improved property. That Chapter makes bonds, issued to construct sewer systems supported by either type of the above charges, deductible from the city's gross debt in figuring the total net debt which the city may incur. This allows the issue of an increased amount of bonds for other purposes (if they can be sold), which would be paid largely from ad valorem taxes. Mecklenburg and Transylvania municipalities were excepted from all of these Chapters, while those in Davie were excepted from 322 and those in Ashe and Haywood were excepted from 353.

Laws designed to reduce property taxes by effecting or authorizing economies.

The legislature also made some attempt to aid in the reduction of the operating costs of local government. The most significant laws of a general nature which are designed to this end are Chapters 193 and 194 of the Public Laws. The first authorizes the consolidation of two or more contiguous counties by a popular vote of all counties concerned. The second authorizes the annexation of one county by an adjoining one

by a similar vote of the people of both counties. Each county involved would continue liable for its existing debts. The chief immediate economy effected by utilization of either of these statutes would be economy in administrative personnel, as the new county would have only one set of county officers. Future savings made possible by eliminating the necessity of more than one set of county buildings and physical equipment would no doubt be substantial. So far as the writer knows, however, no attempt has yet been made to invoke either of these statutes. The initiative is left entirely with the county governing authorities, as neither of the statutes requires an election on the question to be called upon a petition of the voters. The only direct attempt to combine counties was made by a bill introduced to combine Mitchell and Avery counties, which was defeated.

Likewise the Legislature passed Chapter 195, Public Laws, which permits the governing authorities of any county to make an agreement with the authorities of one or more other counties, effective for not more than two years, for the joint administration, through a consolidated agency, of any of the similar administrative functions and activities now administered separately. The same agreements may be made by cities with the counties in which they lie or with other cities in the same county. The agreements may be renewed for two years at a time for an indefinite number of times, but, nevertheless, the two-year limitation on the effectiveness of any one agreement seems seriously to limit the attractiveness of such agreements between counties. As between counties the greatest potential economies would seem to lie in situations requiring considerable capital outlay, such as the construction of a modern county home; and a two-year agreement hardly justifies this necessary capital outlay. In two particulars the legislature did pave the way for a joint project involving capital outlay as, by Chapter 201, Public Laws, it authorized two or more contiguous counties to enter into agreements for the construction and maintenance of district jails, and by Chapter 365,

Public Laws, it authorized joint maintenance of libraries. These agreements are not restricted as to time; but they seem to be the only functions not so restricted.

The same criticism may be directed, though possibly with less force, against the utility of agreements between cities and the county and between cities. However, since the county and a city in the county already administer a number of similar functions in the same territory, practical and beneficial agreements may be made between the county and city without necessitating any considerable outlay. Thus, for instance, in several places in the State, city and county taxes are already collected by the same agency, though, so far as the writer knows, it is not the result of the privileges granted by Chapter 195. More specific attempts to combine city and county governments met with legislative success, but popular indifference. Thus statutes were passed submitting to a popular vote the question of combining the governing body of Wilmington with that of New Hanover County, and combining that of Durham with that of the County of Durham. In the first of these instances the voters rejected the combination, while in the second the election has never been held.

On the whole it may fairly be said, in so far as economies to be obtained by utilizing the great American principle of merger and consolidation are concerned, that the legislature contented itself with passing the buck to local authorities and to the voters. On every principle except that of experience it belongs there. On the other hand, in so far as economy by reducing local salaries and personnel is concerned, the legislature refused to pass the buck. No general laws on this subject were enacted, but local salaries and fees were reduced and local personnel was curtailed by local bills far too numerous to mention. In a few of these bills the County Commissioners were given absolute discretion in fixing salaries of all officers and employees, in most they were given some discretion, and in the remaining few they were given none at all (at least as far as the principal county officers are concerned).

Three bills which would have given all Boards of Commissioners and municipal governing boards complete discretion in fixing salaries and in abolishing all offices not required by the Constitution met with such general opposition that they were allowed to sleep peacefully in committee during the remainder of the session.

Three statutes were designed to reduce the cost of operating courts. (1) Chapter 248, Public Laws, permits a judge sitting in any county except Ashe or Durham and ordering special veniremen from another county to summon them to report to their own county seat, allowing the county of trial to furnish transportation from there instead of paying mileage to each individual juror. (2) Chapter 132, Public Laws, reduced from 10c to 5c per mile the mileage allowed Sheriffs for bringing up a prisoner on habeas corpus proceedings and for taking a prisoner to another county. (3) Chapter 40, Public Laws, accomplished the most substantial saving of the three. It prohibits payment of witness fees, in criminal cases, to any law enforcement officer testifying in a court sitting in territory in which he has authority to make an arrest, unless the officer receives no compensation as an officer except fees. It is obvious that these statutes merely scratched the surface of court expense.

Debt service requirements as a barrier to reduced taxation.

Despite the fact that taxes may be reduced by decreasing valuations and by reduction of governmental operating costs, it is everywhere recognized that the most serious barrier in the way of tax reductions lies in the problem of local governmental debt. Beside every farmer and merchant and citizen who is today protesting his taxes is a bondholder protesting just as vigorously that his interest or principal has not been paid. As to which of these protests is the more just, it is not the purpose, nor is it within the ability of the present writer to say; but it is perhaps wise to point out several of the fundamental considerations to be kept in mind in evaluating the measures passed by the recent General Assembly.

In addition to the problem of balancing equities between taxpayers and bondholders, and to the age-old doctrine that what is borrowed should be repaid, the problem is complicated by two very serious considerations, one of law and one of policy. The legal question turns on the Federal Constitution, which prohibits the states from passing laws which impair existing contract rights. Bonds are, of course, contracts, and under them the bondholders have rights with which legislatures may not interfere. The chief rights involved here arise from the fact that the full faith and credit and (which is more important) the taxing power of the unit issuing the bonds are pledged for their repayment. Under laws in force when most of the bonds were issued, bondholders have the right to start an action, when their bonds are in default, to compel the levy of sufficient taxes to meet the payments due. Further, the counties and cities themselves are under contractual obligations to levy taxes sufficient to meet their bond payments without waiting for such an action to be started. The legislature is thus circumscribed in the action it may take by the prohibitions contained in the Constitution. Nor does the Legislature have the power to decide whether or not its laws contravene the Constitution. Since the days of John Marshall that power has rested in the courts. Consequently it is one of the phenomena of our system of government that our lawmaking proceeds by a trial and error method in which the trial begins always months and sometimes years before the error is authoritatively discovered by the courts. It is a well known fact that the sanctity of the contractual obligations of our local governments has broken down in the face of depressed times and shrinking tax collections. It remains to be seen whether those same facts will have any comparable effect on the judicial interpretation of constitutional law.

The question of policy involved may be stated simply, but has grave implications. It is: how far may a state legislature go in aiding the state's weaker cities and counties to go through some form of bankruptcy without making it impossi-

ble for any of its cities and counties to borrow money in the future and without impairing the credit of the state itself? The fact that the state is already paying from 5% to 6% for borrowed money (as it was during the time the legislature was in session) is of no great aid in solving this question.

In deciding these questions the legislature, while scrupulously balancing the State's budget and preserving the State's credit, and without being too partial, apparently heard the taxpayers, who are more numerous in the territory lying within legislative earshot, just a little more clearly than it heard the bondholders. This slight cocking of the legislative ear toward the voting taxpayers may or may not have been influenced by the knowledge that numbers of the present holders of local bonds paid for them a price much below par; though this consideration would be offset to some extent by the knowledge that many local bonds and notes are held by local banks which, in many instances, paid for them at par.

Laws designed to protect bondholders.

The score for the bondholders was not a complete blank. They scored by virtue of the reduction in State and local school maintenance taxes resulting from the School Machinery Act. The taxes which might have been levied for this purpose may now be levied as debt service taxes to care for defaulted obligations. In several cases which have come to the writer's attention, this is actually being done to the extent that a part of the saving in local school maintenance taxes is being taken up by increased debt service levies. The bondholders also scored in a negative but important way in the defeat of measures more radically favorable to the taxpayers than those which were passed. Finally, they scored in Chapter 374, Public Laws, which allows them to petition for appointment of an Administrator of Finance for defaulting units; but this privilege is hardly of practical value and probably may be disregarded. This Chapter 374 will subsequently be mentioned again.

Laws Affecting Debt Service Levies and Designed Primarily for the Benefit of Taxpayers.

1.—*Estimating uncollectible taxes—method liberalized.*

The score for the taxpayers needs more detailed consideration. Chapter 191, Public Laws, amended the County Fiscal Control Act by eliminating the provision which formerly required tax levying authorities, in estimating the amount of taxes which will remain uncollected in the fiscal year for which taxes are being levied, to arrive at their estimate by averaging the amount of current taxes remaining uncollected at the end of each of the three preceding years. The Chapter did not eliminate the requirement that an estimate of taxes which will not be collected within the current year be made; nor did it eliminate the requirement that sufficient taxes be levied to care for the counties' budgeted appropriations despite the estimated uncollectibles. It simply left the method of making the estimate within the discretion of the county authorities. Presumably this discretion must be exercised in good faith.

2.—*Anticipation of receipt of money due unit in fixing tax rate.*

The preceding Chapter was concerned with the levy of all taxes. Chapter 332, Public Laws, dealt more directly with debt service taxes, by amending section 38 of the Local Government Act. That section requires the governing board of any unit, whose duty it is to provide for the payment of the unit's obligations, to make such provision by levying sufficient taxes to care for maturing obligations or making other legal provision for their payment. It further requires every member of the board who is present at the time this levy is to be made to vote in favor of the levy and to have his request for the levy recorded in the board's minutes. Chapter 332 adds to these provisions a proviso that in making the levy the board may make allowance for moneys due it, the receipt of which may reasonably be anticipated. Presumably, this

privilege also must be exercised in good faith, and there is no disposition on the part of the writer to be critical of it; but, with large amounts tied up in closed banks with the prospect for dividends unpredictable, and with much larger sums outstanding in delinquent taxes which may be paid under new legislation the result of which is equally unpredictable, it is easily seen that this Chapter opens a sweeping range within which the exercise of reasonable anticipation and good faith would be difficult to attack successfully. It is hardly to be doubted that both this Chapter and the preceding one discussed are constitutional. No bondholder has a right to require that the amount of taxes to be levied in the first instance be arrived at by any particular method of computation, provided that the method actually used is employed in good faith. If the taxes so levied subsequently prove insufficient he still has his rights of action.

3.—*Removal of liability for failure to levy sufficient taxes.*

Chapter 418, Public Laws, has a much deeper significance with respect to tax levying than either of the two preceding laws. Before the passage of this Chapter it was a misdemeanor for any member of any tax levying board wilfully to fail to vote for a tax levy sufficient to meet the unit's obligations, as outlined under section 38 of the Local Government Act, which was summarized above. Any such member was also rendered liable, in a civil action, for all damages suffered by any person aggrieved. Concededly the financial condition of some of our cities and counties is such that if this law had remained in force and been strictly enforced, many honest citizens would have become criminals and bankrupts merely because, as members of taxing boards in units in which no agreement had been reached with bondholders, they refused to vote for tax levies so high that collection would be impossible. Concededly, also, without some such provision, the levy of debt service taxes is open to any amount of abuse by local officials. The legislature no doubt weighed

these considerations, reached its decision and passed Chapter 418, which not only prevents the imposition of the criminal and civil penalties just mentioned but also repeals all other laws imposing civil or criminal liability on taxing authorities for failure to levy taxes sufficient for any particular purpose. Thus, while the duty to levy sufficient taxes remains, the chief means of enforcing its performance has been abolished. Bondholders might still have a right to seek a writ of mandamus to compel the levy of sufficient taxes, but we will shortly see what has happened to mandamus proceedings. It has been suggested that the liabilities should have been removed only in cases where the necessary tax levy would exceed a certain specified rate. This would seem on the surface, to be a fairly practical solution to the dilemma. It is also held in some quarters that the Local Government Commission, working in conjunction with local officials, could have coördinated tax rates with refinancing plans to such an extent that it was unnecessary to pass Chapter 418. The Chapter certainly is constitutional in so far as its repeal of criminal liabilities is concerned, because the enforcement of a criminal penalty is solely the right of the State and was never open to the bondholders. (The State's rights are preserved to some extent by the fact that the Local Government Act allows the Governor, on recommendation of the Director of Local Government to remove local officers for failure to perform their duties, subject to the approval of the Local Government Commission.) Its elimination of civil liability is also probably constitutional, as it does not affect the bondholders' more direct remedies against the unit issuing the bonds. There may be some doubt of this, however, when this Chapter is coupled with a statute previously passed.

4.—*Legal complications in path of bondholders seeking writ of mandamus.*

This previously passed statute is Chapter 349, Public Laws. It provides that whenever any person seeks to enforce

a money demand in an action on contract (which includes bondholders), by suing out a writ of mandamus against any county, city, town or taxing district, he must show in his complaint that his claim has been reduced to judgment, and must also show "what resources, if any, are available for the satisfaction of the judgment, including the actual value of all property sought to be subjected to additional taxation and the necessity for the issuing of such writ." This injects further complications into the path of the bondholder's direct remedy, the utility of which was already doubtful because of practical considerations. Bondholders seeking to compel additional tax levies are never regarded with sympathy by local taxpayers and rarely by local courts.

Assume for the moment that the tax levying authorities of a unit announce their intention to levy no debt service taxes for the current year. If this Chapter is to be construed literally, the individual bondholder's hands are tied, even if he has nerve enough to brave the taxpayers' collective wrath by attempting to compel a local levy. He must first obtain a judgment. If his bonds are not yet in default he cannot get a judgment, but it is more in line with the real facts to assume that they are in default. He may also have legal difficulties in obtaining an individual judgment; that is, without obtaining coöperation from other bondholders. But assuming that he has no trouble of this kind, he must still, after obtaining his judgment, obtain information, for presentation to the court, to assemble which will require a great deal of time, energy and money, before he is able even to begin an action to compel the levy of taxes. By the time he has brought his action to a successful conclusion, at least one and very probably two or more tax-levying dates have passed without his receiving any money. The case put is freely conceded to be extreme; but the test of the constitutionality of a statute is not what is actually done pursuant to its provisions, but what can be done. The constitutionality of this particular statute, with respect to bondholders, will hinge on the highly technical legal

question of whether it affects the contract rights of the bondholder or merely affects the remedies he employs to enforce those rights without substantially affecting the rights themselves. It is almost impossible to predict what a court would say on this question when considered against the background of the other legislation. Probably it would be held to be a matter dealing with remedies only, not affecting the bondholder's ultimate right to recover his money, and hence constitutional.

It has been assumed that the action for mandamus would be brought in the State courts. The writer is undertaking no discussion of possible considerations and results in the case of an action brought in the Federal court.

Here it should be pointed out that the legislature, apparently by way of off-set to the laws just discussed, opened a new remedy to the bondholders. The Local Government Act gave to the Director of Local Government the power to appoint an Administrator of Finance for any county in default on its obligations. Such an Administrator would have full control of all tax collections, of the safeguarding of funds and of the disbursement of funds. He could remove any local officer connected with the collection or disbursement of funds. He would be required to comply with "all the requirements of law applicable to such unit, officers and employees," and it at least may be inferred from this that it is intended that he supplant the local officers in the fixing and levying of tax rates. To confer on him the power to levy taxes without any action by the local officers may, however, be unconstitutional.

This idea of having a receiver for a county or city has never been tested, as the Director of Local Government has never appointed such an Administrator. The 1933 General Assembly provided a method by which sometime it may be tried; but it seems extremely doubtful. Chapter 374, Public Laws, requires the Director, on petition of the holders of 51 per cent of the indebtedness of any unit which has been in default for more than a year, to appoint such an Administrator, subject to

the consent of the resident Judge of the Superior Court. It also contains provisions which seem to indicate that during the Administrator's tenure of office negotiations are to be carried on for refinancing the debts, as there are several references to orders which may be made by the court and to hearings to be accorded bondholders who did not join in the petition. There is no way of determining just what these provisions do mean, however, as this Chapter contains no real explanation and the part of the Local Government Act which it amends contains no reference to court proceedings whatever.

As a remedy for bondholders this statute does not have any great practical appeal. There would probably be no surer way of encouraging complete repudiation and inviting a complete strike by the taxpayers.

5.—*Provision for compromise of debts of local governments.*

Chapter 205, Public Laws, is, on the surface at least, the most important piece of legislation passed by the last legislature with respect to the problem of local governmental debt. Up to the present time it has not been utilized. In fact, the machinery which it provides for debt adjustment has not even been set up. But as long as it remains on the statute books its potential significance is great.

It was passed before any of the legislation discussed under 2, 3, and 4 was passed. Those laws were first presented as they form a valuable—almost a necessary—background for the consideration of Chapter 205. They give some idea of the rights and weapons available to the respective parties if and when any local unit undertakes to negotiate a settlement with its bondholders under the provisions of this Chapter. In view of these facts, and looking at the work of this legislature as one completed job, the writer believes that the order of presentation adopted is justifiable.

Chapter 205, from which only Forsyth County is exempted, as amended by Chapters 312 and 348 of the Public Laws, created a County Readjustment Commission of 3 members to be

appointed by the Governor. This Commission, with such clerical and legal assistance as it deems necessary, will conduct an investigation into the debt situation in any county or city which requests it to do so, at the unit's own expense. It will, after examining all the facts and hearing all parties, determine what it considers to be the true value of the unit's outstanding obligations and the ability of the unit to pay them, and will make any suggestions it sees fit concerning readjustment of the indebtedness. The unit may then request it to open negotiations with the creditors for such a readjustment.

If the readjustment, or refinancing plan, is agreed to by the local authorities and the holders of two-thirds of the bonds and other obligations, the plan will become effective unless it is rejected at an election called on petition of 10 per cent of the voters of the unit. As soon as the agreement becomes effective, the tax levying authorities are directed to levy no debt service taxes in excess of those required by it. The same settlement accepted by the holders of two-thirds of the obligations must be offered to the remainder. If these refuse to accept, they may sue for their money; but the statute expressly provides that they may seek no writ of mandamus until 18 months after final judgment is secured, and then the court may make its own investigation as to the ability of the unit to pay and issue a conditional mandamus based on its findings. This apparently means that the court may, in its discretion, require the unit to pay only a part of the debt.

There seems to be no question about the fact, unless bondholders become frightened at the possible use of the other legislation passed and previously discussed, and except for the coercive, 18-month postponement of the mandamus action, that this statute is not unfair. By invoking the services of a disinterested State Commission, by requiring consent of the holders of at least two-thirds of the securities (a number of whom will be local banks and local people), and by leaving the redress of dissenters in the hands of the same judges in whose hands rest the settlement of all other controversies in-

volving money, the legislature (excepting again the 18-months clause) has guarded against abuse in this statute much more adequately than it did in some of the statutes already mentioned. Unfortunately, however, there seems equally little doubt that the statute interferes with the strict contract rights of the bondholders and creditors and hence may be declared unconstitutional. There remains also the question of whether the Federal courts would give effect to the statute, even if they regarded it as valid.

One of the characteristics of our Constitution and laws is that there has heretofore been, neither in the national bankruptcy laws nor in the State insolvency laws, any adequate provision for compromising the debts of governmental units comparable to the privileges allowed private persons and corporations. It looks very much as though our local economy is in such a state that some such provision must be passed and upheld. The chief requirement of such legislation will be that it be not subject to political abuse. It seems also, since the Federal Constitution is involved, and since that document expressly allows Congress to pass laws concerning bankruptcy, that Congress is the logical source of legislative relief for overloaded local governments. But that is wandering beyond the field of state legislation, to which this work is supposedly confined.

It has been felt in some quarters that the administration of any such State law (assuming its validity for the moment), should be left with the Local Government Commission, in which is concentrated most of our centralized experience with local government finance. That Commission is, at present, doing yeoman service in attempting to refinance local obligations. It is, however, admittedly handicapped by the fact that it is forced to rely, for the effectiveness of its agreements, almost solely on its ability to obtain the consent of substantially all bondholders and other creditors. And its work is confined largely to efforts to secure postponement of maturities and reduction of interest rather than reductions of bonded debt.

This reduces the tax rate for the time being by spreading the levy over an additional period of years, but does not reduce the aggregate amount of taxes to be paid.

Returning to Chapter 205, that Chapter also authorizes the Readjustment Commission, on request of a local unit, to negotiate a loan for the unit whenever the borrowed money may be used to purchase the unit's own obligations at 60c on the dollar or less. It also authorizes the units to borrow for the same purpose, if they can, from the Reconstruction Finance Corporation. Apparently these privileges may be exercised regardless of whether or not the unit is attempting to put through a debt settlement plan under the other provisions of the Chapter. A comparable provision, though made for a somewhat different purpose, was contained in Chapter 376, Public Laws, which authorized all local units to accept their own bonds in settlement of any claims growing out of deposits in closed banks. While this may benefit the units, it also may benefit local officials and bonding companies.

6.—*Liberalization of laws governing investments by units in their own securities.*

Two statutes, much less sweeping in effect, but similar in purpose to the last-mentioned provisions of Chapter 205, were also passed. Chapters 143 and 436 of the Public Laws are both designed to liberalize the laws governing investment of local sinking funds in the unit's own bonds or notes. The first removed the restriction which formerly prevented the investment of sinking funds in any of the unit's own obligations except those for the payment of which the sinking fund was created. The second removed the restriction which formerly prohibited any such investment in its own securities by a unit already in default. These statutes are, of course, for the purpose of allowing local units to take advantage of prevailing low markets for their securities, thus lessening, to some extent, the acute character of their debt problems. The statutes do not remove the requirement that all such invest-

ments must be approved by the Local Government Commission. That Commission, for obviously sound reasons, will approve no such investment in past due securities or in securities maturing after the period for which the sinking fund is created. It also requires that the sinking fund be reimbursed for the cost of the bonds out of debt service taxes. Securities so purchased are not retired until maturity. These laws are almost undoubtedly valid.

7.—*Liberalization of laws governing funding and refunding of local debts.*

Three statutes were passed which deal with funding and refunding of local debts under plans receiving the approval of the Local Government Commission.

Chapter 258, Public Laws, is an amendment to the Local Government Act, and its provisions are rather detailed. Its chief purposes are to allow more flexibility in the time of retiring funding and refunding bonds and to allow bond ordinances to include provisions regarding the levy of taxes, security, the use of special bond funds, and the arbitration of disputes, which were not formerly expressly authorized. Most of the provisions make for more flexibility in the bond contract, part of them being designed for the benefit of the unit, and the remainder being designed to make the bonds more attractive to those holders of outstanding obligations who may be called upon to exchange such obligations for new bonds. Worthy of mention in the latter respect are the provisions which authorize the ordinance to permit a simple majority of the bondholders to declare that the bonds are due upon violation of any conditions specified in the ordinance. Of considerable significance, from the local unit's standpoint, are a provision authorizing units to enter into any debt settlement or refunding plan not inconsistent with general laws, and a provision allowing new bonds to be issued not only to retire outstanding bonds, but also to pay accrued interest on the latter. Any action taken under the majority of the provi-

sions of the Chapter is subject to the approval either of the Local Government Commission or of the County Readjustment Commission, mentioned above.

Chapter 259, Public Laws, amends the Municipal and the County Finance Acts, and also contains considerable detail. In general, it increases the number of cases in which funding or refunding bonds may be issued; it liberalizes, to some extent, the provisions regarding issue of revenue anticipation notes; it increases from thirty to fifty years the maximum period within which funding or refunding bonds must mature (formerly the fifty year period was allowed only where the unit's gross debt exceeded 10 per cent of its assessed valuation); it exempts such bonds from the requirement that bond issues must mature in installments (i.e., permits issue of term bonds); and it provides that no tax for the payment of the principal of such bonds need be levied prior to the year in which they mature, unless the bond order or resolution specifies otherwise. The Chapter also requires that bond orders must, in the case of funding or refunding bonds, contain a brief description of the indebtedness to be refunded. It was subsequently made clear by Chapter 500, Public Laws, that this provision only applied to orders passed after April 11, 1933 (the day on which Chapter 259 was ratified). All of these provisions are, of course, designed to enable local units to postpone the fatal day of payment and thus to spread out, or to postpone completely, the levy of taxes to provide for the payment. They merely undertake to aid in alleviating present burdens, without undertaking to aid in ultimate reduction of the tax load. In fact, if term bonds are freely used in refunding it is not inconceivable that in the future, when they mature, many of our units will be placed in a situation having great similarity to their present situation. In such cases it will amount to bequeathing to succeeding generations our own heritage of municipal insolvency. The theory of the legislation and of action taken under it, however, is that in more prosperous future times, with taxes more easily collect-

ible, local revenues will be sufficient to provide for payment of these obligations, and that meanwhile a semblance of credit is preserved. Another consideration is the fact that refunding will, if properly worked out, frequently allow the amount of debts to be retired and debt service taxes to be levied each year to be fixed at a similar, as distinguished from a fluctuating, amount each year. It is also argued that with the Local Government Commission, a State agency, to supervise the issue of bonds, the use of term bonds will not be permitted unless provision for adequate sinking funds is made. It will be recalled that it was the prevalence of this type of bonds, together with the lack of well formulated sinking fund and repayment policies, which led to the passage of the County and Municipal Finance Acts and, indeed, to the establishment of the Commission itself.

Chapter 257, Public Laws, allows local units other than counties, cities and towns to fund or refund their obligations, in the same manner as counties, under the County Finance Act. However, several exceptions from the Act's provisions are made for these units, the chief of which are waiver of the requirement for filing a debt statement and the requirement that the bonds issued mature within forty years after issue.

It is under these three laws and largely subject to the approval of the Local Government Commission, rather than under Chapter 205, with its provision for the Readjustment Commission, that refinancing plans for local units are now being worked out.

This completes the unofficial tabulation of the score between taxpayers and bondholders, as far as general legislation is concerned. On the basis of these unofficial figures, the taxpayers undoubtedly are leading; but the official scorekeepers, alias the courts, have not yet been canvassed. Their decision may be had for a lawsuit and the asking.

Special law relating to tax levies in drainage districts.

Before leaving this phase of taxation there remains to be pointed out one further statute dealing with a special phase of tax levying. Chapter 504, Public Laws, applying to all drainage districts in the state except those in Mecklenburg County, is short enough to be quoted. It provides: "Whenever any assessment has been made or may be made by any drainage district formed under the laws of the State of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made." There seems little doubt about the fact that this statute is unconstitutional in so far as it affects the rights of the holders of drainage district securities outstanding when it was passed.

C.—TAX COLLECTIONS AND FORECLOSURES

Practically all of the legislation so far discussed is prospective in effect; that is, it only affects taxes levied after its ratification. It accomplished nothing with regard to the acute problem created by an unprecedented amount of delinquent ad valorem taxes and an unprecedented number of pending or imminent tax foreclosures.

Summary of tax collection procedure.

Before plunging into a discussion of this problem, it may be helpful, for those who are unfamiliar with the mechanics of our tax system, to present a very brief outline of the collection system which was generally in force with respect to 1927-32 taxes. The outline will not discuss changes in the law during those years, as they did not change the principles of the system. The law given is that in force when the 1933

Assembly convened. Ad valorem taxes on real property became due on the first Monday in October in the year in which they were levied. These taxes could be prepaid and prepayment entitled the taxpayer to a discount of 3 per cent for payment on or before July 1, 2½ per cent on or before August 1, 2 per cent on or before September 1, 1½ per cent on or before October 1. After taxes became due, taxpayers were entitled to a discount of 1 per cent for payment on or before November 1 and ½ per cent for payment on or before December 1. From December 2 to February 1 neither discount nor penalty was provided. Beginning with February 2 a penalty of 1 per cent per month was charged, up to and including May, making a total of 4 per cent. On the first Monday in June, if the law was strictly followed, the county held a sale at which it sold, not the land, but the taxes. At this sale so-called tax sales certificates were issued which were substantially first mortgages on the property. They included the amount of the taxes with the accrued penalties and the cost of advertising and sale added. They bore interest on the total amount of 10 per cent per annum during the first year they were outstanding and 8 per cent per annum after that time. If they had not been paid within 16 months after they were issued, they could be foreclosed. The foreclosure was very similar in principle to foreclosure of a mortgage, and, if pushed to a conclusion, resulted in a sale of the land itself for the amount of the tax sale certificate, the accrued interest on it, the costs incurred in the court action (including an attorney's fee of not more than $10.00), and the cost of advertising and sale.

While the law allowed this foreclosure proceeding to be begun at any time after 16 months from the time the certificate was issued, it did not require that the proceeding be begun until just prior to the expiration of two years from the issue of the certificate. Individual purchasers of certificates were penalized for failure to start foreclosure within 18 months by having their interest reduced to 6 per cent, but this did

not apply to counties and cities. It contained no requirement that the proceeding be pushed to a conclusion, and the land be sold, within any specified time, though it did require prosecution "as vigorously as may be necessary to obtain early final action."

The situation at the beginning of 1933.

There is no question but that in many instances, due to a combination of depressed conditions and local laxity in enforcement, this collection system had broken down long before the 1933 General Assembly convened. The Attorney General repeatedly ruled that the law contained no authority to postpone the sale of taxes from the first Monday in June. Even more repeatedly many local units proceeded to postpone these sales. To this practice the legislature was disposed to give considerable countenance by passing laws designed to ratify the postponements. Thus the 1933 Assembly passed Chapter 177, Public Laws, which validated all sales held in 1931 and 1932 on any day other than the prescribed one. Further, it was common practice to postpone the beginning of foreclosures beyond the 24-month period prescribed by the law, despite the legal risks involved. And in many instances where foreclosures were begun they were allowed to drag along without obtaining that "early final action" mentioned in the statute.

This situation could not be blamed wholly on local officials, as foreclosure required a considerable outlay of cash in attorney's fees, advertising costs and court fees of one kind and another. Then, if the county or city bought the land, as it was forced to do in the great majority of instances, it was no better off than it was before and no further taxes would accrue. Thus each such foreclosure reduced potential tax revenues. The situation demanded action and the legislature, according to its lights, took that action in a series of laws which are still highly controversial. Many citizens and local officials feel that the legislature went too far in recognizing

depression tax relief needs, and placed an unwarranted penalty on the prompt payment of taxes. They feel that this will render the collection of current taxes impossible and will result in a further collapse (if possible) of local credit. Many also feel that the legislation is much too favorable for railroads, mortgage companies and other large corporate taxpayers. The validity of the contentions can only be proved by experience. Collections of current taxes during the next few years, when compared with collections for other years under similar economic conditions, may throw considerable light on the subject. The process of experimentation may or may not be costly, but experimental legislation is at least in tune with the times. At present it is only possible to point out what the legislature actually did.

Compromise of delinquent 1931 and prior taxes.

First in point of time it turned its attention to a revision of the foreclosure laws; but as that work was largely prospective and as it was subsequently undone, it is best discussed later. For our purposes the legislature first dealt with taxes which had already been delinquent for some time; that is, taxes for 1931 and prior years. It passed the Tax Sales Certificate Refunding Act, which is Chapter 181 of the Public Laws.

This Chapter, first, barred from collection all real estate taxes for 1926 and prior years, the tax certificates or sale certificates for which were held by local governing agencies, on which foreclosure proceedings had not actually been instituted prior to the Chapter's ratification on March 27, 1933. Second, it requires all governing agencies to allow the delinquent taxpayers to pay 1927-31 taxes on real estate by giving notes, payable in annual installments. The notes must be given before April 1, 1934; and the Chapter limits the total period over which the installments may be spread to 5 years. Apparently this means that the taxpayer has the right to demand the full five-year period. There is no specific require-

ment that the installments must be equal in amount, though that such was the intention may be inferred from the wording of the form of note required to be used. The makers of these notes are not personally liable for their payment, the land itself being the sole security for their payment. The amount of the notes must total the principal amount of the taxes, exclusive of all interest and penalties (penalties for failure to list being waived as well as penalties for failure to pay). The Chapter allows the various governing agencies to require payment of 1932 taxes before allowing taxpayers to pay older taxes under this plan. There was no reference to payment of costs. The notes bear interest at 6 per cent per year from April 1, 1933. The Act allows mortgagees to take advantage of the plan if the landowners do not.

Third, the Chapter gave local governing agencies the option, wherever they had bought land at foreclosure sales, to allow the former owner or any other person interested in the land, at any time before April 1, 1934, to redeem the land by paying, on a 5-year installment plan similar to that already mentioned, the amount of "taxes, costs and charges" which the unit paid for the land at the tax sale. Apparently this includes penalties and interest though that is not as clear as it might be. Also to be paid is an amount equivalent to taxes which would have accrued against the land had it not been purchased by the unit. These transactions are to be handled by conveying the property to the former owner or other interested person, taking notes and securing payment of the notes by a deed of trust. Here again there is no personal liability on the part of the maker of the note.

Fourth, the Chapter undertakes to allow taxpayers to pay tax sales certificates held by persons other than the governing agencies to redeem the certificates by paying, before April 1, 1934, the full amount paid by the holder, plus all the necessary expenses he has incurred, together with 6 per cent interest. In so far as this attempts to cut the interest rate on

these certificates it may be invalid, but otherwise will probably be upheld.

Fifth, the Chapter provided that all units should accept for delinquent 1927-31 real estate taxes, if paid before April 1, 1934, "the principal amount of the taxes, less interest and penalties, in cash, less 10 per cent." It is fairly apparent that the legislature did not mean that interest and penalties should be deducted from the principal amount of the taxes and 10 per cent deducted from the remainder. It apparently meant that interest and penalties should be waived and that 10 per cent should be deducted from the principal amount of the taxes. A reasonable amount of statute-reading will soon disclose, however, that there is very frequently a wide discrepancy between what the legislature apparently means and what it says in plan, unmistakable words. This part of the Chapter further provided that the maker of any installment note given to pay taxes or sales certificates (not for redemption of land already sold), should be allowed a 10 per cent discount for paying any installment before it was due. As there was no limitation of time, this meant that the taxpayer could pay his installment the day before it became due and save 10 per cent. It was recognized in several quarters that 10 per cent was fairly adequate compensation for the sacrifice of one day's use of the money.

All of these discount provisions were contained in section 9 of the original Chapter 181. That section was apparently changed by Chapter 548, Public Laws. Chapter 548 introduced itself simply by providing that Chapter 181 should be "amended as follows." It makes no reference to any particular part of the preceding Chapter as the part which it amends or supersedes. Since it deals with discounts it certainly supersedes a part of section 9, but as the result of its unusual draftsmanship it is almost impossible to tell with absolute certainty just how much of that section it supersedes.

Its provisions are: "Provided that a ten per cent discount shall be allowed on all delinquent taxes paid on or before De-

cember 1, 1933; seven and one-half per cent on all delinquent taxes paid after December 1, 1933, and before January 1, 1934; five per cent on all delinquent taxes paid after January 1, 1934, and before February 1, 1934; two and one-half per cent on all delinquent taxes paid after February 1, 1934, and before March 31, 1934. Provided, however, that this Act shall not apply to taxes for the year 1932-3. Provided that nothing in this act shall be construed to eliminate any costs of advertising or costs of foreclosure, it being the purpose and intention to only eliminate interest and penalties."

It is fairly obvious that this provision supersedes those provisions of section 9 which allowed 10 per cent discounts for taxes paid before April 1, 1934 and replaces them with the graduated discount scale. It seems also to have been assumed by many that Chapter 548 eliminated the discounts allowed by section 9 on installment payments. This, however, is open to considerable doubt. There is no direct conflict between Chapter 548 and the installment discounts provided in section 9. In other words, both provisions may easily be in force at the same time, though they are logically inconsistent. Further, Chapter 548 does not contain any repealing provisions whatever. It does not even contain the almost universal provision repealing "all laws and clauses of laws in conflict" with its provisions. It thus appears that if the installment discounts have been eliminated, they have been eliminated in accordance with a legislative intention which the legislature failed to express. On the other hand, if they have not been eliminated, a taxpayer may, after December 1, 1933, obtain a larger discount by giving notes and paying them before they mature than he may obtain by paying the entire amount in cash. Such a result is hardly consistent with common sense.

This, however, does not end the discussion of Chapter 548. A careful reading of the portions of that Chapter already quoted will disclose three fairly obvious facts. First, there

is something mysterious about January 1 and February 1, as no discounts are allowed for payments made on those days, despite the fact that discounts are allowed on all other days in their respective vicinities. Second, "all delinquent taxes" is broad enough to include taxes on personal property. Thus while the original Chapter 181 was concerned only with real estate taxes, Chapter 548 extends the discount provisions (though not the installment plans) to include taxes on personalty. Third, "all delinquent taxes" is also inclusive enough to include 1926 and prior taxes on which foreclosures had been begun but not completed when Chapter 181 was ratified. Such taxes, under Chapter 181 as originally passed, were, apparently through legislative oversight, not provided for at all. Now they may be paid under the provisions of Chapter 548, though they are still not eligible to installment payment.

This still does not end the discussion of the brief but important Chapter 548. The Chapter leaves at least three other questions open for judicial construction:

(1) Does its provision that costs must be paid apply to taxes paid under the first of the installment plans mentioned above, as well as to taxes paid under the discount provisions? Apparently it does. The answer to the question turns on whether "this act" as used in connection with the costs proviso in the section quoted above refers to Chapter 181 or to Chapter 548. If the legislature had specified that the amendment made by Chapter 543 should be added to some particular part of Chapter 181, there could be no doubt that "this act" refers to Chapter 181. Apparently it refers to Chapter 181 anyway, but the matter is open to some dispute. The reason the question is of importance is the fact that the Attorney General had ruled that under Chapter 181 as originally passed, payment of costs was waived.

(2) Is "all delinquent taxes" as used in Chapter 548 broad enough to include payments made to redeem land already foreclosed and owned by the taxing unit? In a technical sense, such payment might easily be regarded as not being a pay-

ment of delinquent taxes and hence not subject to the discount provisions. Some support for this attitude might be obtained from the fact that the legislature itself, in the original Chapter 181, differentiated between installments paid on taxes and sales certificates and installments paid to redeem land, by allowing discounts for prepayment of the former without allowing discounts for prepayment of the latter. The Local Government Commission, however, in a letter to the Mayor of Bryson City on September 1, 1933, ruled that the sliding scale of discounts should be allowed on all payments made in the prescribed time, even though the land had been foreclosed and final judgment entered.

(3) What is the meaning of section 1½ of Chapter 548? This is the most puzzling of the questions raised, as here again the legislature said something in plain words which it can hardly be supposed to have meant. Section 1½ reads as follows: "That this act shall not apply to any of those counties or muncipalities which have by Public, Private or Public-Local Laws amended said Senate Bill No. 180 (Chapter 181) in its application to said counties or municipalities."

In the first place it is obvious that "this act" as used here refers to Chapter 548 and not to Chapter 181—the converse of the situation already discussed with respect to the costs provisions. But the serious question presented is: what counties did the legislature intend to except from Chapter 548?

Twenty-four counties amended Chapter 181. As the amendment for Pender was passed after Chapter 548, and as the amendments for Davidson and Mecklenburg exempted those counties from Chapter 181, the total of counties vitally affected by section 1½ is reduced to twenty-one. Of these twenty-one, only eight (Alamance, Beaufort, Chatham, Dare, Granville, Nash, Pitt and Scotland) passed amendments specifically relating to discount provisions. The amendments affecting the remaining thirteen (Burke, Caldwell, Catawba, Cleveland, Columbus, Halifax, Hertford, Jackson, Johnston, McDowell, Madison, Mitchell and Union) were concerned with

other matters and affected the discount provisions only to the extent that they gave to local authorities in some of the counties the option to reject the entire Chapter if they saw fit. It seems odd that Chapter 548 should not apply to these thirteen counties, yet a literal construction of Chapter 548 would mean that and would also mean that the provisions of the original section 9 might still be applicable in those counties. The oddity of the situation is made more apparent when it is pointed out that Chapter 181, as originally passed, contained special provisions affecting fourteen other counties in precisely the same way as the subsequent amendments affected the unfortunate thirteen. To these fourteen, Chapter 548 applies. In view of these facts it is the writer's belief that a court would construe section 1½ to apply only to counties which amended the discount provisions of Chapter 181 if it could find any possible theory on which to do so.

Court opinion, however, can be of no great assistance in solving many of the questions raised under Chapters 181 and 548. Chapter 181 must be acted upon before April 1, 1934, or its advantages will be lost. The greatest advantages to be obtained under Chapter 548 will be lost after December 1, 1933. Test cases brought in the courts very probably might not be decided finally by our Supreme Court until one or both of those dates have been passed. Meanwhile there is general confusion on the subject and very likely the only persons who will receive any benefit from the court's ultimate decision will be those few taxpayers whose stake in the matter was large enough to justify the very considerable expense of going to court. It is obvious that the passage of such legislation places an extremely unfair burden on administrative officials and necessitates an inexcusable amount of guessing.

Returning to the main thread of the discussion of Chapter 181, one of its provisions has not yet been mentioned. It provides that the beginning of foreclosure actions on sales certificates for 1927-31 taxes not settled under its provisions may be postponed until October 1, 1934. As the Chapter, in

effect, requires postponement of such foreclosures (and also postponement of further action in foreclosures already begun) until April 1, 1934, this means that, in counties where the Chapter applies, the officials may begin foreclosure at any time between that date and October 1. A later statute (Chapter 560, Public Laws, the other provisions of which will subsequently be discussed) contained substantially the same provision for counties in which Chapter 181 does not apply. The chief differences are first, that in those counties, though foreclosure may be begun at any time before October 1, waiting until April 1 to begin is not required; and, second, Chapter 560 applies to foreclosures of *certificates representing sales in 1931 and prior years*, whereas Chapter 181 applies to *certificates representing taxes for 1931 and prior years*. Thus, Chapter 560 does not authorize postponement of the time for foreclosing 1931 taxes beyond the regular time.

Before leaving Chapter 181 it should be pointed out that, as may have been inferred from the number of amendments already mentioned, the Chapter is not by any means a law of uniform application throughout the state. Either by the Chapter itself or by subsequent amendments, five counties (Davidson, Forsyth, Hyde, Mecklenburg and Orange) were exempted completely. In twenty-three counties (Alleghany, Beaufort, Burke, Caldwell, Camden, Catawba, Cleveland, Durham, Gaston, Granville, Guilford, Halifax, Hertford, Lincoln, Moore, New Hanover, Polk, Richmond, Rockingham, Scotland, Surry, Union and Wilkes) its application is within the discretion of the local authorities. Dare, Jackson and Nash were at one time in this optional group, but were removed. Finally, special provisions of one kind or another were passed for sixteen counties (Alamance, Beaufort, Catawba, Chatham, Dare, Granville, Johnston, Madison, McDowell, Mitchell, Nash, Pamlico, Pender, Pitt, Richmond and Scotland).

One other statute also deals with delinquent 1931 and prior taxes. It is Chapter 97, Public Laws, and authorized Sheriffs and Tax Collectors who had the tax lists for 1923-31, or

their personal representatives or bondsmen to continue collections. Of course, part of such taxes were cancelled by Chapter 181. This, however, is obviously not a tax relief statute. Only two further relief statutes remain to be mentioned here. Chapters 252 and 410, Public Laws, dealt with special improvement assessments which, for our purposes, may be regarded as ad valorem taxes. The latter superseded the former, and it authorizes city authorities, if they so desire, to extend the time for paying installments due before July 1, 1932. The extended installments will fall due yearly after the final original installment is due. In any such extension all delinquent assessments must be treated alike, and they will bear 6 per cent interest from the due date of the last original installment.

This completes the picture with respect to 1931 and prior taxes, except for one of two points which will be pointed out subsequently in connection with later taxes, and unless Chapter 280, Public Laws, is a statute applying to the whole state. Chapter 280, according to its title, is intended to apply only to Buncombe County; but nowhere in the statute itself is its application limited to Buncombe. As introduced it was restricted to Buncombe and Representative Martin, who introduced it has informed the writer that it was intended to apply only to Buncombe. However, a Senate amendment, in rewriting some of the Chapter's provisions, eliminated the only provision restricting it to Buncombe. The Chapter is an alternative to Chapter 181 in so far as payment of 1928-30 taxes and sales certificates and redemption of lands sold for taxes for those years are concerned. It waives costs, as well as prior interest and penalties; but all payments made under it bear interest at 8 per cent from July 1, 1933, whether they are made to pay taxes in full or to pay them under an installment plan provided. Whether or not this part of the Chapter applies throughout the state is chiefly important in those counties where Chapter 181 does not apply, as, with the exception of the waiver of costs it is not so liberal as Chapter 181. How-

ever, 50 per cent of any payment made under its provisions may be made by presenting bonds of the taxing unit, which are to be credited at par value. This is important even in counties where Chapter 181 applies, as neither that Chapter nor any other general law permits acceptance of bonds for taxes.

The Attorney General has expressed himself to be of the opinion that Chapter 280 applies only to Buncombe. There is strong ground available for disagreement with that opinion, as the language of the Chapter is so general that the title might well not limit its application. However, the Chapter must be availed of before December 31, 1933, and, except for the possibility of the matter going to court in one or two isolated instances before that time, the question is largely academic, as the Attorney General's opinion will be followed until the court rules otherwise. By that time December 31 will be behind us. Accordingly, no more space will be devoted to the question. It was mentioned largely to point out one more example of the burdens bequeathed by the legislature to administrative officials.

Legislation affecting collection of 1932 taxes.

This brings us to 1932 taxes. At the time the legislature was in session these, though past due, were current taxes. Accordingly, the legislature did not permit their payment under the liberal provisions of Chapter 181. In fact, local authorities were authorized to require payment of 1932 taxes (presumably in full with all accrued penalties) before permitting taxpayers to take advantage of the first installment plan provided by Chapter 181.

It would have been strange, however, in view of the other tax legislation passed, if the situation had been left at that. It was not. On the last day of the session, Chapter 559 was passed. That Chapter was introduced to reduce penalties on 1932 taxes in Rowan County to ½ of 1 per cent per month, beginning on July 1, 1933; to refund all penalties on such taxes which had already been paid; and to limit penalties on

1933 and subsequent taxes to ½ of 1 per cent per month. This thought met with such approbation in the House that, when it finally received that body's official stamp of approval, it applied to a total of 62 counties. The Senate, according to custom, was of a somewhat different mind. First, it knocked out five counties (Catawba, Durham, Franklin, Stanly and Surry). Then it eliminated the provision for repayment of penalties already collected. Finally, it required the ½ of 1 per cent penalty on 1932 taxes to begin on February 1, 1933, instead of July 1, 1933. The time being short and the result being still fairly attractive, the House accepted the Senate's amputations. The fifty-seven counties to which the statute applies are Alexander, Ashe, Avery, Beaufort, Bertie, Bladen, Buncombe, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Columbus, Craven, Cumberland, Currituck, Davie, Duplin, Gates, Greene, Harnett, Haywood, Hertford, Hoke, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, McDowell, Moore, New Hanover, Onslow, Pamlico, Pasquotank, Perquimans, Person, Pitt, Robeson, Rowan, Scotland, Stokes, Swain, Transylvania, Tyrrell, Vance, Wake, Warren, Wayne, Wilkes, Yadkin and Yancey. Separate statutes somewhat similar to this, as far as 1932 taxes are concerned, but having no application to 1933 and subsequent taxes, were passed for Anson, Catawba, Iredell, Nash and Union counties.

Also passed on the last day of the session was Chapter 560, Public Laws. Its provisions did not refer to penalties on 1932 taxes, but may have had a very material affect on those penalties in most of the counties to which Chapter 559 did not apply. It postponed sales of 1932 taxes in the majority of counties from the first Monday in June 1933, to the corresponding date in September. (It also postponed the beginning of advertisement of the sale from May to August and the tax collector's settlement from July to October). Under the 1931 Machinery Act, which applied to these taxes, penalties were provided for at the rate of 1 per cent per month from February through

May; but the Act's provisions regarding penalties contain no reference to penalties to be charged after May. Consequently whether penalties were increased between May and September was largely a matter of local discretion. If they were not increased, the penalty due just prior to the sale in September was the same as in the counties where Chapter 559 applies, as under 559 the ½ of 1 per cent per month penalty did not cease in May but continued to accrue until the sale was held.

Legislation affecting collection of 1933 taxes.

The 1933 Machinery Act gives local authorities in every county except Forsyth the privilege of imposing no penalties whatever on 1933 taxes. If penalties are waived under this provision the discounts allowed for prompt payment will also be reduced slightly. In counties where this option is not exercised and in which Chapter 559 does not apply, the regular penalty of 1 per cent per month will begin in February and end in May. Just as with respect to 1932 taxes, in these counties, it is uncertain whether further penalties will be added before the first Monday in September, as Chapter 560 also deferred sale of 1933 taxes from the first Monday in June, 1934, to the first Monday in September. In counties where Chapter 559 applies, the question of what will happen to penalties on 1933 taxes is also problematical. Of course, they also may eliminate all penalties under the Machinery Act. If they do not choose to do that, penalties are nevertheless limited by Chapter 559 to ½ of 1 per cent per month. Presumably this penalty will begin on February 1, 1934, although this is not specified. Neither does the Chapter specify when the penalties will cease to accrue. There is no real evidence of what the legislature intended in this respect.

It is worth noting here that the legislature, while providing, in most counties, for abolition of penalties on 1931 and prior taxes and giving local authorities the right to abolish penalties

on 1933 taxes, steadfastly refused to abolish them completely on 1932 taxes.

The writer is not undertaking any discussion of penalties to be imposed on 1934 taxes, as the legislature will meet again before penalties begin to accrue on those taxes, and any discussion of them would be properly classified as pure speculation.

Foreclosures of 1932 and subsequent taxes.

This brings us to the last important topic in this section of this chapter, which is sale and foreclosure of 1932 and subsequent taxes. The most important piece of legislation passed with respect to this was The Tax Foreclosure Act of 1933, Chapter 148, Public Laws. Before the legislature adjourned, after having been made either inapplicable to or optional in numerous bailiwicks, it was repealed by the previously mentioned Chapter 560. There was a very serious question presented as to whether the Act applied to taxes prior to 1932 which had not been foreclosed; but, as the Act was repealed for every county except Wake, this question may be passed over. There are enough live issues to fight about. The Act's chief significance was that it would have abolished the procedure of first selling the taxes and then, months later, selling the land. It would have established a system of entering judgment 15 months after the due date of taxes, issuing execution 12 months after the entry of the judgment, and selling the land under the execution. Thus, while very little if any time would have been saved, one sale would have been eliminated. Also it would have reduced interest rates to some extent.

Chapter 560, which repealed this Act and reënacted former foreclosure laws, is of considerable importance. Its provisions with regard to the time of bringing foreclosures on 1931 and prior taxes, and with regard to postponing the dates for the sale of 1932 and 1933 taxes, have already been mentioned. They do not apply to Mecklenburg and Wake counties. There are also a few other counties to which those provisions may not

apply but, if so, the differences between the provisions of Chapter 560 and the local laws applying to those few counties are not serious. The reason for these variations came about by virtue of the fact that Chapter 560 expressly provided that it should not repeal any Private or Public-Local Act of the 1933 Assembly relating to the levy or collection of taxes in Ashe, Craven, Davidson, Gaston, Guilford, Henderson, Lee, Macon, Mecklenburg, Pitt, Swain, Wayne and Yancey counties. Wake County was expressly excepted from all of its provisions and there The Tax Foreclosure Act of 1933 is still in force. Mecklenburg has a foreclosure law of its own. Of the remaining counties mentioned only Ashe, Davidson, Gaston and Guilford seem to have local laws which conflict with any of the provisions of Chapter 560. In Ashe the only difference seems to be that sales of 1932 taxes were permitted up to the first Monday in November, 1933. In Davidson and Gaston sales of 1932 taxes were scheduled for July rather than for September as under Chapter 560, and foreclosure of 1931 and prior taxes is required to be begun before March 1, 1934, rather than before October 1. In Guilford, the Chapter itself excepted all foreclosures pending on April 8, 1931 (this apparently is of importance only with respect to the cost provisions). Also in Guilford, sales of 1932 taxes were scheduled for July instead of September and foreclosure of 1931 and prior taxes was required to be begun before November 1, 1933. The laws which effected the various exceptions for Davidson, Gaston and Guilford were nominally "Public" laws, but their provisions are such that they are probably "Public-Local" laws within the meaning of the exception in Chapter 560.

In addition to these counties, special legislation was passed affecting the date for sale of 1932 taxes or the time for foreclosure of certificates for 1931 and prior taxes in Alamance, Alexander, Burke, Caldwell, Cleveland, Durham, Granville, Orange, and Rowan counties. None of these counties was expressly mentioned in Chapter 560, and all of the laws specially affecting them were nominally "Public Laws." Nevertheless,

the Attorney General expressed the opinion, in a letter dated July 26, 1933 to W. J. Webb, County Auditor of Granville, that the special law for Granville prevailed over the provisions of Chapter 560 in these matters. As Granville's law is typical of the laws affecting the other counties named, no doubt the latter also should have followed the provisions of the local law.

The provisions of the Chapter yet to be discussed, however, apparently apply to all counties except Wake and, probably, Mecklenburg. The first fixes interest on tax sales certificates at 8 per cent per annum. This undoubtedly applies to all such certificates issued after the passage of the Chapter on May 15, 1933. It also probably applies to certificates held by taxing units at that time. This would only be of importance with respect to certificates which had been issued less than a year prior to May 15. Its importance with respect to those certificates would be to reduce the remainder of the first year's interest from 10 per cent to 8 per cent.

The Chapter also limited total costs to be charged against the taxpayer in any one foreclosure suit to $6.00, of which not more than $2.50 may be for an attorney's fee and not more than $3.00 may be for newspaper advertising. Apparently this does not limit the amount which may be spent for these items, but only the amount which may be collected from the taxpayers. This interpretation, with regard to attorney's fees at least, is in line with an opinion of the Attorney General contained in a letter to John L. Skinner, a member of the Warren County Board of Commissioners, dated July 29, 1933. The amount which the unit may pay as an attorney's fee is still limited by the prior laws, however, to $10.00 in each suit.

Other statutes regarding tax collection.

Only two other statutes regarding the collection of taxes remain to be mentioned. The first, Chapter 532, Public Laws, is designed to allow persons interested in land being foreclosed

for taxes to raise objections or to pay taxes at any time before the final order to make the deed is made, instead of merely at any time within 6 months after the newspaper advertisement appears, as was formerly the case. The second, strangely enough, is designed wholly to aid counties in the collection of delinquent taxes. It is Chapter 245, Public Laws, and provides that whenever a county must pay a bill of costs in a criminal case, and it appears that any sum is payable under the bill to any person who owes county taxes, the sum may only be paid by crediting it on the taxes. This Act is drawn in terms of such general application that it apparently applies not only to fees payable to citizens, such as witness fees, but also to sums payable to local officers, such as justices of the peace, constables and sheriffs. It was so construed in an opinion of the Attorney General expressed to A. Wayland Cooke, Clerk of the Guilford Superior Court, in a letter dated June 9, 1933. By subsequent amendments Craven, Granville and Wilson counties were excepted from the provisions of the Chapter. This law applies to jury fees wherever they are payable by a county in a bill of costs, which is seldom as, in the Superior Court, at least, jurors are not summoned for a particular case and their fees are not taxed in particular cases. Here it may be pointed out that jurors who owe no more than two years' delinquent taxes may not be challenged for failure to pay those taxes. This was accomplished by Chapter 130 of the Public Laws.

Summary.

This concludes the summary of legislation concerned with ad valorem taxes or affecting those taxes in such a way that it could not well be discussed elsewhere. The underlying explanation for all of it may be found, of course, in the character of the times. And, as has been poined out the legislative effort to reduce these taxes was not concentrated on any one phase of the process of levy and collection, but rather was spread all along the line. The laws governing tax valuation,

tax levies, local expense, debt service, delinquent collections, foreclosures and taxable costs were all modified in the name of economy or tax relief. The most drastic steps, and those which, in the eyes of many local officials, are supported by the most dubious policy, were those taken with respect to outstanding delinquent taxes. Even those may perhaps be justified if they may be taken to be solely emergency measures which will not become a precedent for future action to be taken in more normal times.

II. Local License or Privilege Taxes.

The most important law affecting local license taxes is, as usual, the Revenue Act. It authorized levy of five types of license taxes by counties which formerly were not authorized. These are taxes on (1) traveling theatrical companies, (2) photographers (and their agents), (3) loan agencies, (4) laundries, and (5) pressing clubs, hat blockers and dry cleaning plants. The privilege of taxing the last two types of business also nominally includes the privilege of levying a special tax on such businesses which are not located in the county but solicit business there. However, the validity of this latter privilege is extremely doubtful.

The Act increased the maximum license tax which counties may levy in numerous cases, including circuses, menageries, wild west and dog and pony shows, carnivals at agricultural fairs, pawnbrokers in towns of 15,000 or more population, some slot lock machines, swimming pools and skating rinks and similar amusements in towns of 10,000 or more population, dealers in cap pistols and fireworks, and rural service stations. Businesses on which the maximum levy was decreased include dealers in horses and mules, pawnbrokers in towns of less than 10,000 population, peddlers (though the number of persons taxable as peddlers is greatly increased), billiard tables and bowling alleys, some slot lock machines, dealers in second-hand motor vehicles, and motor vehicle dealers in towns of less than 1,000 population.

New types of license levies permitted to cities and towns by the Act include photographers (and their agents), tourist homes, tobacco warehouses and loan agencies and loan brokers. The Act also eliminated the provision which formerly permitted cities and towns to levy a license tax of 2c on each $100.00 of book value of building and loan associations.

City and town taxes which the Act authorized to be increased include all of the cases in which the Act authorized increase in county taxes except the case of rural service stations. They also include taxes on traveling theatrical companies, hotels, sandwich dealers, cotton compresses, barber shops, laundries, pressing clubs, dry cleaning plants and hat blockers. The Act extends to cities and towns the same privilege it extended to counties with respect to the levy of a special tax on laundries, pressing clubs, dry cleaners and hat blockers, but, as already pointed out, the validity of this is doubtful, the tax being discriminatory. Businesses on which the maximum levy permitted to cities and towns were decreased include all those the county tax on which was decreased. They also include coal and coke dealers in towns of between 2,500 and 5,000 population and between 10,000 and 25,000 population, wholesalers of bottled drinks, marble yards, and dealers in pianos, organs, victrolas or radios.

With respect to cities and towns the Act also changed the basis of two types of taxes. It shifted the basis of the tax on soda fountains from that of population to that of draft arms; and it shifted the tax on contractors for plumbing and similar work from that of the number of employees to that of population (with one-half tax for those employing only one assistant). Finally the Act fixed the maximum city tax on chain stores at $50.00 on each store, with the single exception that no tax is payable by the store in which is located the principal office of the chain in the State.

Next most important license tax statute is Chapter 319, Public Laws, which is the Beverage Control Act. It fixes the county license for retailing beer at $25.00 for each place of

business, regardless of whether the beer sold is for consumption on or off the premises. The city or town license fee for retailers is placed at $10.00 for those selling beer for consumption only off the premises, and $15.00 for those selling it for consumption on the premises. These municipal rates are for the first license issued to one retailer, and for each other license issued in the city or town to the same retailer, the tax is increased progressively by 10 per cent of the base tax. The county tax is not graduated in this way. These rates of tax superseded those specified by Chapter 216, Public Laws.

The only other statute to be mentioned here is Chapter 375, Public Laws, which allows cities and towns to charge $1.00 a year license tax for each motor vehicle operated by their residents. Formerly, cities and towns were permitted to levy a tax of $20.00 per vehicle on motor vehicles operated for hire by any person other than a franchised carrier. The Chapter also expressly prohibits counties, cities and towns from levying any franchise tax or "other fee" upon franchised motor vehicles paying State taxes under the Chapter. This provision is not an innovation.

III. Miscellaneous Laws Regarding Local Government and Finance.

(1) Four laws are concerned with the letting of contracts by local units. Chapter 50, Public Laws, provides that the certified check which accompanies bids on local projects as a guarantee of good faith, may be drawn on a National bank as well as on a State bank. This merely eliminates a discrimination which probably was inadvertent and which certainly was invalid.

Chapter 66, Public Laws, prohibits employment, on any city, county or State work undertaken in whole or part with public funds, of any architect, engineer, draftsman or designer who is in any way connected with the sale, promotion or manufacture of any material or items to be used in the work. So broad is this prohibition that ownership of stock in any cor-

poration making or selling the materials is sufficient to bar the owner from this employment. It is also made unlawful for any properly employed architect, designer, draftsman or engineer to allow any manufacturer or manufacturer's agent to draft specifications for such work. Specifications properly drawn are required to specify at least three items of equal design which will be acceptable in each instance where materials are specified, unless there are not three such items available, in which case as many as are available must be specified. Violation of this statute entails revocation of the professional license of the guilty person for one year, and a maximum fine of $500.00.

Chapter 400, Public Laws, requires that every contract for construction or repair work or purchase of supplies, involving expenditure of $1,000.00 or more of public money, must be let by advertisement for competitive bids. Exceptions are emergency cases involving public health or safety and cases in which proceeding under the statute would prevent use of labor paid by Federal or State unemployment relief funds. A deposit of 2 per cent of the bid must accompany each bid. The contract must be awarded to the lowest responsible bidder. Surety bonds are required of successful bidders to guarantee performance. Where use of convict labor is contemplated, the specifications must state what wages must be paid or what allowance for the labor will be made. The Chapter, however, does not apply to the State Highway and Public Works Commission. The force of the Chapter with respect to contracts of local units was greatly lessened by Chapter 552, Public Laws, which raised from $1,000.00 to $5,000.00 the amount of expenditure necessary before the Chapter applies.

(2) Chapter 140, Public Laws, deals with the collection of water bills. It provides that where water has been shut off for failure on the part of a tenant (as distinguished from the owner) of the premises to pay his bill, the authorities may not require a new tenant or occupant of the premises to pay the bill before furnishing him with water. Undoubtedly the chief beneficiaries of this legislation are landlords. The Chapter

does not apply where premises are occupied by two or more tenants serviced by the same water meter. Apparently this exception is broad enough to cover all such cases, even though all old tenants move out and the request for water service comes from an entirely new set, and the situation thus becomes comparable to that where a single tenant moves away.

(3) Chapter 8, Public Laws, is designed to liberalize the provisions of law governing the powers of sanitary districts. It specifically authorizes acquisition of property, easements, rights-of-way and water rights outside as well as inside of the district; and authorizes the district to supply raw or filtered water to any person, private corporation or municipal corporation whenever it has a supply available, particularly where supplying the water will enable the district to dispose of its sewage more conveniently by disposing of it in streams formerly furnishing water to the users whom the district undertakes to supply. Rates for water service outside the district may be higher than those for similar service inside the district. District boards, subject to the approval of the State Board of Health, are also authorized to vary the original plan adopted by the voters in order to provide for such an exchange of water service in return for more convenient sewage disposal rights. The Chapter further authorizes service charges at a rate sufficient, if still reasonable, to provide for debt service, as well as operating requirements of the district, thus making the project self-liquidating and eliminating or lowering direct property taxes. Finally, the Chapter provides that where the sale of bonds produces more revenue than is necessary to finance the construction and pay indebtedness due before operations and tax collections begin, the surplus must be used to purchase, at par and accrued interest, any of the district's outstanding bonds.

(4) Chapter 80, Public Laws, contains several amendments to the laws respecting cities operating under "Plan B" as set out in the Consolidated Statutes. It provides that in such cities having a population of over 25,000 the mayor may be

paid as much as $5,000.00 per year, as against the former maximum of $3,500.00. It provides that the mayor is to have control over the activities of the heads of departments in the city government, and that no contract is binding on the city until approved by a majority of the city council and approved and countersigned by the mayor. With respect to such cities having a population of more than 80,000, it provides that a "Plan B" government may be adopted at an election called by petition of 10 per cent of the voters instead of 25 per cent as in smaller cities; and that such cities must have 12 wards, each of which is entitled to have one alderman or councilman.

STATE ECONOMY AND FINANCE

I. State Economy

If there was any one keynote in the legislation enacted by the 1933 General Assembly, it was depression-born economy. In its drive for economy, in which it was supported by the administration-sponsored objective of a balanced budget, the legislature did not slight the complicated structure of the State's government. It approached the task of slashing the State's expenditures chiefly in two ways—first, it attempted to reorganize, to some extent, the State's departments and bureaus; and, second, it greatly reduced the amounts assigned for the operation of those departments and bureaus.

A.—Reorganization

The beginning in this field was made by Resolution No. 8, which provided for the appointment of a joint committee on State Reorganization. The committee was charged with the duty of recommending changes and consolidations designed to eliminate all offices and agencies "not immediately essential to the efficient and proper administration of the State's affairs." By this original resolution passed on January 9 when the legislature was still in swaddling clothes, the committee, which had not even been appointed, was allowed eleven days to ferret out all of the State's agencies which were not "immediately essential." As it turned out, a considerably longer time was consumed, and even then the job could hardly be regarded as complete.

It must not be supposed that all of the laws dealing with State agencies originated with this joint committee on State Reorganization, for the committee's eight members had no monopoly on ideas. Further, it must not be supposed that every move made to reorganize the State Government was productive of serious and lasting economies, as a number of them were grounded at least as much upon the hope of greater ef-

ficiency as upon the hope of helpful savings. Nevertheless it seems more logical to group together the most important laws dealing with reorganization, whether their chief results may be stated in terms of economy or not, as a preliminary to the greater and more concrete economies affected by decreased appropriations.

1.—*Offices and agencies abolished.*

It is obvious, of course, that the most certain savings in this field may be effected by complete abolition of State agencies, but only two statutes fall completely in this category. The first is Chapter 88, Public Laws, which abolished the State Tax Commission. It is true that the Commission's duties were transferred to the Department of Revenue to the extent that the Chapter requires the Commissioner of Revenue to make a biennial report to the legislature containing all available data concerning "the tax laws and systems of this and other states," with his recommendations for changes in our tax laws; but the only inference to be drawn from the Chapter is that this report is merely incidental to the Commissioner's other and more regular duties, and is not to entail any extra expense.

The second complete abolition was contained in Chapter 46, Public Laws, which abolished the office of Director of Personnel and transferred its duties to that of Assistant Director of the Budget, to be performed by that office without extra compensation. The Chapter also repealed those provisions of the law which formerly authorized the personnel officer to employ clerical assistance. The saving effected by this may be gauged by the fact that the former law authorized a maximum salary of $6,000 per year for the Director of Personnel, and that the annual appropriation for the Division of Personnel from 1931 to 1933 was $16,250. To make it possible for the Assistant Director of the Budget to handle these duties, the Chapter eliminated all the duties formerly placed on the personnel office regarding the personnel needs of the counties, cities and towns.

Three other laws nominally abolished various State offices or functions, but the abolition in these cases was not quite so complete as in the two cases already discussed. The first of these was Chapter 30, Public Laws, which abolished the office of Executive Counsel (an office which rated an appropriation of $10,622.00 per year from 1929-31 and $7,035.00 per year from 1931-3). On the surface this abolition was complete, but subsequently, when the legislature passed Chapter 111, Public Laws, creating the office of Commissioner of Parole, it partially revived the duties of the former Executive Council. Chapter 111 fixes the Parole Commissioner's maximum salary at $3,000.00 per year, and allows him "reasonable clerical assistance," the maximum cost of which is not specified.

The second law to be mentioned in this category is Chapter 357, Public Laws, which abolished the offices of State Game Warden and Commisisoner of Inland Fisheries. This was merely a statute to reduce and not to eliminate expense, as the Board of Conservation and Development was authorized to employ some person of scientific training and experience in the propagation of fish and game, at a salary of not more than $3,000.00 per year, to handle the work formerly handled by these officers.

The third statute in this category is by far the most important of the three from the standpoint of the change effected in the State's administrative organization, if not from the standpoint of economy. This is Chapter 134, Public Laws, which abolishes the Corporation Commission, effective as of January 1, 1934, and substitutes a single Utilities Commissioner in its place. The Commissioner will, in the first instance, be appointed by the Governor, but, beginning with the 1934 general election, he will be elected quadrennially. The provisions of this Chapter regarding public utilities are dealt with in the chapter on Corporations and Public Utilities. The chief interest here is that the Commissioner's salary, which is $4,500.00 per year, is only approximately the same as the average salary of each of the three Corporation Commissioners.

In cases involving more than $3,000.00 he may be assisted by two Associate Commissioners, appointed by the Governor, who will receive $25.00 per day each and expenses. Per diem payments are limited to $1,800.00 per year, or $900.00 apiece. It is hardly likely that the addition of expenses to these per diem fees will bring the total compensation for executive services in this field up to the former total paid the Corporation Commission.

2.—*Duties transferred.*

In addition to the transfer of duties involved in some of the statutes already mentioned, the legislature also transferred a few offices and functions *in toto.* The first statute along this line was Chapter 21, Public Laws, and is of minor importance only. It merely transferred the office of Legislative Reference Librarian from the Historical Commission to the office of the Attorney General. The second, Chapter 31, Public Laws, is considerably more important, as it made the formerly independent Local Government Commission a division of the State Treasurer's Office. To some this statute may be slightly reminiscent of "The Mikado" as it made the State Treasurer ex officio Director of Local Government and also Chairman and Treasurer of the Local Government Commission. However, the Chapter seems to have been a case of the office following the man, as Charles M. Johnson, present State Treasurer, was, prior to his election, the Director of Local Government. The Chapter preserves some degree of separate entity for the Local Government Commission, as it expressly directs that the Commission be a "separate and distinct division" of the Treasurer's Department. It also added the Secretary of State to the Commission's membership.

The two remaining transfers involved the Revenue Department. The first was Chapter 214, Public Laws, and transferred the State Highway Patrol from the State Highway and Public Works Commission to the Revenue Department. At first blush, it may seem peculiar that the Highway Department, already in charge of highways and newly combined with

the State Prison Department, should immediately be required to relinquish control of the State's only constabulary, primarily organized to enforce highway laws, to a Department formerly solely concerned with financial matters. Be that as it may, however, Chapter 214 and Chapter 491, which amended it to correct what was apparently a typographical error, accomplished the transfer. Chapter 214 also greatly enlarged the functions of the Highway Patrol, by permitting the Commissioner of Revenue to utilize it in inspecting and taking samples of gasoline, kerosene and lubricating oils, in testing gasoline pumps and other equipment and in performing any other duties assigned by him. It also limited the number of patrolmen to 67 men.

Chapter 544, Public Laws, is a further step in explaining the logic of placing the Patrol under the jurisdiction of the Revenue Department. It provides that under the supervision of that Department's Motor Vehicle Bureau shall be concentrated the registration and licensing of motor vehicles, the collection of gasoline taxes, the inspection of kerosene, gasoline and lubricating oils, the enforcement of motor vehicle laws and the control of the Patrol. In immediate charge of this Bureau is a Deputy Motor Vehicle Commissioner, and to supervise its activities generally there is a Motor Vehicle and Inspection Board composed of the Governor or his representative, the Commissioner of Revenue, and the Chairman of the State Highway Commission (this last must mean the State Highway and Public Works Commission, which had already been established when Chapter 544 was passed). The only other feature of this Chapter worth noting is purely an economy measure. It rescinded the appropriation of $15,600.00 per year which had earlier been made to the Department of Agriculture for gasoline and oil inspection, and requires the Motor Vehicle Bureau to finance these inspections either from the regular appropriation for the Revenue Department or out of such inspection fees as the Budget Bureau may allot for the purpose. Any such fees not used in this way will become,

under the Appropriations Act, a part of the State's general fund.

The second transfer involving the Revenue Department is Chapter 523, Public Laws, which authorized the Governor in his discretion to transfer the office of the Superintendent of Weights and Measures from the Department of Agriculture to the Revenue Department. It also authorized the Governor to appoint the Superintendent.

3.—*Merger of Highway and Prison Departments.*

The most important reorganization statute of the session was Chapter 172, Public Laws. That statute combined the State Highway Department and the State Prison into a single department, to be supervised by a State Highway and Public Works Commission. While the statute contains some new provisions with regard to the treatment and discipline of prisoners (which are discussed in the chapter on Crime), the chief reasons for its enactment were financial. This is clearly shown by the recitals of purposes in the Chapter itself, which list the economical use of prison labor in improving the highways, and the gainful employment of all able-bodied prisoners as the Chapter's chief aims.

The Chapter calls for a Chairman and six members on the new Commission, all to be appointed by the Governor. This Commission succeeded to all the powers formerly possessed by the two Departments, and the only respect in which the union was not complete was that the prison's deficit was not assumed by the Highway Department. The old system of appointing Highway Commission members by districts was abolished and the new appointments were from the State at large. Members are paid $7.00 per day while actually on duty, and their expense incurred on official business. Six thousand dollars per year is the maximum salary for any employee, as against ten thousand allowed in the old Highway Department. The Chapter contemplates that prisoners shall be used, not only on the highways and on farms, but in prison industries, forestry, and the production of agricultural lime. Preference is to be given,

as under former laws, to producing food and other supplies for the Department and other State institutions. Prison labor may be farmed out to other State agencies; and it may also be hired out to private enterprise, as the Chapter expressly preserved that controversial practice. Further, the proceeds of a $400,000.00 bond issue, authorized in 1927 for the acquisition of land for prison farms, were made available for use not only for that purpose but also to purchase equipment, erect necessary buildings, and establish industries.

The State lost one economic fight to the counties when the Chapter recognized the rights of courts to sentence prisoners to the State's roads for thirty days or longer. The former minimum sentence for which a defendant could be sent to a State prison camp was sixty days. The economic importance of this is, of course, that it necessitates support of many additional convicts by the State, and also means that the State must spend, in equipping these prisoners for road work, an amount which probably cannot be recouped in labor savings. The permission to make such sentences, however, had already been given by the 1933 Assembly in Chapter 39, Public Laws, and this Chapter reënacts it.

The production and sale, to the farmers of the State, of agricultural lime also engendered opposition, as does any effort to obtain cash revenue from convict made goods. Chapter 300, Public Laws, in fact, required sales to be confined to the State's institutions and subdivisions after January 19, 1934, but this Chapter was repealed by Chapter 518, Public Laws. The prison's industrial activity is also otherwise limited as a revenue producing enterprise, as Chapter 146, Public Laws, expressly prohibited the sale, to anyone in the State except State institutions and subdivisions, of any convict made or produced goods except coal, chert, stone and agricultural products. (This statute applies to goods produced in other states as well as in North Carolina, and the validity of such statutes is being questioned at present in an action pending in the United States Supreme Court). Chapter 172

does not seem to modify these prohibitions. It thus seems that the Chapter, despite its avowed purposes, does not improve the situation greatly with respect to making the prison and prison camps (the number of which may be increased under the Chapter) more nearly self-supporting. It merely shifts the responsibility of supporting the prison (in so far as it is not supported by credits for labor and receipts for prison products) from the State's general fund to the State's highway fund. Such definite economies as the Chapter accomplished were largely the result of reducing maximum salaries and its replacing two Commissions with one. It also may have effected economies by providing an organization capable of increased efficiency, but that is an indefinite benefit not yet capable of real evaluation.

4.—*Other laws affecting State agencies.*

It may not be inappropriate here to mention those statutes which, while perhaps not strictly reorganization statutes in the same sense as the statutes already mentioned, yet deal with the delegation of administrative duties. (1) Chapter 212, Public Laws, required an audit of Park Commission expenditures and an investigation of those expenditures under the direction of the Governor. Probably the chief cause of this statute's passage was legislative dissatisfaction over attorney's fees paid by the Commission in connection with title investigations. The Chapter also reduced the number of members of the Commission from eleven to five. (2) Chapter 260, Public Laws, transferred the power to approve the selection of Park Commission attorneys from the Attorney General to the Governor. (3) Chapter 441, Public Laws, increased the power of the Advisory Budget Commission with regard to making regulations to govern the letting of contracts and making of purchases by the Division of Purchase and Contract. (4) Chapter 400, Public Laws, requires all State boards and governing bodies except the Highway and Public Works Commission to call for competitive bids when letting any contract involving more than $1,000.00.

5.—Effect of laws dealing with reorganization.

It is perfectly apparent that all of the reorganization statutes, whether they took the form of abolition, substitution, consolidation or transfer of functions, and whether or not they accomplished serious results in the attempt to reorganize the State's government, merely scratched the surface as far as economy in the spending of State money is concerned. They did not, and could not, seriously attempt to eliminate the disparity between expenditures and revenue which built up a State deficit of more than $12,000,000.00 by the end of the fiscal year 1932-3. And it was becoming increasingly necessary, not only from the standpoint of sound governmental business, but also from the standpoint of preserving the essential credit of the State, to eliminate that disparity.

To eliminate any further deficit and to balance the State's budget the legislature passed three types of laws. First, it reduced salaries; second, it reduced general appropriations; and, third, it undertook to raise the amount of revenue necessary to meet the State's expenses.

B.—Salary Reductions

The salary reductions were, of course, merely one phase of reducing appropriations. However, as they were treated separately, to some extent, by the legislature, they will also be treated separately here. Seven statutes were passed dealing with salaries of particular State officers and employees. (1) Chapter 1, Public Laws, attempted to reduce by 15 per cent the salaries of all elective officers of the State. It was passed before those officers were inaugurated, but was not ratified until after the inauguration. Consequently, with respect to all the officers who are guaranteed against salary cuts during their terms by the Constitution (such as the Governor, the Secretary of State and the Attorney General), it was legally ineffective. Nevertheless, the majority, if not all of these officers are voluntarily taking 15 per cent reductions. (2) Chapter 5, Public Laws, reduced the mileage allowance of pres-

idential electors from 10c to 5c per mile. (3) Chapter 6, Public Laws, reduced the salaries of all employees of the legislature, except pages, and of employees in the enrolling office, the reductions ranging from 14 per cent to 33 per cent. (4) Chapter 22, Public Laws, after reciting that Supreme and Superior Court Judges were willing to take salary cuts even though their salaries were guaranteed by the Constitution, authorized the State Auditor to issue two monthly salary checks to each judge, one for $83.33 and one for the balance. The expectation is that the $83.33 check will be returned to the State. The $1,000.00 per judge per year thus saved reduces the salary of Supreme Court Judges from $7,500.00 to $6,500.00 per year and that of Superior Court Judges from $6,500.00 to $5,500.00 per year. Expense allowances are not affected. (5) Chapter 78, Public Laws, reduced Solicitors' salaries, which are not protected by the Constitution, from $4,500.00 to $3,900.00 per year and eliminated the yearly $750.00 formerly allowed each Solicitor as expense money. (6) Chapter 173, Public Laws, reënacted the reduction, already provided for by Chapter 6 in the pay of employees in the enrolling office (the office which copies all passed bills). It also limited to twelve the number of employees in that office, subject to the provision that the Rules Committees of the House and Senate might increase or decrease the prescribed number of employees. (Subsequently, to take care of the grand rush at the end of the session, Resolution 58 authorized the Secretary of State to borrow clerks from other State offices for work after regular hours in the enrolling office, and to pay them 10c per 100 words.) (7) By Chapter 292, Public Laws, the legislature showed its magnanimity, and provided that wherever the salaries of State employees were being paid from outside sources, and hence a salary reduction would effect no saving to the State, there need be no reduction made by the Budget Bureau.

The statutes enumerated made no changes in the salary schedule for the great majority of the State's employees.

Very material changes had been made in those schedules, however, by the Budget Bureau. Further, the legislature assured itself that the reductions already made should be largely continued in force and, in some cases, should be increased. The first step along this line was taken by Resolution 13, which provided for the appointment of a joint committee to study and report on all departmental salaries. The real clincher was applied by the Appropriations Act. In that Act the legislature greatly reduced departmental appropriations below what had been considered economical appropriations in 1931, and then expressly provided that salaries must be brought within those appropriations and declared an intention to reduce salaries, including salaries in the Department of Agriculture and the State Highway and Public Works Commission, by at least 38 per cent from the schedule nominally in force on July 1, 1930. This means that salaries as a whole are reduced 38 per cent from that basis, taking into consideration changes in organization, staff requirements and other factors, and not that each individual salary is reduced by that percentage.

The Appropriations Act also fixed the annual salary of the State Librarian ($1,800.00), the Adjutant General ($3,825.00), and the Corporation Commissioners (one at $3,825.00, one at $4,250.00 and one at $4,500.00). Allowances to the Advisory Commission, the State Board of Equalization (now the School Commission) and the Highway Commission (now the Highway and Public Works Commission) were fixed at $7.00 per day and actual expenses; while other commissions and boards entitled to compensation were limited to $3.50 per day and 5c per mile. Travel allowances for State officials were also specified.

C.—Reduction in Appropriations

As already pointed out, the legislature made very material reductions in appropriations. The extent of these reductions with respect to public schools and colleges is pointed out in the chapter on Education, and their extent with respect to

charitable and correctional institutions is pointed out in the chapter on Social and Welfare Laws. The following table will give some idea of the reduction made with respect to most of the other functions of the State. All of the figures except those given for legislative expense represent the average amount appropriated for each year of the biennium, and not the amount appropriated for both years. The legislative expense figures are the amounts appropriated for the year in which there were or will be regular sessions:

	1929-31	1931-33	1933-35
Legislative appropriations	$ 194,835	$ 173,535	$ 158,550
Appropriations for Judicial Department (including Judges' and Solicitors' salaries, printing and departmental expense)	424,900	398,400	318,000
Executive and Administrative appropriations (which include the Governor's office and State departments and offices approprations for which are made from the State's General Fund)	1,986,261	1,663,744	955,367
Department of Agriculture (Appropriations from Agriculture Fund)	515,000	384,834	220,750†
Highway and Public Works administration expense, highway maintenance and construction and Motor Vehicle Bureau (Appropriations from Highway Fund. No figures are given for 1929-31 as there is no real basis for			

† This figure may be raised or lowered in accordance with receipts in the Agriculture Fund.

comparison, since the State assumed maintenance of many county roads in 1931).	$15,519,650	$6,682,750*

It is not pretended that these figures are completely accurate. Further, the figures obviously do not represent the total cost of operating the State government. They are merely given as a basis for what the writer believes to be a fair, general comparison of appropriations for operating costs over the six year period covered. Debt service costs have not been given, as the fact that different amounts mature each year is misleading from the standpoint of comparisons for the purpose of which the above figures are presented. Suffice it to say that the State's general fund and highway fund debt service requirements will approximate $13,370,000 in 1933-4 and $14,280,000 in 1934-5. The figures with regard to highway expenditures need some amplification. By Chapter 87, Public Laws, the Legislature had already decreed that practically no State money should be spent for new highway construction, and the biggest savings in highway appropriations are the result of that decree.

The Appropriations Act was three times amended. Chapter 446, Public Laws, merely provided that the amount appropriated for the Corporation Commission should go to the Utilities Commissioner when appointed, that the Highway Commission appropriation should go to the Highway and Public Works Commission, that the appropriation for the Legislative Reference Library should be transferred from the Historical Commission to the Attorney General, and that $254.00 should be allowed the Department of Labor from 1932-3 funds to settle a claim against it. (Also authorizing expenditures from 1932-3 funds were five Resolutions authorizing payment of the expenses of legislative committees, and twelve Resolutions

* This figure may be increased by an additional $900,000 for road maintenance, and by a further amount for emergency construction. A more complete explanation of this possible increase in highway expenditures will be found in the chapter on Highways.

authorizing printing and distribution of various 1933 laws. Also, Resolution 3 authorized payment of a maximum of $600 as inauguration expense.) Chapter 447, Public Laws (most important of the amendments), increased the emergency fund (which is not included in the above figures) from $200,000 to $350,000 per year, apparently in recognition of the fact that meagre appropriations might necessitate increased emergency needs. (Chapter 534, Public Laws, subsequently authorized purchase of a new automobile for the Governor from this fund, as the one in use had been driven over 150,000 miles in 4 years of service.) Chapter 519, Public Laws, appropriated an additional $10,000 for public utility rate investigations, and an additional $25,000 per year for public utility appraisals and audits. These last-mentioned additional appropriations are included in the departmental expense figures given above. Chapter 544, Public Laws, rescinded an appropriation of $15,600 made for gasoline and oil inspection, requiring this work to be provided for out of inspection fees. The figures above reflect this change.

The figures above do not reflect the fact that the Department of Revenue may be allotted by the Budget Bureau, to care for collection expense, not more than 2 per cent of sales tax collections and not more than 3 per cent of beer tax collections. These amounts are extremely indefinite and, since they are to take care of the cost of collecting taxes not levied before 1933-4, their absence from the above figures does not detract seriously from the value of the comparison.

Finally, with respect to the figures given it should not be supposed that they are absolutes. They are merely legislative estimates of the portion of estimated collectible revenues to which each department is entitled. The Budget Bureau has authority to vary the appropriations on the basis of revenues actually materializing. In fact, one of the chief ideas which led to the creation of the Budget Bureau was the fact that a permanent administrative agency, such as the Bureau, would be able to keep the budget balanced, on the basis of actual

revenues, in much better fashion than a legislature which normally meets only once each two years and bases its financial decrees on estimates which, in the nature of things, must embody a large percentage of error. That the Budget Bureau, tested in abnormal times, has not been able to balance the budget, is witnessed by the fact that the State's deficit, by the end of the fiscal year 1932-3, had mounted to considerably more than twelve million dollars. Chapter 330, Public Laws, authorized the issue of bonds to fund this deficit and also to fund $572,090 of advances made from the State's general fund to meet emergency capital outlay expenditures at the State's educational and correctional institutions. This authority enabled the State to enter the fiscal year 1933-4 with a nominally balanced budget. Under Chapter 330 the manner and time of issuing these funding bonds was left in the discretion of the Governor and Council of State. The interest rate likewise is to be fixed by the Governor and the Council, but may not exceed 6 per cent. The interest rate probably will not be as high as 6 per cent, but neither will it be as low as it might have been had Congress acted on the request contained in Resolution 48. In that Resolution the legislature requested the Federal Government to issue $500,000,000 in currency and use it to purchase 2 per cent State Bonds issued to fund State deficits.

As it was inevitable that the State could not continue to pile up an operating deficit and still preserve its credit, the legislature also attempted to insure that the budget would stay balanced during 1933-5.

The statutes designed to accomplish this purpose by cutting expenditures have already been mentioned. The legislature also retained and even increased administrative authority to keep the budget balanced. The Revenue Act expressly authorized the Governor, as Director of the Budget, with the advice of the Budget Commission, further to decrease the salaries of all State officers and employees if State expenses begin to exceed State revenue. If the disparity is such

that necessary cuts would be too drastic, the Governor is requested to call a special session of the legislature, presumably to provide greater revenues. Further, if revenues exceed expenses, the salaries of State officers and employees, including school teachers, may be raised, but not to more than 80 per cent of the 1929 level. There remain to be discussed those statutes designed to bolster the State's faltering revenues.

II. State Revenue

A.—The Revenue Act

The most important, in fact the only important State tax eliminated was the 15c ad valorem tax formerly levied for the general fund, but primarily intended to help finance the schools. The most important new tax levied by the Revenue Act (Chapter 445, Public Laws) was, of course, the sales tax, also levied for the general fund but primarily intended to help finance the schools. The main facts in connection with the sales tax are well known throughout the State. It is a 3 per cent tax on retail sales of all commodities except flour, meal, meat, lard, milk, molasses, salt, sugar, coffee, gasoline, fertilizer, and except farm, forest and mining products sold by the immediate producers. By virtue of Chapter 522, Public Laws, the tax must be paid by the consumer and may not be absorbed by the merchant. Maximum tax on any one article is $10.00. Collections of this tax, at the time of this writing are at present complete only for July and August, and these collections are far below the $700,000 per month revenue which it was estimated the tax would produce. However, due to the fact that ordinarily these months are the poorest sales months in the year, and that there was considerable anticipatory buying just before the tax went into effect, these two months do not necessarily offer a criterion for subsequent collections. No study of the organization set up by the Revenue Department to collect this tax or of the various rules promulgated regarding its imposition will be attempted here. It is the present purpose of

The Institute of Government to make a study of these matters after the tax has been in force for a full year.

The other taxes levied by the Revenue Act are the same general taxes levied by Revenue Acts of former years—inheritance, income, license and franchise taxes. There were changes made with respect to all of these taxes, but only a few of the more important changes may be discussed here.

1.—*Inheritance taxes.*

The most important change in the inheritance tax was an increase in the tax rates. With respect to Class A beneficiaries (parents, children, husbands and wives) this was done by reducing from $25,000 to $10,000 the amount above exemptions taxable at 1 per cent, by taxing amounts from $10,000 to $25,000 at 2 per cent, by increasing by 1 per cent the rates of tax on all amounts between $25,000 and $2,500,000, by taxing at 11 per cent amounts between $2,500,000 and $3,000,000, and by taxing at 12 per cent all amounts over $3,000,000 (formerly all amounts over $2,500,000 were taxed at 10 per cent). With respect to Class B beneficiaries (brothers, sisters, uncles, aunts, nephews and nieces), it was done by raising the tax rate in each bracket by 1 per cent, thus making the tax range from 4 per cent on the first $5,000 to 24 per cent for all over $3,000,000. No change was made with respect to amounts going to Class C beneficiaries (all beneficiaries not already enumerated except religious and charitable institutions, which are tax exempt). These rates range from 8 per cent on the first $10,000 to 25 per cent for all over $2,500,000.

The next most important change in inheritance tax laws was the reduction of the exemptions allowed Class A beneficiaries of life insurance policies from $40,000 to $20,000. Until 1931, proceeds of policies payable to such beneficiaries were not taxed by the State at all. In that year the exemption was limited to $40,000, at the request of the Commissioner of Revenue, and the taxes collected as the result of this move were a substantial portion of inheritance tax collections

from 1931 to 1933, as most large estates during that period were virtually insolvent. The 1933 reduction in the exemption is designed, of course, further to increase the revenue from this source. Other changes in exemptions eliminated the exemption for bonds of North Carolina or its subdivisions owned by a non-resident decedent, and the exemption for intangibles owned by decedents resident in a state not taxing intangibles owned by North Carolina decedents.

Two other changes are worth noting. The first provides that the additional Federal estate taxes which became effective on June 6, 1932 may not be deducted from gross estate in determining the amount taxable by the State. The second requires the safety deposit boxes of all decedents to be inventoried in the presence of a Clerk of the Superior Court or his representative. This gives the Revenue Department a partial check on unregistered securities owned by the decedent.

2.—*Income taxes.*

With income taxes, as with inheritance taxes, the most important change was in the rates. Individual income tax rates were moved up so that the first $2,000 of taxable income will be taxed at 3 per cent, the next $2,000 at 4 per cent, the next $2,000 at 5 per cent and all over $6,000 at 6 per cent (6 per cent is the maximum rate allowed by our Constitution). The former rates began at 2 per cent and ranged up until the full 6 per cent was imposed on all amounts over $10,000. Corporation rates, with respect to both foreign and domestic corporations, were moved up from a uniform 5½ per cent rate on all taxable income to a uniform 6 per cent rate. The tax on dividends on stock of foreign corporations remains at 6 per cent. Dividends on stock of domesticated foreign corporations are also taxed the full 6 per cent on whatever portion of the dividend does not represent income on which the corporation paid income tax in North Carolina.

A few other changes in income tax laws should also be mentioned. First, the new recital of deductible losses excludes losses incurred as the result of personal loans or endorsements

not made for profit; excludes all losses on security sales in excess of profit on securities during the same tax year, unless the securities on which the loss was suffered were held two years or more prior to the sale; and limits other non-business losses to those incurred by fire, shipwreck and like casualties. Second, all deductions must now be pro rated to the extent that taxpayers receiving income *not taxed under the Revenue Act* may take only that percentage of total deductions which corresponds to the percentage of their total income represented by taxable income. It is at least arguable that all dividends would be taxable income for this purpose, as they are taxed under the Act in one way or another, even though in the case of domestic and domesticated foreign corporations, the corporations as distinguished from the individual taxpayer, pay all or a part of the tax. Third, the special provisions already applicable to banks with regard to interest and unearned discounts on debts were applied to installment paper dealers. Fourth, it is made clear that gasoline taxes, and automobile license and registration taxes not paid in connection with operating a business may not be deducted. Fifth, income from a business in another state is not taxed if tax is paid in that state (the former law allowed the tax paid in the other state to be deducted from the tax otherwise payable in this state). Sixth, it was made clear that unless an assessment of additional tax is properly protested within 30 days after notice is given, the taxpayer loses his right to protest and the assessment becomes final. Finally, the salaries of all State officials whose salaries are protected from reduction by the Constitution are made taxable beginning with those elected or appointed after the Revenue Act was ratified.

3.—*Franchise taxes.*

With respect to franchise taxes also, the chief changes made were changes in rates. The rates for ordinary foreign and domestic corporations, railroads, most public service corporations, and telephone companies were increased by 20 per cent of the former rate and the rate for telegraph companies was

increased by 16 2/3 per cent. Only one reduction was made. The rate for private water companies was decreased by 20 per cent. Two other changes are also worth mentioning. First, the same requirements made with respect to income taxes were made regarding the time in which additional tax assessments must be protested. Second, in determining the capital stock, surplus, undivided profits and excess borrowed capital upon which the tax on ordinary foreign and domestic corporations is based, the average of borrowed capital excess is to be used and not the excess at the end of the tax year as in the past. This change was considered equitable for some corporations which are heavy borrowers at the end of the tax year due to seasonal requirements. For these companies it will decrease the tax, while no doubt it will increase the tax for other corporations whose peak demand for borrowed capital comes at other seasons. Whether the net result will be to increase or decrease the State's collection is problematical.

4.—*State license taxes.*

Probably the three most important changes in license taxes were: (1) The tax on chain stores was increased, on a graduated scale. Formerly it was $50.00 for each store over one, regardless of the number of stores. Under the new law it begins at $50.00 and ranges up to $150.00 for each store over 50. It is made clear by Chapter 543, Public Laws, that this tax does not apply to the operation of single departments in department stores where the departments are conducted under the name of the store and not under the name of the owner of the departments. The tax likewise does not apply to chain service stations. (2) The system of taxing theatres was changed from a basis of the population of the town in which the theatre is located to a basis of 3 per cent of gross receipts, with a minimum license tax, based on population, which is credited against the 3 per cent tax. These minimum licenses are only 50 per cent of the former taxes, but the 3 per cent feature should raise more revenue (Chapter 503, Public Laws, also deals with this tax, being concerned with the method of

ascertaining the tax where motion pictures are shown under percentage royalty contracts). (3) A stamp tax was placed on all work done by laundries, dry cleaning plants, pressing clubs and hat blockers, amounting to 1c on each dollar or fraction of a dollar charged for the work. This is in addition to license taxes.

License taxes reduced include those on automatic machine dealers, automobile dealers in towns of less than 1,000 population, pool tables of less than standard size, wholesale dealers in bottled carbonated drinks, some retail coal and coke dealers, dealers in horses and mules, marble yards, newspaper contests not held by a daily paper, pawnbrokers in towns of less than 10,000, peddlers, piano and organ dealers, plumbers, pipe-fitters, electricians, dealers in radios and radio accessories, dealers in phonographs, phonograph records and player piano rolls, sewing machine dealers, some slot lock machines, some soda fountains, and stock brokers and security dealers using leased wires or ticker services in towns of 10,000 and less than 20,000 population. The majority of these reductions were apparently by way of compensation for the imposition of the 3 per cent tax on gross sales of the dealers affected.

License taxes increased include those on barber shops, cold storage warehouses, cotton compresses, hotels, boarding houses, laundries, mercantile agencies, pawnbrokers in towns of 15,000 or more, pressing clubs, dry cleaning plants, hat blockers, sandwich dealers, some types of slot lock machines, tobacco warehouses selling less than 5,000,000 pounds, stock brokers or security dealers using a leased wire or ticker service in towns of 20,000 and less than 25,000 population, and swimming pools and some other amusement places in towns of more than 10,000.

New taxes were imposed on athletic contests, some boarding houses, outdoor signs advertising the sign owner's own business, contractors (on contracts between $5,000 and $10,000), loan agencies and loan brokers, morticians and em-

balmers, a number of peddlers (including those selling to merchants for resale) not taxed by the former law, traveling salesman employed by marble yards, tourist homes and camps, and toll bridges. The only tax completely eliminated seems to be the separate tax on dealers in scrap or untied leaf tobacco.

5.—Amendments to the Revenue Act.

The Revenue Act was amended by two statutes in addition to Chapter 503 and 543, which have already been mentioned. Chapter 507, Public Laws, supplied definitions, which had been omitted in the original Act, and Chapter 509, Public Laws, merely corrected a typographical error in the Act.

B.—Highway Fund Taxes

Several important statutes were passed with regard to motor vehicle license taxes and gasoline tax. Those statutes are discussed in the chapter on Highways.

C.—Beer Taxes

With the exception of the statutes just mentioned and the Revenue Act, the most important revenue laws passed were those dealing with beer taxes. The first of these was Chapter 216, Public Laws, which levied a tax of $2.00 per 31 gallon barrel and 2c per 12 ounce bottle. These taxes, scheduled to become effective May 1, were superseded before they went into effect, as the Beverage Control Act (Chapter 319, Public Laws) was ratified on April 28. That Act, as amended by Chapters 394, 444 and 558 of the Public Laws, provided a much more complete system of taxation. As annual State license taxes it levied $500 on brewers and manufacturers, $250 on bottlers, $150 on wholesalers, $100 on railroad systems selling beer on trains, $12.50 on salesmen, and $5 on retailers. Each license over one held by the same retailer costs an additional 50c; that is, the first license costs $5, the second $5.50, the third $6, etc. This, of course, is chiefly a tax on chain stores. In addition to these license taxes there

is a sales tax of $3 per 31 gallon barrel and 1c per 12 ounce bottle. Three per cent of the revenue from these taxes was made available for the use of the Revenue Department in collecting them. The Department was also given broad discretion in the means adopted to collect the taxes and particularly the sales tax. It has express authority in this latter connection to require the use of stamps or special bottle crowns furnished by it, but to date has not employed either device.

The real joker in beer taxation did not develop until the legislature had adjourned and the general 3 per cent sales tax levied by the Revenue Act went into effect. The Revenue Act, passed after the Beverage Control Act, made no express exception for beer in its sales tax provisions. Consequently the 3 per cent general tax is being added to the particular sales taxes levied by the Beverage Act on beer. A poll of members of the legislature conducted by Mr. Spencer Murphy of the Salisbury *Evening Post* indicated that the overwhelming majority did not contemplate this result when the two Acts were passed. Nevertheless, the Acts were so drafted that the result seems inescapable.

D.—Other Laws Affecting State Taxes

Only four other State revenue measures need be mentioned here. (1) Chapter 106, Public Laws, considerably reduced taxes on the State's depression-ridden commercial fishing industry. (2) Chapter 337, Public Laws, greatly reduced license taxes levied on non-resident fur dealers and reduced to a lesser extent some types of resident fur dealers licenses. Apparently, however, two types of resident licenses were increased. (3) Chapter 441, Public Laws, while not essentially a revenue law, provides that no bidders for State contracts shall be made to suffer because of sales taxes or excise taxes imposed by the State. Since the sales tax does not apply to State purchases, presumably this means that the State authorities, in letting contracts, must consider sales taxes which local contractors will have to pay in purchasing materials to

be used in performing the contract. (4) Chapter 115, Public Laws, attempted to pick up a few dollars for the State by authorizing sale at cut-rate prices of copies of the Consolidated Statutes on hand, the copies being to some extent obsolete.

III. The General Fund Budget

Before closing this chapter, it may be wise to summarize to some extent. The Highway Fund, which is composed of motor vehicle license and gasoline taxes, is expected to take care of the expense of the State Highway and Public Works Commission, of the maintenance of highways, of Highway Fund debt service, and of the Revenue Department's Motor Vehicle Bureau and Highway Patrol. The legislature was hopeful that it would show a surplus above all these charges, particularly since the spending of State money for new construction was largely prohibited. Any such surplus, to the extent of $1,000,000 per year, will be transferred to the State's General Fund under the Appropriation Act.

The Department of Agriculture is expected to be cared for from the Agriculture Fund, which consists largely of inspection taxes of various kinds, tonnage fees on fertilizer, the price of goods condemned and sold by the Department of Agriculture, and similar revenues. Any balance remaining, however, goes into the General Fund. Practically all other major State expenses are chargeable to the General Fund. If the estimates of revenues given below prove to be approximately correct, and the appropriations made by the legislature are not substantially changed by the Budget Bureau, the State's General Fund revenue and expense statement for 1933-4 will approximate the figures given below. The estimates of revenues no doubt contain a large percentage of error; but they are the best the writer has been able to obtain, after considerable effort and solicitation. The State will receive:

From Inheritance Taxes	$ 600,000	
From License Taxes	1,700,000	
From Franchise Taxes	6,141,000	
From Income Taxes	6,175,000	
From The Sales Tax	8,400,000	
From Beer Taxes	500,000	
From Fees and Non-Tax Revenue (Including the Agriculture Fund)	1,100,000	
As a Transfer from the Highway Fund	1,000,000	
Total		$25,616,000
The State will spend:		
For Courts	$ 318,000	
For Executive and Administrative Departments, including the Department of Agriculture, but not including the Highway and Public Works Department	1,176,000	
For Educational Institutions other than Public Schools (not including appropriations for deaf and blind schools and blind student aid listed in the appropriations Act under "Educational Institutions")	1,209,000	
For Charitable and Correctional Institutions (including the deaf and blind schools, and blind student aid)	1,377,000	
For items in Appropriations Act as "State Aid and Obligations," including such matters as Mother's Aid and Vocational Education	151,000	
For pensions to Confederate Soldiers and their Widows	722,000	
For Public Schools	16,000,000	
For General Fund Debt Service	4,243,000	
For Emergency Expenses	350,000	
Total		25,546,000
This will leave		$ 70,000

EDUCATION

I. Public Schools

A.—The School Machinery Act

It will be universally conceded that the School Machinery Act (Chapter 562, Public Laws) is by far the most significant statute regarding schools passed by the 1933 General Assembly; that it is, in fact, one of the most important school statutes in the State's long history.

Judging from the space it has received in the newspapers, both editorially and as news, it has also aroused more popular interest and controversy since its passage than any other 1933 legislation. Salaries, supplements, transportation and many other matters have been stressed. In the days since the General Assembly adjourned it has, in this respect, dwarfed even the bitterly contested, spotlighted sales tax which was imposed to finance it. It has also dwarfed the important local ad valorem tax legislation which is elsewhere discussed.

Like that local tax legislation the School Machinery Act, during its checkered legislative career, was many times amended. As introduced in the Senate and sent to Committee it was little more than a short, simple resolution directing the State to assume the support of an eight months term. It was reported by the Committee as a much longer and more complicated statute sketching the machinery by which this purpose should be accomplished. It was then amended freely by both the Senate and the House. Even as finally passed, however, it left many questions open for interpretation by the Attorney General, the School Commission, the Superintendent of Public Instruction and eventually by the courts. Unlike the local tax legislation, it is at least uniform in its application throughout the State. Its only local variances result from the fact that it denied to Cherokee, Currituck and Martin counties those privileges of supplementing State maintenance funds which are being but sparingly exercised elsewhere.

Historical background prior to 1931.

Before beginning a detailed discussion of the Act and its interpretation, it may be wise to sketch very briefly the developments in school legislation prior to 1933. For these historical facts the writer is indebted to Dr. A. T. Allen, State Superintendent of Public Instruction.

The Constitution in 1876 provided that each county should be divided into a convenient number of districts, in each of which one or more public schools should be operated for at least four months in each year. At this time the only contribution made by the State was the income from a permanent school fund and, as the fund had been largely dissipated during the Civil War, the income from it was very small. Practically the entire burden of school support was left with the counties.

Also in force at this time was a constitutional limitation which restricted the total ad valorem tax levy for State and county purposes, including schools, to 66 2/3c on each $100 of tax valuation. It was soon found that this did not produce sufficient revenue, in many places, to support the four months school. Consequently, as early as 1876, some of the State's cities began to seek legislative permission to levy special taxes, authorized by popular vote, in addition to the taxes authorized by the Constitution, for support of local schools. So began the special school districts and special charter districts which were to become, in later years, the backbone of our school system. It is important to note here first, that this made school support an even more local function than it had been when regarded solely as a county function; and second that, from the very first, such local taxes were grounded solely on the permissive vote of the people.

In 1885 the legislature, still thinking solely in terms of county and local support, directed the counties to levy taxes sufficient to support a four months term in each district, regardless of the tax rate which this might necessitate. This act was held to be unconstitutional by our Supreme Court, as

it violated the 66 2/3c limitation on the tax rate. Consequently, in 1899, the legislature took a new step, and there the principle of State support began. It appropriated $100,000 to be distributed among the counties, on a per capita basis, for school support. In 1901 the legislature appropriated an additional $100,000 per year to be distributed, not on a per capital basis, but on a basis of the counties' respective needs, and there began our State equalization fund.

For some years this fund grew very slowly. Meanwhile, in 1907, the Supreme Court decided that the county commissioners could be required to levy taxes to provide a four months term in every school, and that, for this purpose, the tax rate was not limited by the Constitution. This immediately caused a wide variation in county school tax rates, which had formerly been fairly uniform except where special taxes were being levied by authority of a popular vote.

Also in 1907 the legislature made its first appropriation for high schools—$50,000. It was not until 1917, however, that the Supreme Court lent final authority to the proposition that the counties must support a four months high school term as well as other elementary school terms. Close on the heels of this decision came another major development. The Amendment of 1917, adopted in 1918 and affecting schools first in the year 1919-20, raised the term requirement from four months to six.

With this as an impetus, the flourishing '20's became the boom years of our school system. The State's equalization fund which had grown only from $100,000 in 1901 to $836,000 in 1921, grew to $6,500,000 in 1929. In 1921 also a State teacher's salary schedule was adopted which, according to Dr. Allen, fixed salaries at from three to four times the average paid before that time. The State also established building loan funds to aid the counties in constructing buildings necessary for the operation of the six months term. During this period also many new special charter and special tax-

ing districts were created, and the consolidated rural school came into its own.

During these years, the State, the county and local districts were all investing more and more money in popular education. The money of the local units was spent only because the voters desired that it be spent. The State's money was spent, not with the idea that either the Constitution or the voters expressly required it, but because of recognition of the fact that the State did have some obligation to help the counties, and particularly the poorer counties, to bear the educational burden placed upon them by the Constitution. The counties, then, still bore the brunt of compulsory tax levying.

School legislation in 1931.

When the legislature of 1931 convened, the prosperity of the '20's had vanished and recession was well under way. County tax collections were already in such condition that, in many instances, it was obviously impossible for them to collect their part of the six months school revenue. The legislature thereupon assumed for the State the burden of supporting the Constitutional term. This was the first legislative recognition of any duty on the part of the State to support the schools by virtue of a direct obligation resting on the State, rather than merely to attempt to equalize the burden as between counties. The legislature, however, did not at that time abandon the equalization principle entirely, as it created an equalization fund to aid the counties and districts in operating an additional two months of school. It did not undertake, nor has the State ever undertaken, to support any part of a ninth month.

For the conduct of the uniform six months term the legislature appropriated $15,700,000 for each year of the biennium. In addition, it appropriated $150,000 as an emergency fund, making a total specific appropriation of $15,850,000 per year. It also estimated that fines, poll taxes and dog taxes set aside for schools in the various counties of the State would approximate $1,320,000 in each year. The writer has been

unable to obtain exact figures on actual collections of these fines and taxes, but they undoubtedly fell far short of the estimated amount. Out of the $15,850,000 specifically appropriated, the State actually spent $15,708,246 in 1931-2 and $15,633,814 in 1932-3, leaving an unexpended balance for the two years of $357,940. The figures on actual expenditures were obtained from the Budget Bureau. (These figures apparently can not be reconciled with the more detailed figures obtained from the Superintendent of Public Instruction appearing subsequently. In actuality, they can be approximately reconciled. As the reconciliation is a fairly tedious process, and as the total apparent difference over the entire two-year period is less than $40,000, the writer will not undertake the reconciliation here.)

As an equalization fund for the extended term of two months the legislature appropriated $1,500,000 for each year. Of this amount, $1,234,577 was actually spent in 1931-2 and $1,206,747 was spent in 1932-3. The amount spent in 1932-3 would not have reached the figure given had it not included some payments on obligations incurred in 1931-2 and had it not been for Chapter 144 of the Public Laws of 1933. Before this Chapter was passed, the law required schools sharing in the Tax Reduction Fund, as this equalization fund was attractively called, actually to complete the operation of the extended term and to provide their own part of the cost of its operation before they could receive the State's contribution. This Chapter removed these restrictions to the extent that it required payment of one-half of the allotment for a school as soon as the school had completed one month of the extended term, and payment of the balance on completion of the second month, regardless of whether the school had collected enough local taxes to provide its share of the cost. The chief reason this liberalization of the law did not result in payment of the full $1,500,000 appropriation was that, due to shrinkage in State revenues, considerably less than that amount had been allotted. The allotment might possibly

have been even smaller had not Chapter 144 directed that the appropriation for the extended term should be reduced by no greater percentage than the average percentage of reduction made by the Budget Bureau in all other appropriations.

It will be noted that, during the biennium, the State spent a total of $558,676 less than it appropriated for the extended term. When this is added to the $357,940 which was appropriated but not spent for the six months term, it means that the State spent $916,616 less than its specific appropriation. This balance was not carried over into the present biennium. Under the authority of Chapter 524, Public Laws of 1933, the Budget Bureau used approximately $407,000 of this money to pay the interest on funds which the State had borrowed to meet its school obligations. The balance, or so much of it as had actually been set aside for the school fund, reverted to the general fund at the end of the fiscal year 1932-3.

The spending of all money appropriated for schools by the 1931 legislature was under the control of the State Board of Equalization, composed of the Lieutenant-Governor as Chairman, the Governor or his representative as Director of the Budget, the State Superintendent of Public Instruction, and one member from each Congressional District appointed by the Governor and approved by the Senate.

The 1931 laws, though they almost tripled the State's largest prior appropriation for school maintenance, and though they made it possible for practically all local units to reduce ad valorem taxes for school maintenance, did not undertake to interfere very positively with the levy of local maintenance taxes. One law did undertake to require all boards of county commissioners, when levying taxes generally, to reflect within 3 per cent the reduction in ad valorem taxes effected by the State highway law and the State six months school law. However, this law had exceptions and was so indefinite that it would have defied strict enforcement. So far

as it was concerned local taxes could still be levied to supplement State allotments for salaries and other costs as the local districts saw fit. The only real limitation on this power resulted from the fact that the State Board of Equalization had the right to approve or reject the local budgets.

Further, the maintenance of the extended term was left largely as a local burden, as no district which could conduct such a term, on the basis of the State's schedule of costs, from revenue obtained by making a levy of 14c on each $100 of property in the district, was permitted to share in the Tax Reduction Fund. For this purpose, in order to obtain uniform results throughout the State, the valuation of property in the various districts was determined by the Board of Equalization and was not obtained from local tax books. The maintenance of a ninth month, as has already been pointed out, and the maintenance of special summer schools was left entirely as a local burden.

Local expenditures for operation of schools, 1930-3.

The amount budgeted by local units, for school operating costs not paid by the State (including the ninth month), was in the neighborhood of $6,400,000 in 1931-2 and $5,500,000 in 1932-3. These figures do not include amounts budgeted for maintenance of plant and fixed charges, as those items were supposedly cared for by fines, poll taxes and dog taxes. The State has not assumed these items and, as will subsequently be pointed out, they are still to be paid, in so far as possible, from fines and poll and dog taxes. The figures given do represent the approximate amounts which had to be raised chiefly by ad valorem taxes in local units. At this writing, the figures as to how much of these budgeted amounts were actually spent are not available for either 1931-2 or 1932-3. They undoubtedly will be considerably less than the budget figures, but any estimate as to how much less would probably be extremely inaccurate. Further, there are no figures available at this time to show how much spending was made possible by borrowing against uncollected taxes or to show how much was "spent"

by the issue of vouchers which still remain unpaid. Undoubtedly a large percentage of the spending would fall in these two categories. These figures, when compiled, should be extremely illuminating.

For purposes of obtaining some means of comparison, however, it will be arbitrarily assumed that 90 per cent of the local funds budgeted in 1931-2 and 1932-3 for operating expenses, exclusive of plant maintenance and fixed charges, were spent in one way or another. This would mean that $5,760,000 was spent in 1931-2 and $4,950,000 in 1932-3. By adding these to the State's actual expenditures we have a total spent for these operating costs of $22,702,823 in 1931-2 and $21,790,-561 in 1932-3. In 1930-1 the total actually spent for these items by the State and local units was $27,391,742. It may be well to keep these figures in mind for comparative purposes.

The 1931 legislature, to provide its part of school maintenance cost, relied in part, on the very means of taxation the collapse of which had rendered the State support of the six months term necessary. It levied a State-wide 15c ad valorem tax, estimated to produce $4,500,000 each year. While this tax was levied for the general fund, it was accepted by the public and by the legislature as a school tax, and it was treated as a school tax by the State Superintendent of Public Instruction in his last biennial report to the legislature.

The situation at the beginning of 1933.

It divulges no secrets to say that during the interim between the 1931 and the 1933 sessions of the General Assembly the depression deepened. The State's ad valorem levy became extremely unpopular, so much so that it became, in many places a campaign issue. It also proved itself to be an extremely unreliable source of revenue. From the State's standpoint this is more important than the unpopularity of the tax.

Further, it became quite evident that many sections of the State which had been accustomed to supplementing State funds, would not only be unable to supplement the State's six months term, but would also be unable to conduct any extended term

whatever. In fact, during the school year 1932-3 many school units which had been credited with tax resources sufficient to prevent their sharing in the Tax Reduction Fund, fell far short, in their collections during the year, of the amount necessary to meet their minimum operating costs for extended terms. In some of these units teachers have not yet received their salaries for the last months of school. A few, in fact, were forced to close without completing the ninth month of school which they had been conducting for many years.

Four significant features of 1933 school legislation.

Of course all of these events had not happened when the 1933 legislature began to consider school legislation, but it was perfectly apparent that they were going to happen. Faced with this situation, the legislature, in the School Machinery Act, the Revenue Act and the Appropriations Act, did four significant things:

1.—*Abandonment of ad valorem taxes.*

First, it completely abandoned ad valorem taxation as a means of raising revenue. This development was not startling as it was everywhere anticipated. There is no doubt, as many have pointed out, that large corporate landowners were not seriously aggrieved by this action; but there is also no doubt that the real causes of the action were the fact that the ad valorem tax had become, temporarily at least, an undependable source of revenue, and the fact that to many small landowners (and voters) in the State it had become the symbol of the last straw. The unfortunate phase of the action, from the legislative standpoint, was that it necessitated the exploitation of new sources of tax revenue. How it finally found those new sources in a sales tax, and what a bitter time it had in the process of discovery are facts too well known to necessitate discussion here.

2.—*State support of an eight months term.*

Second, the legislature provided for the support of a uniform eight months term of school by the State. This differed

from the 1931 assumption of the six months term in more than degree. It involved acknowledgment by the State of responsibility for the conduct of a school term exceeding that required by the Constitution. The old equalization funds and even the assumption of the six months term merely recognized that the Constitutional requirements must be met and that many counties were unable to meet them without undue sacrifice. The 1931 Tax Reduction Fund merely extended the old equalization principle by assisting the weaker counties to maintain extended terms which those counties themselves sponsored. The 1933 legislation recognized the fact that the Constitutional requirements are too niggardly, even in depressed times, for the State's educational needs and ideals; and that the State is responsible for bettering those requirements. Considered apart from the financial perplexities involved (if such a thing is possible), that is a long step forward. It is further forward than any other state in the Union has gone. Even in North Carolina it is a child of adversity sired by depression; but, in the light of the steady development here of the principle of State support, the chances are it will live. Its birth was perhaps a trifle premature, but can hardly be regarded as totally unexpected.

3.—*The annual appropriation (compared with prior expenditures).*

Third, the legislature appropriated, for the operation of the eight months term, $16,000,000 for each year of the present biennium. It will be recalled that this was a hard-won appropriation, and that it was secured only after a tremendous amount of dickering and conferring, and a very considerable amount of roaring and thundering. It will also be recalled that in 1931-2 and 1932-3 the State itself spent very nearly this amount to meet approximately the same items of operating costs for six months as the new appropriation is required to meet for eight months; that the State and local units spent somewhere in the neighborhood of $22,700,000 for the same items of operating cost for the entire school

year of 1931-2 and approximately $21,800,000 in 1932-3; and that these 1932-3 expenditures represented a reduction of approximately $5,600,000 from the amount spent for the same items in 1930-1. These figures represent an inexact basis of comparison to the extent that actual local expenditures during 1931-2 and 1932-3 can, as pointed out above, only be estimated, and to the extent that all of the figures except those for the present biennium include whatever was spent for a ninth month of school. However, the percentage of these figures spent on the ninth month would be extremely small. And the figures do offer a fairly accurate basis for contrasting expenditures from all sources for operation of schools in the State. Making an ample allowance for whatever amount will be contributed by virtue of the few local supplements being levied this year, the total has decreased at least $11,000,000 since the school year 1930-1—a decrease of slightly more than 40 per cent. The brunt of this decrease falls, of course, on the old charter schools, in most of which it will aggregate a great deal more than 40 per cent. In the majority of the schools the decrease in expenditure is less than 40 per cent and in some the amount to be spent this year represents an increase. This last class is largely composed of those schools which have hitherto conducted no extended term. In 1931-2, the last year for which figures are available, this last category included schools attended by 12.1 per cent of the white and 57.5 per cent of the negro school children in the State.

That the present appropriation is a minimum below which the State can ill afford to drop can hardly be successfully controverted. It is also fairly obvious, if these funds are not supplemented, that facilities will be curtailed, teaching morale will suffer, the system will sustain serious losses in the top ranks of its teaching personnel, and the State may be accused, with something approaching accuracy, of desiring quantity rather than quality in its education. Yet, from the difficulty evidenced in raising enough tax revenue to meet

even the $16,000,000 appropriation, it may fairly be said that the school-minded members of the legislature, in fixing that figure, came exceedingly close to the maximum obtainable as well as to the minimum needed for the purpose involved. The only apparent solution to this dilemma was to allow local supplements where they were considered necessary. That the legislature proceeded to do, but in a manner entirely different from that to which the State had become accustomed.

4.—*Provisions for reorganization of school districts with attendant limitations on local school taxation.*

This brings us to the fourth significant feature of the new laws. The legislature abolished all existing school districts and all existing local school maintenance taxes, and provided machinery for the creation of new school administrative units. It then provided that taxes to supplement the funds provided by the State for the operation of the eight months term could be levied by any county or city administrative unit by authority of a popular vote; and that taxes might be levied under the same authority by any such unit to provide a ninth month of school, provided the unit was not in default on its obligations.

This last limitation represents an innovation in the principles of school taxation. It is the first time the legislature has placed any specific limitation on the right of local voters to authorize school maintenance taxes; the first time the legislature has drawn a circle beyond which the horns of the local units may not protrude. It will be interesting to see if this limitation will prove to be the first step toward legislative (as distinguished from administrative) control of local as well as State school expenditures. Meanwhile, it is utterly inconsistent with the privileges granted to levy taxes to supplement the eight months term, as it would be entirely possible to spend just as much money for this latter purpose as would be spent, in the absence of the limitation, for both purposes. For the school year 1933-4, however, the limitation did not prove to be

of any great importance, as will subsequently be apparent from the record of elections held.

There is a limitation on local budgets to the extent that local supplements must be approved by the State School Commission. This limitation is not new, as the former Board of Equalization had the same power, and the local tax levying authorities also have it. The Commission would no doubt be required to exercise it reasonably. Further, it is a limitation in a very different sense from the limitation imposed by the default clause, as it deals not with the right of the voters to authorize taxes, but with the tax rate to be levied under that authority, and as it involves no decisions based on an arbitrary, hard and fast rule of general application prescribed by the legislature. It is administrative rather than legislative control.

Requiring approval by the electorate of any supplement for the eight months term introduced no new principles into the law. The only authority which ever existed in North Carolina to levy school maintenance taxes without a vote was that to levy taxes to maintain the term required by the Constitution. That burden, for years, was carried by the counties; but the legal necessity for countywide levies for that purpose was removed by the 1931 law under which the State undertook to support the required term. If our courts ever found as a fact that the State was not maintaining that term, then the burden might revert to the counties and maintenance taxes could be levied without a vote; but as long as the schools are operated for six months each year, such a fact would be exceedingly difficult to find.

It was pointed out in the early part of this chapter that, from the beginning, all maintenance taxes levied by any unit less than a county could only be levied by authority of a willing electorate. The same is true of all maintenance taxes levied to maintain a term of more than six months, whether levied by a county or a smaller unit, for a county levying such taxes levied them as a school district and not as a county.

The 1933 law abolished all the old school districts of all types, and abolished their power to tax for maintenance. It follows that no new district could levy such taxes without a vote.

Effect of local tax provisions.

The effect of this is two-fold. First, it greatly simplified and completely standardized the method of supplementing State funds, and eliminated the necessity of forming some special kind of a school district in connection with voting supplements. Every part of the State is now already in a school district which has the power to vote a supplement. Second, it wiped the slate clean and placed squarely up to the voters the question of whether they wished to pay more for better schools than the State thought it could afford to furnish them. It left that question to be decided against the background of present economic conditions, and not against the background of conditions existing in former years when the late lamented school maintenance taxes were voted.

If the scarcity of elections which have been held may be regarded as indicative, the legislature, in adopting this procedure, was fairly accurate in judging the temper of its constituents. Under the new law, 100 county and 67 city administrative units were created. Only two counties (Durham and New Hanover) and fourteen city units (Concord, Lenoir, Newton, Durham, Winston-Salem, Gastonia, Greensboro, Roanoke Rapids, Charlotte, Southern Pines, Rocky Mount, North Wilkesboro, Chapel Hill and Shelby) held elections to vote on supplementing State support during 1933-4. The proposition was defeated in the county elections and in seven of the city elections. A supplement was voted in Lenoir, Durham, Roanoke Rapids, Southern Pines, Rocky Mount, Chapel Hill, and North Wilkesboro, though in the latter place the result is being contested. It will be noticed that in Charlotte, Greensboro and Winston-Salem, always regarded as among the most progressive cities in the State, the electorate said no.

It is being contended with some authority that the present stipend is far too low for the efficient maintenance of an eight

months school. If so, the responsibility rests as much upon depressed times and upon the people of the State as upon the legislature. But it must not be overlooked that the collection of local school maintenance taxes was dangerously near a complete breakdown in many instances, and that units found themselves forced, to paraphrase a recent statement by Governor Ehringhaus, to pay off in promises. It is undoubtedly true that a school system paid for on a niggardly scale is better and has greater possibilities for permanence, despite the grievous losses it will suffer, than one which is not paid for at all.

It should also be kept in mind that the pathway to greater school expenditures has not been completely obstructed. Even those units in which the supplement for the present year was defeated will have the opportunity to reconsider in other years. The history of the development of our school system prior to 1933, and of the increase of the State's contribution from $100,000.00 to $16,000,000.00 per year, is grounded on the effort to lift our poorer schools to something like a parity with our better ones. Local taxation, which made possible our better schools thus automatically raised the standard of parity to be sought for the whole system. At present, the only limitation on the right of local electorates to authorize supplemental taxes to provide better schools is that prohibiting supplements for a ninth month of school by local units in default on their indebtedness.

Creation of the State School Commission.

Now, at long last, we come to the specific provisions of the School Machinery Act and the manner in which it is being put into operation. The principle that the State should control the spending of its own school funds was recognized before 1933. The 1933 legislature recognized that principle when it placed the responsibility of spending the annual sixteen million in the hands of a new State School Commission, which was created by the Act. The composition of this Commission is not greatly different from that of the old State Board of

Equalization. The Governor is Chairman and the members are the Lieutenant-Governor, the State Treasurer, the State Superintendent of Public Instruction, and one member from each Congressional district appointed by the Governor. The disbursement of funds is handled by the State Superintendent of Public Instruction. He makes these disbursements on the basis of monthly requests filed by the local units. He is, of course, restricted by the allotments made by the Commission, and may not make any disbursement to which the Commission objects.

The Commission succeded to all of the powers of the old Board of Equalization and was also granted additional powers, the character of which will subsequently appear. The general situation is that the Commission is charged with managing the financial affairs of the school system, while the State Department of Public Instruction is charged with managing its educational affairs.

The compensation and expenses of the Commission and its staff are paid from the school appropriation. To limit the potential amount of this payment, the legislature limited the pay, expenses and travel allowance of each member to a maximum of $1,000.00 per year, beginning with the second year of the Commission's tenure. The amount was not restricted for the first year because of uncertainty regarding the time and travel which would be necessary in putting the new regime into operation. The salary of the Commission's Executive Secretary is limited to a maximum of $3,600.00 per year and no other Commission employee may be paid more than $2,800.00 per year.

Apportionment of the annual appropriation.

The remainder of the $16,000,000.00 must be divided between the items which the State undertakes to pay. These items are divided into four general classifications. (1) General Control. This classification includes such items as the salaries and traveling expenses of superintendents, the expense of maintaining local school offices and clerical forces, and the com-

pensation of County Boards of Education. It also included, in former years, the salaries and traveling expenses of school attendance officers, and in the school year 1932-3, approximately $52,500 was spent by the State for this purpose. However, the '33 law leaves provision for this item in the discretion of the Commission, with the limitation that the allotment for Instructional Service shall not be reduced by any allotment for attendance. The meaning of this limitation is somewhat uncertain as, given a limited amount of money to spend, it is mathematically impossible to spend any amount of it for any particular purpose without automatically reducing the amount to be spent for every other purpose. The solution to the dilemma is that the State is spending nothing for attendance officers this year. The total spent by the State for all items of General Control in conducting the six months term was approximately $570,000.00 in 1931-2 and $560,000.00 in 1932-3. (As will subsequently appear, these figures for 1931-3 do not include salaries of superintendents of special charter schools. Figures for 1933-4 and 1930-1 do include these salaries.) The amount tentatively allotted for General Control for the eight months term in 1933-4 is $400,000.00. Total expenditures for this item from all sources in 1930-1 amounted to $1,233,000.00.

(2) Instructional Service. This classification accounts for approximately 80 per cent of State school expenditures. It includes the salaries of all teachers and the salaries and expenses of school principals except superintending principals of city units. The number of principals has been greatly reduced this year. It also includes all instructional supplies. Up until this year it included the salaries and travel allowances of rural school supervisors, and in 1932-3, approximately $31,500.00 of State money was spent for this purpose. The new law prohibits any allotment for these supervisors. During 1931-3 this classification also included the salaries of the superintendents of special charter schools. This year, however, the salaries of all such superintendents who have become superintending-

principals of city administrative units are included in General Control. The reason for this shift is that the Act requires that city units shall be treated by the State authorities in the same manner as county units. The total spent by the State for all items of Instructional Service, for the six months term, was approximately $12,537,000.00 in 1931-2 and $12,823,-000.00 in 1932-3. For the eight months term in 1933-4 the tentative allotment is $12,900,000.00. Total expenditures for this classification in 1930-1 amounted to $21,719,000.00.

(3) Operation of Plant. This classification includes janitors' wages, janitors' supplies and the fuel, water, light and power used in schoolhouses. In operating the schools for six months the State spent approximately $851,000.00 in 1931-2 and $788,000.00 in 1932-3. The tentative allotment for the eight months term in 1933-4 is $1,000,000.00. Total expenditures for this classification for 1930-1 amounted to $1,831,000.00.

(4) Auxiliary Agencies. This classification consists of transportation (school busses), the upkeep of school libraries and the expense of school health programs. Of the money spent by the State for these items in operating the six months terms in 1931-2 ($1,675,000.00) and 1932-3 ($1,582,000.00), approximately 98 per cent went for transportation and substantially all the balance for libraries. Nothing was spent on health in 1931-2 and only $15,000.00 in 1932-3. The tentative allotment for all three items for the eight months term in 1933-4 is $1,700,000.00, of which $1,600,000.00 is allotted for transportation. Total expenditures for Auxiliary Agencies in 1930-1 amounted to $2,609,000.00, of which $2,174,-000.00 was for transportation. The law requires that all children living more than two miles from the school to which they are assigned must be afforded transportation, but beyond that the law specifieth not. The Commission, in attempting to make the $1,600,000.00 cover the cost, drew the line at two miles and left all those living less than that distance from school to furnish their own means of locomotion. The resound-

ing controversy which this aroused is still fresh in the minds of rural school patrons and the newspaper reading public. Its present status is that the Commission has ruled that County Boards of Education may provide transportation for children living within two miles of the school if the bus is not loaded to capacity by the children living outside the limit. Each Board is its own judge of when a bus is loaded to capacity. The Board is required, however, to give preference to children under ten years of age and to children who are physically unable to walk to school. The Board is further prohibited from adding any busses or additional mileage which will increase the cost of transportation.

One other serious problem has arisen with respect to transportation, and that is whether the State has assumed the burden of providing, as well as of operating school busses. The '33 Act vests the "control and management" of all school transportation facilities in the State. It allows the Commission to make rules regarding the operation of the transportation system, and requires inspection of each vehicle at least every thirty days. It allows the Commission to make arrangements with the State Highway and Public Works Commission for use of the latter's facilities for repairs, maintenance and labor (at the cost of the school fund). It allows the School Commission to approve or reject all routings for school busses fixed by County Superintendents and Boards of Education. Undoubtedly all of these provisions mean only that the State will operate the transportation system, and do not necessarily imply that the State will provide the equipment for the system. The Act, however, went further. It required all local authorities to turn over such equipment to the Commission, and provided for an inventory and an appraisal by the latter. Finally the Act prohibits local authorities from selling or disposing of transportation equipment without the consent of the School Commission. This last provision certainly seems to mean that title to the equipment remains vested in the local authorities (the County Boards of Education in most cases), even though their

right of disposal is limited. From this premise it may be argued with considerable force that if the State did not take title to the old equipment, it did not contemplate furnishing the new equipment; and that school busses, like school buildings, must be furnished by local money, even though they are operated by the State. An interesting contrast in this respect is the State Highway Law, by which the State both took title to old equipment and assumed the burden of providing all new equipment.

The School Commission, with its limited appropriation, has naturally taken the position that the State is not obligated to furnish busses. In this position it seems to be supported not only by the above line of reasoning, but also by the provisions of section 5596 (b) of the Consolidated Statutes. That section defines what items must be included in a county's Capital Outlay school budget. One of the items there mentioned is the purchase of vehicles for transportation. This provision was not expressly repealed by the 1933 Act, and, unless it was impliedly repealed by the transportation provisions already summarized, the counties are still obligated to furnish the busses, as the State has not assumed Capital Outlay items. The Attorney General, on August 29, 1933, wrote A. W. Brickhouse, Chairman of the Tyrrell Board of Commissioners, that he was inclined to think that the State, under the 1933 Act, had assumed the burden of providing the busses, and doubted that a county might levy taxes for this purpose. He regarded the matter as very doubtful, however, and thought it could only be authoritatively determined by the courts. Tyrrell County did raise the question in court but apparently the proceeding was dropped when the Tyrrell transportation problem was amicably adjusted otherwise. What the court's opinion will be, if the matter is again presented, the writer is unable to predict.

Local budgets, expenditures and supplies.

Returning now to the duties of the School Commission, it is charged with the approval of all local school budgets in so

far as they contemplate the spending of State funds. It is also charged, as has been pointed out, with the duty of approving those budgets which contemplate the spending of local funds. This includes debt service as well as supplemental operating budgets. The Commission must also, through the State's Division of Purchase and Contract, purchase all school supplies, including those used in any locally financed ninth month of school.

The Commission must allot the compensation for County Boards of Education and for County Superintendents. These allotments must be made within the bounds prescribed by the legislature and will be discussed further as the new school organization is unfolded. The Commission also is required to allot the number of teachers to which each school is entitled and to fix the salary schedule for superintending principals, teachers and all other school employees.

Salaries.

In fixing salary schedules the Commission is circumscribed by two things. First, the Appropriations Act required 35 per cent reductions in superintendents' salaries from 1932-3 levels, and reductions of 35 per cent in the salaries of principals and 30 per cent in the salaries of teachers and all other school employees from the schedule nominally in effect on July 1, 1930. The provision regarding superintendents was superseded, as the legislature itself, in the School Machinery Act, prescribed the yardstick for their salaries. As to other salaries, in view of the second limitation, which was the limited appropriation made, it was largely unnecessary.

The tentative schedule for teachers is based, as in the past, on the two factors of the type of certificate held by the teacher and the length of the teacher's experience. For 1933-4, for 8 months of 20 teaching days each, the teachers with Class A High School, grammar grade or primary certificates will receive a maximum of from $560.00 to $720.00, based on the length of their experience. Teachers holding Class B

certificates of the same type will receive a maximum of from $480.00 to $600.00. Those with Class C certificates of the same type will receive a maximum of from $440.00 to $520.00. Those holding only elementary certificates will receive, if the certificate is Class A, a maximum of from $400.00 to $440.00. Those holding only elementary Class B certificates and non-standard teachers will receive a maximum of only $360.00 regardless of their experience.

The schedule for principals is based on the two factors of the number of teachers in the principal's school building and district, and the length of the principal's experience. It begins with a maximum of from $760.00 to $920.00 for principals in seven-teacher schools and ranges gradually up to a maximum of from $1,720.00 to $1,880.00 for principals in schools with 50 or more teachers. There is some variation between the method of determining the number of teachers to be included in arriving at the salaries of principals in city administrative units and the method used with respect to principals in county units. There are numerous questions relating to the rating to be accorded principals, which seriously affect the salaries of individual principals, which have not yet been finally determined on a State-wide basis. Consequently, wide variations from the regular schedule may be found in the salaries of individual principals. The salaries of superintending principals of city administrative units will be mentioned subsequently.

Under the Act white principals of all kinds, whether superintending or otherwise, are paid on a basis of white teachers, and colored principals are paid on a basis of colored teachers. Only the County Superintendent is paid on the basis of teachers of both races.

These schedules represent the maximum salaries which may be paid from State funds by County Boards of Education and city boards of trustees. The Commission has arranged a schedule for maximum janitor's wages which varies with the type of buildings, the number of buildings, the heating plants to be tended and other factors. The maximum payable is about

$300.00. The salaries of school bus drivers and clerical help are to be determined by local authorities, so long as they stay within the State's allotments, which are meagre. The single exception is that student drivers may not be paid more than $7.50 per month.

Finally, with respect to salaries, the Commission has power, under the Act, after finally providing for General Control, Operation of Plant and Auxiliary Agencies as economically as possible, to increase or decrease, on a uniform percentage basis, the salary schedules for superintendents, superintending-principals, principals and teachers.

Variation in school terms.

The Commission may discontinue the last two months of the eight months term in any school when necessity requires or when it believes that the low average attendance at that school renders operation unnecessary. This power is also vested in the County Board of Education. The Commission and the local school authorities (but not either acting separately as in the last situation) may also permit any school to operate six days each week instead of five or to add an hour to each school day, thus speeding up the completion of the eight months term. This is apparently designed to meet the rural demand for children as farm labor. In such cases the Commission is empowered to adjust teachers' salaries "on an equitable basis." This seems to mean that such teachers' monthly pay checks would be increased, but that their total compensation might be decreased. So far neither of these arrangements has been made at any school.

Results of Commission's reorganization of districts.

Finally, in addition to the more minor duties of the Commission which will be mentioned from time to time, it was charged with the duty of creating new school districts throughout the State. This was almost undoubtedly the most important new function delegated to the Commission. The latest figures regarding the total number of special school districts (other

than special charter districts) available at present at the State Department of Education are those for 1930-1. In that year there were 2,408 white school districts in the State, of which 1,168 levied special maintenance taxes, and 1,813 colored districts, of which 490 levied special maintenance taxes. The great majority of the colored districts, however, were coterminous with white districts. The existence of all these districts, with their hard and fast lines, and with widely varying terms and revenues, created many problems in school administration. Dr. Allen, in his last report to the legislature, pointed out one instance where there were forty vacant classrooms in modern buildings in one county, while within striking distance of these buildings there were thirty one-teacher and two-teacher schools. District lines and the differences in the length of terms made the consolidation impracticable. He also estimated that if the old district lines were removed a hundred small high schools could be consolidated with other high schools at a saving of $150,000.00. It was fairly evident that a revision of district lines would not only result in a considerable monetary saving, but would also afford a great opportunity for more efficient administration.

The Commission was given almost blanket authority to proceed with this revision and to designate what type of instruction should be given at each school. The only restrictive rules made by the legislature with regard to these matters were: (1) The Commission was required to seek the advice of County Boards of Education in establishing new districts. It was not required to take that advice. (2) It was also required to consider the recommendations of those Boards with regard to the schools to be used as high schools, but was not required to abide by them. (3) It was prohibited from operating a high school with an average daily attendance of less than 60 pupils or an elementary school with an average of less than 25 unless forced to do so by unusual geographic or economic conditions. (4) It was required to incorporate into the local district school system all vocational and farm life schools which

formerly served as high schools but were administered as separate units. Except for these restrictions, the Commission's discretion in redistricting the State was complete. It was allowed to include parts of two or more counties in any district, and was also allowed to consolidate any schools, regardless of the fact that they might be located in different counties. Further, once it has established the districts, it is still authorized to allow children residing in one district to attend school in another, provided there is room for them in the latter district's schools. The job of redistricting is now substantially complete and the Commission has established 867 new districts. This figure includes colored as well as white districts in the sense that all colored districts are coterminous with the white. This is to be contrasted with the former 2,408 white districts and 1,813 colored districts, some of which had separate boundaries.

The Commission was not allowed so broad a discretion in establishing administrative units. The statute itself provided that each county should be an administrative unit. The statute also required that all old special charter districts which were divided about equally by a county line, and which had a school population of 3,000 or more in 1932-3, should be designated as a city administrative unit. (This last restriction covered only the situation existing at Rocky Mount). The Commission was also allowed to designate as a city administrative unit any new district in which a special charter system was formerly operated and which had a school population of 1,000 or more in 1932-3. Under these provisions the number of county administrative units, of course, remained the same, but the number of city administrative units established is 67, as compared with the 92 special charter districts in 1932-3.

There now remain to be discussed, with respect to the new organization, only the powers and functions of these administrative units and the duties of their officials. The first is the county administrative unit.

Organization of the county administrative unit.

The governing body of this unit is the County Board of Education. It is required to meet at least four times a year, and the compensation of each Board is limited to $100.00 per year as far as the State is concerned. This apparently includes traveling expenses. The Board makes the contracts with all teachers in the units, though it has no discretion in selecting the teacher. It is also charged with the duty of preparing and submitting to the School Commission and to the tax-levying authorities all necessary budgets, whether for debt service, capital outlay, maintenance of plants or the operation of the schools. It has the power to require the County Commissioners to call an election to vote on the supplementing of State funds. It also appoints the local committeemen for each district in the unit, and, subject to the approval of the School Commission, and the State Superintendent of Public Instruction, elects the County Superintendent.

The administrative officer of the unit is the County Superintendent, who, among other things, may approve or reject all teachers selected by the local committeemen, and who has active charge of running the schools in the unit. His salary is regulated by the Act and is based on the number of teachers under his supervision. If there are 100 or fewer teachers in his county unit he receives $1,400.00 per year. For each ten additional teachers he receives $50.00. The maximum he may receive is $2,800.00. Teachers in any city administrative unit which lies within his county are not counted in figuring his salary. If he can obtain the permission of the School Commission, and is requested to do so by the local authorities, he may also serve as county welfare officer and receive extra compensation from the county. This extra compensation may not be paid from county school funds.

Power of county unit with regard to taxes.

The county unit, as such, has no tax levying powers. It may, however, request an election to determine whether State

school operating funds shall be supplemented, and, if the county is not in default on its debts, to determine whether a ninth month of school shall be operated. The Attorney General has expressed the opinion, in a letter of June 15, 1933, to Ray Funderburk, Superintendent of the New Hanover Schools, that if a unit wishes to vote both on extending the term and on supplementing State funds for the eight-months term, the election must be on the maximum tax rate required for both purposes, and not on the tax rate for each purpose separately.

The Attorney General has also ruled, in a letter to Parrish and Deal, Winston-Salem attorneys, dated July 8, 1933, that the tax levying authorities must call the election when requested and must submit at the election the tax rate requested by the Board of Education; that the request need not be submitted by June 15 of the year in which the election is to be held, as the law might be construed to mean, but may be presented later when a proposed supplemental budget is submitted; and that the authority to levy taxes up to the maximum rate, once conferred by the election, continues from year to year, though each year the amount actually to be levied must be approved by the taxing authorities. The amount to be levied must also be approved by the School Commission. Any tax levied under authority of an election should be levied only in those parts of the county which are included in the county administrative unit.

The Attorney General has expressed the opinion to Dr. Allen, in a letter of June 23, 1933, that, in counties containing a city unit, the election should not be held jointly, with the money being divided on a per capita basis between the county and the city unit, but should rather be held separately with each unit fixing its own rate and paying its own taxes. The Attorney General, however, regarded the matter as extremely doubtful, and suggested that a case be constituted for court decision. The only such case which has yet arisen was in Durham where the county and city voted separately. The procedure there was not tested in court. As the county election

failed and as the city unit undoubtedly has the power to vote a supplemental levy without waiting for the county to do so, the question has become unimportant there, at least for the time being. These supplemental taxes are the only ones which may be levied as the result of action taken as an administrative unit. The taxes which may be levied by the county as a county will be dealt with subsequently.

Organization of school districts.

Each district within the county unit is presided over by a board of three committeemen appointed by the County Board of Education, except in those 25 districts which include a former special charter district not constituted as a city administrative unit. In those cases the governing body of the old special charter district is retained, is still vested with title to all the property of the former district, and is subject to reappointment or reëlection under the former laws. However, if one of these districts contains more territory than the old district, no doubt citizens living anywhere in the new boundaries would be eligible to serve on the governing board, despite any restrictions in the former laws. In all other respects, these few districts are like all other local districts.

The local district committeemen may be inclined to approach their jobs with a certain amount of ennui. They have practically no powers except the power of selecting teachers for schools in their districts, and their action in that respect is subject to the approval of the County Superintendent. They are prohibited by the Act from discriminating against married teachers. The law makes no provision for any compensation for committeemen. The districts themselves are without power either to levy taxes or, as districts, to vote for the levy of taxes. They can vote for supplemental levies only when the whole county administrative unit votes.

The schools in the district are, of course, under the general supervision of the County Superintendent. The Act provides that they are also entitled to a superintending principal (that is, a superintendent who devotes his full time to executive work

and does no teaching) if they have 50 teachers allotted to them, and to one additional superintending principal for each 40 teachers in addition to the first 50. The Act also allows a teaching principal, in addition to the superintending principal, in districts having only 75 teachers. These provisions of the Act do not expressly prevent the assignment of principals for a smaller number of teachers.

Organization of city units.

Each city administrative unit is governed by the same board which governed the old special charter district included in it. This board retains the title to all the property and is elected or appointed in the same way as formerly. It has almost the same powers and duties within the city unit as the County Board has in the county unit; but the law contains no provision for their compensation. There are, of course, no districts in the city units; but, with the exception that each city is entitled to at least one superintending principal, regardless of the number of teachers allotted to it, it is subject to the same rules regarding principals as the county schools; and the principals of particular schools are paid by the same schedule, with some variations already pointed out. The superintending principal has the same functions in the city unit as the County Superintendent has in the county unit, except that there is no provision allowing him to act as welfare officer. A white superintending principal is paid on the basis of the regular principal's schedule and receives, in addition, $8.00 per year for each teacher under his supervision in excess of 50 and up to 125. For each teacher over 125 he receives $4.00 per year, but his maximum salary is $2,800.00 per year.

City unit's power with regard to taxes.

The city unit has substantially the same right as the county unit to hold an election on the question of supplementing the State funds. The mechanics of calling the election are the same, except for the fact that the Attorney General has ruled

that where the unit includes only territory within an incorporated city, the request for the election must be directed to and the election must be called by the city rather than by the county tax-levying authorities. The elections, in both city and county units, must be held as nearly as possible under the old school tax election laws. (Consolidated Statutes, secs. 5639-41 and the 1929 Australian Ballott Law). The question of who is to bear the expense of the election has never been settled. The common sense view of it taken by Dr. Allen, with respect to city administrative units, is that if there are maintenance funds of the old charter district on hand it may be paid from those; if there are not such funds and the election carries, the expense may be paid from the new tax levy, whereas if the election is defeated the unit governed by the tax levying authorities who called it must pay the cost. With respect to county units, the first alternative would probably not be available, unless there was formerly a county-wide school district in the county, except to the extent that funds earmarked for the six months term were available, as other funds of districts smaller than the county unit could hardly be used to finance an election throughout the unit.

Any supplemental tax voted by a city unit will be levied by the same taxing authorities who called the election, and will be levied only on property lying within the unit. Apparently no taxes whatever may be levied solely within the city administrative units, as such, without a vote. This is somewhat confusing to those who know that the old special charter districts levied taxes for certain purposes, in addition to debt service (which must be treated separately), which have not been assumed by the State. It is also confusing to the casual reader of the School Machinery Act, who may have assumed that the Act provided for taxes to be levied without a vote, solely in city units to provide for three classifications of items falling in this category.

(1) Maintenance of Plant (repairs, replacements, furniture, installation of heat, light, and plumbing, and similar items) and Fixed Charges (rents and insurance). The Act provides that all income of the County Public School Fund derived from fines, dog taxes, poll taxes and any other source except State funds shall first be devoted to paying these items. If a surplus is left it may be used to supplement State operating funds. (This is the only express authority in the law for the use of funds secured other than by vote to supplement items assumed by the State). If, however, these funds are insufficient to meet the charges against them the Act requires "the tax levying authorities *of the said administrative unit*" to levy taxes to pay the deficit. In counties having a county auditor, the auditor must make a quarterly check of all court records and make certain that all fines are being promptly paid to the school fund, and must also see that dog and poll taxes are being promptly so paid. If there is no auditor this duty devolves on the county accountant; if there is no accountant it devolves on the county manager; and if the county has neither of these officers it devolves on the County Superintendent.

(2) Vocational Agriculture and Home Economics. The Act provides that none of its provisions shall prevent tax levying authorities in "*any administrative unit*" from levying taxes for teaching "vocational, agriculture and home economics," if taxes were being levied for such purposes when the Act was passed. The last quotation has so far been construed as if the comma between "vocational" and "agriculture" were not present, thus automatically ruling out taxes for any vocational training except agriculture and home economics. This, however, does not settle the question as to whether such taxes may be levied by the city units without a vote.

(3) The expense of furnishing bonds for local officers handling State school funds, and the expense of auditing school funds. In both of these instances the Act requires the tax

levying authorities in *county and city administrative units* to make the necessary provisions.

With respect to all three of these cases, the Attorney General ruled, in a letter of July 19, 1933, to Dr. Allen, that taxes could be levied without a vote only by the county, as county-wide taxes. The rationale of these rulings goes back to the old conception, already mentioned several times, that the county alone is charged with the duty of levying taxes for support of the Constitutional six months term, and that any unit less than a county may levy, even for the constitutional necessities, only by authority of a vote. Since all old districts were abolished, save for debt service purposes, the authority of the vote which authorized charter district levies for these purposes has terminated, and the new city administrative unit does not succeed to it, even though its boundaries may be coterminous with those of the old charter district. The legislature may, within reason, prescribe what is necessary for the six months term and require the counties to pay for it; but it may not constitutionally require the city units to do so, or even authorize them to do so except by vote. Thus, the county alone must levy these taxes, and this is presumed to be the legislative intention, despite any inferences to the contrary which might otherwise be drawn from the language quoted above. And thus is the nectar of legislative intention drawn from the stubborn flower of the legislative language.

With respect to the amounts necessary to provide for the auditing of local school funds, it is probable that any such amounts necessary to provide proper audits for debt service funds of a city unit could be included in the debt service tax levy. Under the above reasoning all other auditing expense would have to be included in tax levies made by the county to support the six months term unless included in taxes levied by authority of a vote.

Miscellaneous levies by the county.

With respect to other types of taxes, not yet mentioned, it is appropriate to point out the ruling of the Attorney

General, contained in a letter of June 16, 1933, to Dr. Allen, to the effect that a county may issue bonds and levy taxes, without a vote, to provide necessary school buildings and equipment, but that a city administrative unit may not. The considerations involved are the same as those just discussed. The question as to whether a city unit could vote to issue bonds or levy taxes for such a purpose has not been raised and may not be for some years, but the probable answer is that it could.

The Attorney General has also ruled that provision for adequate sanitary conditions in schools is a necessary part of provision for the six months term and, as the State has not assumed this function, the counties should levy taxes to provide sanitation. This ruling is contained in a letter of August 9, 1933, to Dr. J. M. Parrott, Secretary of the State Board of Health.

The problem is not settled completely, however, merely by deciding that only the county may levy these taxes. The Act provides that all county-wide school funds must be apportioned between county and city administrative units on a per capita basis. It is a perfectly plausible assumption that in some instances collections from fines, poll and dog taxes might, when distributed on this basis, meet the plant maintenance costs and fixed charges of the county unit and not meet the same items in the city unit. In other words, it is perfectly obvious that needs of city and county units for plant maintenance, fixed charges, vocational agriculture and home economics, audit expense and bond expense are not going to vary in direct ratio with their respective populations. In view of the specific wording of the Act, however, it is doubtful if the situation can be remedied during the present biennium unless by a court action based on the Constitutional requirement to support the six months term. It seems to be chiefly a situation which calls for legislative action. If the State for years relied on the equalization principle, it seems that the counties might be permitted to do so in a lesser way.

There is also one angle of the vocational agriculture and home economics situation which does not seem to have been stressed. It turns on the fact that the Act apparently prohibits the levy of taxes for these purposes, without a vote, even by a county, unless similar taxes were being levied when the Act was passed (that is, during the school year 1932-3). The Attorney General, in a letter of June 15, 1933, to T. E. Browne, State Director of Vocational Education, construed this broadly so that counties which had used part of their 1932-3 tax funds for such purposes could continue to levy such taxes, even though they had designated no particular part of the 1932-3 levy as being for those purposes. In the same letter he held that the new levies might be spent partially in particular schools in which these subjects were not taught before, so long as the county had levied taxes for the general purpose in 1932-3. Even with this broad construction, however, it is doubtful if the limitation placed on counties making no levy for the purpose in 1932-3 is valid. The rationale of allowing such levies is, as already pointed out, that they are necessary for the Constitutional six months term. The levy is optional in the counties where it may be made and subject to the approval of the School Commission. No doubt this may be justified on the ground that, under varying local conditions, county authorities and the Commission are entitled to some discretion in deciding what is necessary. If the option were allowed all counties it would no doubt satisfy the constitutional requirement (which binds the lawmakers, though not the voters) that the six months term be uniform. But for the legislature itself to say, as apparently it has in the Act, that these subjects are necessary in some counties and unnecessary in others, purely on the arbitrary basis of whether a tax was levied for them in a particular year seems at least dangerously close to violating that requirement.

Old districts preserved only to pay their debts.

Only one other feature of the Act's express provisions remains to be considered, and that is the status of the old school

districts. So far as the Act is concerned these continue to exist for the sole purpose of cleaning up their debts. They will continue to exist for that purpose until all of their debts have been paid. The Act does not specify who is charged with the duty of making up the debt service budgets. Apparently, the board of trustees of a city unit would have the duty for an old charter district, and in all other cases presumably the duty would fall on the County Board of Education.

Disposition of uncollected taxes of old districts.

The Act provides that all uncollected district maintenance taxes of any kind must be applied to the old district's debt service requirements, after satisfying unpaid vouchers issued to teachers, which are made a prior lien on taxes collected for the years in which the vouchers were issued. If there is no debt service requirement, after paying the teachers as specified, the delinquent tax collections, according to the Act, go into the county school debt service fund. The Attorney General has ruled, however, in a letter of June 29, 1933, to Dr. Allen, that in this latter respect the Act is not to be construed literally. He is of the opinion that these maintenance taxes, in districts where there is no debt service requirement, must be used in accordance with the purpose for which they were authorized by the voters, that is "to supplement the funds for the six months public school term for that district." There would seem to be just as valid a reason for saying that such taxes in old districts having debt service requirements may nevertheless be used to supplement State funds. If the essence of the argument is, as it appears to be, that the legislature cannot be presumed to intend to change the purpose for which the people voted the taxes, it is difficult to see why turning district maintenance funds into district debt service funds is not just as much of a change of purpose as turning the same funds into county debt service funds. The difference is solely one of degree, and not one of principle. So far, however, this attitude does not seem to have been taken. Before leaving this subject it may be pointed out that our Constitution expressly

requires that taxes levied by the General Assembly must be used for the purpose for which they were levied, and for no other purpose. It is silent with respect to taxes levied by local authorities by permission of the voters.

Be that as it may, there are at least three situations along the same line which the Act failed to cover: (1) The situation where a district had unexpended maintenance funds on hand when the Act went into effect on May 15, 1933. The Attorney General ruled, in the letter of June 29 to Dr. Allen, that these might be used to supplement State funds in schools in the old district. (2) The situation where uncollected maintenance taxes might more than offset debt service requirements and obligations to teachers. Apparently this would fall squarely under the Attorney General's ruling regarding such taxes in districts having no debt service requirements. (3) The situation where there were uncollected county-wide maintenance taxes. Here again the Attorney General has ruled, in a letter to Dr. Allen on July 11, 1933, that these taxes may be used to supplement State funds in subsequent years.

With respect to uncollected debt service taxes, there is no question but that they will go, when collected, to the old district's debt service fund. There is also little doubt that debt service taxes must continue to be levied in the old district until all debts are paid; that these levies must take care of operating deficits incurred by the old districts as well as ordinary debt service; and that they must also take care of obligations incurred by the old districts in the expectation of paying them from future budgets, such as teachers' salaries for July and August, 1933, in schools which were paying teachers on a 12 months basis. The question of what will happen to any surplus remaining out of old and new levies when all these obligations have been paid has not yet arisen, and, in all probability will not arise before there is another opportunity to give it legislative attention.

Assumption of district debts by counties.

The Act expressly does not destroy any of the rights of the old districts to require the county to assume their debts. This apparently has reference chiefly to Chapter 180 of the Public Laws of 1925 and Chapter 299 of the Public Laws of 1933. The first of these Chapters authorized counties to assume any school district indebtedness incurred by districts in the county to erect and equip school buildings necessary for the six months term, and to levy county-wide taxes for payment of the debt. This, of course, is in perfect accord with the concept that counties are obligated to provide these school buildings. Unfortunately the Chapter was not passed with the proper formalities of roll call votes on separate days, required by the Constitution in the case of a statute authorizing a tax levy, and hence, under our court's decisions, taxes levied solely by its authority were void. The 1933 Chapter, which was passed with the proper formalities, undertook to cure this defect and to validate all action taken under the 1925 law. Under other decisions of our court, the cure was apparently successful, despite the fact that, without it, the former law was not merely voidable but was void. (These decisions may be found in the annotations in Michie's Annotated Code of 1931 under Art. II, section 14 of the Constitution). The Attorney General has ruled, in a letter of June 16, 1933, to Dr. Allen, that a county may not take over a fraction of all district debts and leave the remainder on the districts. He has also ruled that if a county takes over the debts of some old districts it must take over the debts of all, including debts of the old special charter districts, and the Sixteenth District Superior Court in a case brought by Hickory and Newton districts against Catawba County has so held. At this writing this case has not been decided by our Supreme Court.

Intention to reduce taxes expressed.

The final provision of the Act with respect to taxes is that "it is hereby declared to be unlawful, for any Board of County Commissioners or other School units for the years 1933, 1934 and other fiscal years succeeding to make any tax levy which in the gross does not reflect the savings to the taxpayers of the fifteen cent ad valorem state-wide tax for schools, and all reductions in special school district ad valorem taxes affected under the provisions of this act." This provision is so difficult to construe, particularly in cases where debt service taxes must be increased to make up for prior deficiencies, that it probably could not be enforced. It certainly could not be enforced with any degree of precision.

Effect of Act on county welfare work.

One other by-product of the School Machinery Act is worth mentioning. Before its passage the Superintendent of Public Welfare, or the County Superintendent of Schools acting also as Welfare Officer, was paid partly from ordinary county funds and partly from the funds under the control of the Board of Education. The Attorney General, in a letter of July 19, 1933, to Dr. Allen, has construed the Act to mean that no school funds may be used to pay a Superintendent of Public Welfare, and that any extra compensation paid a County Superintendent of Schools for welfare work may also not be paid from school funds, either State or county.

B.—CHANGES IN LAWS REGARDING TEXTBOOKS

Next in importance, with respect to schools, to the School Machinery Act, is Chapter 464, Public Laws, dealing with the selection of school textbooks. The important changes in the system effected by this Chapter were: (1) The State Board of Education was authorized to select supplementary books and instructional materials to be used in elementary grades, as well as the so-called basal books. (Basal books are those which contain the basic outline of the course to be taught,

and supplementary books are those used to expand the course and to elaborate upon the outline furnished by the basal books.) Heretofore supplementary books and instructional materials were selected by County Boards of Education and local boards of trustees. The change was made with an eye to promoting uniformity and to effecting savings for school patrons. Formerly, in a course such as reading, the number of supplementary books used in different schools ranged from two to thirty. A number of these books are comparatively costly, and it was felt that with uniform selections both cost per book and aggregate cost might be reduced. (2) The State Textbook Commission, which submits to the Board of Education a list of elementary textbooks for adoption by the latter, was required to submit at least four and not more than eight basal books on each subject in each grade. Formerly it was required to submit a list of not more than six where two basal books were to be used for a subject; otherwise not more than four. There was no requirement that any minimum number of books be submitted. (3) The State Board was given power to purchase books in manuscript form and have them printed and distributed, if it finds that it can secure adequate books in this fashion at a lower cost than it can purchase books from publishers. This power may be used to purchase either elementary or high school books. Further, it apparently may be exercised by the Board without waiting for recommendations by either the Textbook Commission or the State Committee (which recommends high school books). It seems to be among the most important of the changes made by the new law. Whether intended as such or not it is a potential weapon against the activities of what the state's press is accustomed to calling "the textbook lobby." (5) Finally the State Board was given express power to make any contracts it considers advisable for the distribution of textbooks. It may utilize for this purpose the State Division of Purchase and Contract or any other State agency, and may also utilize County Boards of Education and city boards of trustees. It

may also use either a central or local depository, or both. Included in these powers are powers to regulate the disposition of books not sold to school patrons, to contract with publishers for the distribution of their books, and to require bonds of those handling books and the proceeds of their sale. The Board probably already possessed most of the powers enumerated by this statute with respect to book distribution. The real purpose of the legislature, apparently, was to make certain of the matter and to place in the Board's hands express powers which would serve as a potential weapon against the present system of distribution, long contended by many to be a private monopoly. As no books have been adopted since the legislation was passed, no change has yet been brought about in the distribution system; nor has the power to purchase manuscripts been tested.

One important provision of this statute was eliminated during a rather hectic legislative career. It would have placed high school textbook recommendations, as well as those for elementary books, in the hands of the Textbook Commission.

C.—Miscellaneous Laws Affecting Public Schools

The remaining legislation affecting schools is composed of ten laws dealing with rather diverse subjects. As none of them requires lengthy discussion they will merely be listed in summary fashion.

(1) Chapter 52, Public Laws, relieved teachers and principals of the obligation to attend summer school during the summers of 1933, 1934 and 1935 in order to preserve the status of their certificates. This was reënacted by the School Machinery Act, which also preserved all credits already earned by teachers and principals in summer school or extension work.

(2) Chapter 497, Public Laws, authorized all colleges in the State to aid public school teachers and prospective teachers to secure, raise, or renew their certificates, subject only to the State Board of Education rules.

(3) Chapter 220, Public Laws, is intended, according to its preamble, to stop the exploitation of the schools in connection with selling and advertising campaigns. It declares that soliciting or attempting to sell or explain any article of property or any proposition to any teacher or pupil of any public school, either on the school grounds or during the school day, without first obtaining the written permission of the superintendent, principal or person actually in charge of the school is a misdemeanor, punishable by fine or imprisonment as the court directs. It will be noticed that this statute is drawn in such sweeping terms that it will undoubedly, if interpreted literally, include situations which the legislature hardly intended to include.

(4) The purpose of Chapter 202, Public Laws, is not difficult of perception. It provided that no appointments of County Superintendents or District School Committeemen, attempted to be made by a County Board of Education scheduled to be superseded by a Board to be appointed by the 1933 legislature, should be valid, but, on the contrary, that any such appointment should be "null, void, and of no force or validity." Which seems plain enough. It also provided that the Boards appointed in 1933 should, "as soon as practicable" after the first Monday in April, appoint Superintendents and Committeemen. This "as soon as practicable" turned out to be sometime after the eleventh of May, as (5) Chapter 421, Public Laws, which made the 1933 Board appointments was not ratified until that date. This was just as well, as the School Machinery Act considerably reduced the number of committeemen to be appointed. The Act also fixed May as the time for the appointment of Superintendents. Chapter 421, incidentally, required the Board members appointed on May 11 to qualify by taking the oath of office "on or before the first Monday in May, 1933."

(6) Chapter 385, Public Laws, incorporated the North Carolina State Thrift Society, a non-stock corporation whose members are the State Treasurer, the State Superintendent

of Public Instruction, the President of the North Carolina Bankers Association, the President of the University, and four bankers, two other business men and six educators appointed by the Governor. Its purpose is to receive deposits from students in the public schools and colleges of the State, with a limit of $1,000 on each account. Deposits bear no interest, but are not subject to State taxation except for gift and inheritance taxes. The Society's funds, which are kept by the State Treasurer, may be invested in North Carolina or United States securities or loaned to students in any college in the State on a note signed by the student and two endorsers certified to be each worth the amount of the loan by a Clerk of the Superior Court and a Register of Deeds. The Society may also receive gifts for this purpose. It must meet all expenses it incurs out of its own funds or the interest on its investments, as the Chapter expressly provides that its activities shall entail no expense to the State.

(7) Chapter 481, Public Laws, supplemented this by requiring the State Superintendent of Public Instruction to provide for instruction in thrift and the principles of saving in the public schools. The Act contemplates also that arrangements be made, under the direction of some teacher in each school, for receiving student deposits in the Thrift Society. As the Society's members, other than the State officials named, have never been appointed, neither the instruction nor the saving is yet under way.

(8) Chapter 473, Public Laws, required County Boards of Education and governing boards of special charter schools to survey the school fuel needs and determine whether they could use wood as fuel economically. If they found that they could do so they were permitted to contract for an adequate supply and, as the avowed purpose of the Act was to bring about a market for "farm products" and turn money into local channels of trade, they were expressly permitted to split their orders between various bidders. The State Board of Equalization and the Division of Purchase and Contract were

directed to coöperate in this program. The statute was passed before the School Machinery Act and its language is hence slightly anachronistic, but the School Commission has allowed local boards to purchase wood if they so desired. The statute did not apply to Mecklenburg.

(9) Chapter 494, Public Laws, provides that County Boards of Education may sell schoolhouses or school property which has become unnecessary for school purposes by selling at public auction after advertising in the same manner as if the property were being sold under a deed of trust. The sale must be reported to the Clerk of the Superior Court and held open for ten days to allow increased bids to be filed. If the bid is increased the property must be re-advertised in the same manner as resales under deeds of trust. The deed to the ultimate purchaser is to be signed by the Chairman and Secretary of the Board and the proceeds are to be paid to the Treasurer of the County School Fund. The chief change effected by the statute is to eliminate the power the Boards formerly had to reject all bids received at the auction and sell at private sale. The weakness of the statute is that it does not specify how much the bid must be increased or whether any deposit must be made with the Clerk by the increased bidder. Only the advertising is expressly required to be the same as that in sales under deeds of trust; but the statute might possibly be construed as intended to adopt the entire deed of trust sale procedure, in which case the bid must be increased 10 per cent if the price is $500 or less and 5 per cent where the price exceeds $500, and the amount of the increase must be deposited with the Clerk.

(10) Chapter 411, Public Laws, vests in the State Board of Education all rights and title in lands reclaimed by the dredging of the Intra-coastal Waterway from Beaufort Inlet to the Cape Fear River and from there to the South Carolina line, except for easements and rights already conveyed to the Federal Government. This is in line with the fact that title to all the State's swamp and marsh lands is vested in

the Board; and this, in turn, is based on the Constitutional requirement that the proceeds of sale of all State-owned swamp lands must be used for educational purposes.

II. COLLEGES

The most important statute affecting the colleges of the State was the Appropriations Act, Chapter 282, Public Laws. In the first place it required salaries in the various educational institutions to be reduced at least 32 per cent below the salary schedule in effect on July 1, 1930, taking into consideration differences in organization, staff requirements and such other factors as might have changed the basis of comparison.

It also, of course, made the appropriations for all of the State's educational institutions for the present biennium. The best comparative method of presenting this is by a table showing appropriations for this biennium and the preceding two. The appropriations given for 1929-31 for the Consolidated University comprise the total of appropriations made separately to the University proper at Chapel Hill, State College and North Carolina College for Women, as the consolidation did not take place until 1931. All the figures given represent the average appropriation for each year of the biennium and not the appropriation for the two years combined. Only the appropriations for the University and the State's colleges and Normal Schools are given. The appropriations for the State School for the Blind and Deaf, for the North Carolina School for the Deaf, and for Blind Student Aid, while carried in the same division of the Act, are more public welfare than higher education appropriations. The comparisons follow:

	1929-31	1931-33	1933-35
Consolidated University	$1,777,762	$1,453,800	$ 832,240
Coöperative Agricultural Extension, directed by State College	175,000	125,000	80,100
East Carolina Teachers College	204,400	150,000	84,280
Western Carolina Teachers College	62,770	60,000	40,000
Appalachian State Teachers College	70,750	84,000	52,550
Negro Agricultural and Technical College	65,000	51,800	28,630
Winston-Salem Teachers College (Colored)	51,200	42,800	23,210
Elizabeth City State Normal School (Colored)	38,000	28,650	13,780
Fayetteville State Normal School (Colored)	40,000	29,750	16,850
North Carolina College for Negroes	46,500	41,500	24,170
Cherokee Normal School	27,600	19,850	13,410
Totals	$2,558,982	$2,087,150	$1,209,220

These figures need little comment, as they are more graphic than any language could be.

One other statute dealt directly with the financing of higher education in the State. From Chapter 330, Public Laws, which authorized the issue of bonds to fund the State's deficit, it appears that $453,305 of the bonds will be issued to fund emergency expenditures made by the State for its educational institutions. This amount is composed almost entirely of emergency items of capital outlay, such, for instance, as the cost of replacing Memorial Hall at the University when the old building was condemned by the State's Insurance Department. The only construction expressly authorized for any of these institutions during the next biennium was the construction of an addition to the stadium at State College, which was authorized by Chapter 291, Public Laws. However, this involved no

spending of the State's general funds. The Chapter authorized the Trustees to borrow up to $50,000 for the purpose, and authorized a pledge of the gate receipts to repay the loan, but expressly prohibited use of the State's general revenues either to repay the loan or to pay interest on it. A loan was successfully negotiated by the Trustees, the stadium was enlarged, and the enlargement is now in use.

In keeping with its policy of economy in educational as well as in other matters, the legislature also abolished free tuition in all three branches of the University, in all State teachers colleges, in all State negro colleges and normal schools, and in the Cherokee Normal School. Only students who are certified by the Vocational Rehabilitation Division of the State Board of Vocational Education to be physically disabled may secure free tuition. The three chief classes of students affected by this are students intending to teach in the State's public schools, ministers' children, and candidates for the ministry. Also at State College it serves to revoke the former power to admit 120 free students each year on a county basis and, in addition, to admit free students from each county who intended to farm or teach agriculture for two years after graduation.

This Chapter (320, Public Laws) directs the Boards of Trustees of the various institutions, each acting separately, to fix tuition fees. It expressly does not interfere with the power to fix larger fees for students from outside the State. The Trustees are also directed to collect from each student in advance, for each term, tuition, room rent, servants' hire and other expenses. They may, however, take notes from students unable to pay cash, the note to be secured in any way the Trustees deem proper.

As the statutes dealing with the Thrift Society and with the duty of colleges to aid public school teachers in connection with their certificates have already been discussed in the first division of this chapter, and as the legislature's election of University Trustees is not a statute, the only statute remaining to be mentioned here is Chapter 546, Public Laws. This Chap-

ter provides for escheat to the University of dividends from certain of the unclaimed obligations of closed banks. A discussion of its provisions will be found in the chapter on Banking Laws.

III. LIBRARIES

Only four statutes were passed with reference to libraries, and only one of these was of general application. This was Chapter 365, Public Laws, which, in addition to some minor changes, made the following significant changes with respect to the establishment and support of libraries: (1) It reduced from 25 per cent to 10 per cent the percentage of the registered voters who must sign a petition before local authorities may be required to hold an election on the question of establishing a public library in a county, city or town. (2) It allows local authorities to establish the library, if they wish, on the filing of the petition, without submitting the question to an election. (3) It requires an election to abolish a library once it has been established by either of the two methods specified. (4) It fixes 3c on the $100.00 valuation as the minimum rate which may be levied for the library, once established. (5) It requires all head librarians appointed after its ratification on May 4, 1933 to have a library certificate issued by a Library Certification Board, composed of the Secretary of the North Carolina Library Commission, the Librarian of the University, the President of the North Carolina Library Association and one Librarian appointed by the executive board of that Association. Provision was made for the issue of certificates to those already employed, and for temporary certificates for temporary appointees when no librarian with the proper qualifications is available. (6) It eliminated the provision of the former laws which, in cases where a city or town contributes to a library without supporting it entirely, limited the appropriation for this purpose to 1/40 of 1 per cent of the tax valuation of the city or town during the preceding year. (7) It authorizes two or more counties to establish

and maintain a joint public library. The contract should specify what part of the library property each will get if the joint operation is discontinued.

The other laws dealing with libraries were:

(1) The Appropriations Act. This pervasive and important statute granted to the State Library an appropriation of $4,550.00 for each year of the present biennium as contrasted with $12,525 each year for 1929-31 and $8,030 each year for 1931-3. To the State's Library Commission it granted $9,-685.00 for each year as contrasted with $24,900.00 per year from 1929-31 and $18,900.00 from 1931-3.

(2) Chapter 2, Public Laws, increased from 2 to 20 the number of copies of the printed statutes allotted to the State Library, while (3) Chapter 355, Public Laws, allotted 25 additional copies of all statutes and State reports and publications to the University library, for use for exchange purposes.

HIGHWAYS AND THE HIGHWAY FUND

As it was found necessary to discuss the provisions of Chapter 172, Public Laws, which merged the Highway Department and the Prison Department, in the chapters on State Economy and Finance and on Crime, the Chapter will not be discussed in its entirety in this chapter. It will only be mentioned here and there throughout the chapter when it seems advisable to refer to specific provisions.

I. Highway Fund Revenues

Most citizens of the State are familiar with the fact that gasoline taxes and motor vehicle license taxes are not paid into the State's General Fund, but are set apart in the Highway Fund for use in financing the State's past and present highway program. Statutes affecting this Fund will be discussed here rather than in the chapter on State Economy and Finance, as they affect the fortunes of the State's General Fund, which is the main concern of that chapter, only indirectly. The 1933 legislature passed nine statutes which relate to these two chief sources of the Highway Fund's revenues. Of these statutes the two concerned with gasoline taxes will first be mentioned, and the seven concerned with motor vehicle licenses will follow. Highway Fund receipts from prison products will be discussed subsequently in connection with expenditures, as the prison situation will be more readily understandable if discussed in the latter connection.

A.—Motor Fuel Taxes

Chapter 137, Public Laws, is designed to accelerate the time of and to improve the efficiency of the collection of the gasoline tax. It requires the Commissioner of Revenue to proceed actively for the collection of the tax immediately upon failure of any distributor to remit taxes for the previous month at the time of making the monthly report. Under the former law the distributor was allowed thirty days after the

filing of the report within which to pay the tax. Further the new law allows the Commissioner of Revenue, in collecting the tax, to use any method of enforcement provided under other revenue laws and allows revocation of the distributor's license whereas methods of collection were much more limited under the former law. The statute also contains detailed provisions regarding audits by the Commissioner of distributor's books and records, and regarding shipping records and other information which must be furnished to the Commissioner by the operators of boats and motor trucks bringing motor fuels into the State. These latter provisions are, of course, designed to assist the Commissioner in checking the accuracy of tax reports made by distributors. Similar provisions already existed respecting railroads. Along the same line, the Chapter requires that all businesses engaged in transporting motor fuels must keep records of their deliveries for two years, and must make monthly detailed reports to the Commissioner, the contents of the report being specified by the Chapter. Commodities specifically designated as within the scope of the Chapter are gasoline, kerosene, benzine, naphtha, crude oil, and any distillates from crude petroleum. Finally, the statute authorizes the Commissioner to furnish information regarding manufacture, receipt, sale, use or transportation of motor fuels to officials of other states charged with the duty of enforcing motor fuel tax laws. This, no doubt, is primarily to sanction the exchange of information regarding interstate shipments with other state officials.

Chapter 211, Public Laws, makes numerous changes in the procedure for obtaining refunds of the motor fuel tax. Important changes are: (1) The new law allows a refund of tax paid on motor fuels for use for any purpose other than operation of a motor vehicle designed for use upon the highways, as contrasted with the refund allowed by the old law only in the specific cases of use in farm tractors, lumbering machinery, motor boats used for fishing, mining machinery and as a manufacturing solvent, ingredient, or vehicle. (2) The new law

allows non-resident boat owners to apply for a refund without the intermediate step of securing a refund permit. (3) The method of storing fuel on which a refund is sought and of segregating it from other fuel is subject to approval of the Commissioner in every case, and not merely in cases of use in manufacturing as formerly. (4) The requirements concerning information to be furnished in making the quarterly applications for refunds under the permits are changed to some extent. (5) The Commissioner is given specific authority, when he doubts the accuracy of an application for refund, to have an investigation made either by a member of the Highway Patrol or by any other agent of his Department, and the investigation may include examination of the books and records. (6) Making a false return or affidavit to secure a refund is made a misdemeanor, the maximum punishment for which is $500.00 fine or two years imprisonment. (7) The new law calls for refund, where granted, of 5c a gallon, whereas the former law allowed refund of the entire tax of 6c per gallon.

Except for the last-mentioned provision of Chapter 211, which in effect imposes a tax of 1c per gallon on motor fuels not used in highway travel, there was no change in the rate of motor fuel taxes imposed by the State.

B.—Motor Vehicle License Taxes

The most important statute affecting motor vehicle license taxes is Chapter 375, Public Laws. It combines in one law the schedule of licenses taxes for all types of motor vehicles. Formerly these schedules appeared at several different places in our statutes, and the concentration is, at least, much more convenient.

The classifications of passenger motor vehicles are not greatly different from those in effect under the old laws. There are five classes: franchise bus carriers (those operating between fixed termini on public highways), "U-Drive-It" vehicles, "For Hire" vehicles, excursion vehicles and private vehicles. These are the same as the general classifications under the old law,

though the new law may have resulted in shifting some bus lines operating between closely situated towns from the "For Hire" classification to that of franchise bus carriers.

The rate imposed on franchise bus carriers is 90c per 100 pounds of weight or 6 per cent of the bus line's gross revenue, whichever is the larger figure. This is the same rate as was imposed by the former law, though three changes were made in the method of determining gross revenues. First, revenue received from special trips is now to be included with all other revenues in figuring gross revenues. Formerly this special trip revenue was figured as a separate fund on which 6 per cent was paid. This change might operate to reduce the tax payable by a bus line, but can not operate to increase it. Second, bus lines are permitted under the new law to deduct amounts paid for bridge tolls (This change was effected by Chapter 533, Public Laws, which amended Chapter 375). Third, the provision for charging only 3 per cent on revenue derived from operations conducted more than 50 per cent, by mileage, over roads in United States reservations maintained by the United States Government has been eliminated.

Rates on "U-Drive-It" vehicles remain at $1.90 per 100 pounds of weight for automobiles and $12.00, $15.00 and $18.00 for motorcycles of one, two and three passenger capacity respectively. The taxes on "For Hire" vehicles ($1.90 per 100 pounds), private passenger vehicles (55c per 100 pounds with a minimum fee of $12.50 for automobiles, and $5.00 for each motorcycle and each side car), and motor vehicle dealers ($25.00 for one set of license plates and $1.00 for each additional set) remain as they were under the former law. Excursion passenger vehicles, formerly taxed in accordance with a schedule based on both weight and passenger capacity, are now taxed at $8.00 per passenger capacity, with a minimum charge of $25.00.

In an effort to protect the persons paying commercial license fees against unlicensed competition, the legislature added a new provision which prohibits the maintenance of an office

through which "persons desiring transportation for themselves or their baggage are brought into contact by advertisement or otherwise with persons owning or operating motor vehicles and willing to transport other persons, or baggage, for compensation, or on a division of expense basis, unless the owner or operator of such motor vehicle furnishing the transportation has qualified under the tax provisions of this act for the class of service he holds himself out to perform." While agencies to perform these services were probably not common, there were a few and, in one or two instances, such services were performed by college Y. M. C. A.'s. The statute apparently does not prohibit similar activity undertaken personally by the owner or operator of the car or by the prospective passengers, and so we may not be altogether denied the privilege of seeing such personal advertisements as "Gentleman driving to Florida desires companion. Share expenses."

The provisions with respect to trucks, truck-tractors, trailers and semi-trailers are considerably revised. The classification of truck lines operating between fixed termini as franchise haulers is preserved, as is the system of charging trucks operated by these lines a specified fee per hundred pounds, to be applied against a tax of 6 per cent on gross revenues. The same changes were made in the methods of determining gross revenue for franchise haulers as were made with respect to franchise bus carriers, except that there is no provision for a deduction of bridge tolls.

The old classifications of long haul and short haul trucks have been discarded and all property-carrying vehicles not operated by franchise haulers are classified either as contract haulers or as private haulers.

The method of determining the weight of all trucks has been changed. Whereas formerly the franchise hauler weight tax was based on the weight of the vehicle and that on other trucks was based on load capacity, the new taxes are all based on the gross weight of the vehicle plus capacity load. These weights are to be determined by the manufacturer's gross weight

capacity as shown in some authorized national publication such as *Commercial Car Journal* or *Automotive Industries*, subject to verification by the Commissioner. Weights are to be figured only in units of 1,000 pounds, with weights of less than 500 pounds disregarded and weights of 500 pounds or over being regarded as 1,000 pounds. The Chapter also prohibits licensing of a semi-trailer for less gross weight capacity than the truck-tractor with which it is used.

The rates of tax per hundred pounds show a considerable reduction, as the total weight to be taxed is greatly increased. The rate for franchise haulers is a flat 60c per hundred pounds. The rate for contract haulers ranges from 85c per hundred pounds for vehicles of less than 8,000 pounds gross weight to $1.30 for vehicles of more than 16,000 pounds, while that for private haulers ranges from 40c to 70c for the same gross weights. Minimum tax on any vehicle is $15.00.

Other provisions of the Chapter require permanent identification of trailers and semi-trailers when applying for license; permit tax payments to be made in two equal installments by owners whose total tax exceeds $400.00; permit overloading of vehicles on payment of additional tax; permit, subject to provisions for reciprocity, occasional operation in this State of commercial vehicles from other states under 30-day permits issued for one-tenth of the annual license fee; permit registration of cars owned by the State or local units on payment of $1.00, without payment of license fees; set forth the methods for collecting the taxes; permit use by the new owner of licenses on vehicles sold under chattel mortgages upon proper transfer of title; and allow credits to be made on new license fees for the unused portion of license fees paid on vehicles "completely destroyed by fire or collision" (which, if interpreted literally, is meaningless).

Two provisions of general interest and importance permit quarterly reductions in the charge for licenses secured for a part of the tax year, and prohibit imposition of any other tax on the use of vehicles taxed by the Chapter either by the State

or local governments, with the exception that cities and towns are allowed to impose a tax of $1.00 per vehicle. Thus, though the State recognizes the principle that vehicles should contribute to the cost of highways in proportion to their weight, the same principle is not recognized with respect to city streets and county roads.

One result of Chapter 375 was probably not intended. Earlier in the session Chapter 221 had authorized exemption from license fees of busses, owned by churches and used exclusively for church and Sunday School transportation, and of automobiles owned and used by orphanages. This Chapter accomplished this by adding appropriate provisions to a section of the statute which was subsequently rewritten by Chapter 375. The latter Chapter does not include the additions, and the effect is to repeal Chapter 221.

Chapter 73, Public Laws, like Chapter 221, amended a section of the statutes which was subsequently rewritten by Chapter 375. However, the latter Chapter expressly provides that it does not repeal Chapter 73. Chapter 73 provides that the license fee for a semi-trailer, weighing not more than 500 pounds, carrying not more than 1,000 pounds load and towed by a passenger car, is $2.00 for any part of the tax year (i.e., is not subject to quarterly reductions). A former similar but less general provision which the Chapter repealed prescribed a $1.00 license fee for trailers used exclusively for carrying motor boats behind passenger cars.

Three statutes affecting licenses remain to be mentioned. Chapter 171, Public Laws, authorized the Commissioner of Revenue to sell licenses, from its ratification on March 20 to July 1, at three-fourths of the annual rate. This Chapter was intended to produce some immediate revenue for the State by offering a bargain. It did not affect or accelerate reductions scheduled for July 1 and October 1.

Chapter 360, Public Laws, allows wreckers owned by automobile dealers to be operated on dealers' license plates. Chapter 344, Public Laws, regarding the procedure for transferring

licenses on cars owned by decedents, is discussed in the chapter on Wills, Estates, Trusts and Guardianships.

II. HIGHWAY FUND EXPENDITURES

The Appropriations Act (Chapter 282, Public Laws) makes the appropriations of amounts to be paid from the Highway Fund during the present biennium. A comparison of the yearly average of the major appropriations with those made for 1931-3 is presented in the following table. The table does not include debt service (requirements for which, including approximately $500,000.00 per year for repayment of county loans, average $9,311,449.00 per year during 1933-5), as debt service requirements are fixed by circumstances beyond legislative control, and do not offer a proper basis for comparison in this connection.

	1931-33	1933-35
Departmental Administration (the 1931-3 figure does not include $21,500 appropriated, as administration expense for the State's prison, from the General Fund)	$ 180,900.00	$ 113,650.00
Motor Vehicle Bureau and Highway Patrol (now administered by the Revenue Department but paid from the Highway Fund)	511,250.00	379,100.00
Maintenance of State Highways	4,027,500.00	*1,680,000.00
Maintenance of County Highways	6,000,000.00	*4,320,000.00
Construction of State Highways	4,800,000.00	*190,000.00
Totals	$15,519,650.00	$6,682,750.00

* The Act allows the Director of the Budget to authorize larger expenditures for these items. It limits the maximum expenditure for State highway maintenance to $2,200,000.00 and the maximum for county highway maintenance to $4,700,000.00. No limitation is placed on the increase in the item for construction of State highways, but, as will subsequently appear, only emergency construction may be undertaken with State funds.

The figures given for 1933-5 for Departmental Administration include all administrative expense for the new Highway and Public Works Commission, which, by virtue of Chapter 172, Public Laws, is in charge of both the highway and prison systems. The figures for road maintenance also presumably include the amounts which will be credited to the prison system as the wages of prison labor employed by the Commission on highways. None of the figures directly include the cost of such items as the custody of prisoners not confined in highway camps and the cost of operating prison farms and prison industries. For such items an annual appropriation of $822,000.00 was made from the General Fund in 1931-3. The reason for the omission of this specific appropriation this year lies in the merger of the two systems. As long as the appropriation was made from the General Fund, receipts from prison labor and from prison farm and industrial products were credited to the General Fund. Since the merger, all such receipts will be credited to the Highway Fund. Correspondingly, all prison expenditures will be paid from the Highway Fund. As a bookkeeping proposition, all money spent for the prison system will be charged to it and all hours of labor furnished by it and all receipts from prison products will be credited to it. It is hoped that, on this basis, the prison system will be self supporting, though the attainment of this goal is rather doubtful, particularly in view of the laws restricting the sale of prison industrial products and those requiring the prison camps to receive prisoners sentenced for only thirty days, which are discussed in the chapter on State Economy and Finance. The ultimate result of the merger, in this respect, is to charge the Highway Fund rather than the General Fund with any deficit incurred by the prison system, or possibly, in the happy event that a surplus results, to credit the Highway Fund with that surplus. It should also be noted that whereas

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If the maximum is spent for the two maintenance items the total Highway Fund appropriations will be $7,582,750.00, subject to further increase by whatever additional amount is spent for construction.

formerly the legislature, by its appropriations, placed limitations on expenditures for the prison system, under the present statues those limitations are left to be fixed by administrative officials. The idea apparently is that these officials, in attempting to avoid a deficit, will be guided by the hours of labor and the cash receipts credited to the prison system. However, as the prisoners must necessarily be fed, clothed and cared for, there are minimum requirements below which neither the legislature nor the officials may go in attempting to balance the prison's budget.

Worthy of mention in this connection is the fact that Chapter 172, Public Laws, made available $400,000.00 (the proceeds of a former bond issue; not an appropriation from the Highway Fund) for use in establishing and equipping additional prison camps, farms and industries. Apparently this money is to be used only for capital outlay and not for operating expense. The Chapter, by section 19, also infers that additional money may be allotted by the Budget Bureau from the Highway Fund for purchase, lease or equipment of new highway prison camps. However, the interpretation of this section is open to some doubt, and it is not yet certain whether any allotments will be made for this purpose.

Even if such allotments are made, however, and even if there is a prison deficit, and even if the maximum amounts are spent for road maintenance and the appropriation for construction is increased, it is most probable, in the light of the figures given above that authorized annual expenditures from the Highway Fund during the present biennium for items other than debt service will be in excess of 40 per cent lower than authorized expenditures for the same items during 1931-3.

The biggest potential saving is in the item of construction of State highways, and this was brought about by Chapter 87, Public Laws. This Chapter prohibits the use of State funds for new construction during the present biennium, except in cases of emergency and necessity, except for the improvement and construction of roads and bridges when found neces-

sary to utilize convict labor, and except for construction of the North Carolina entrance to the Great Smoky Mountains National Park (the cost of which is shared by the Federal Government). It is also made clear that all Federal funds available may be used and that State funds may be used for repairs. The exception for construction undertaken to utilize convict labor should be particularly noted in the light of the previously discussed problem of making the prison system self-supporting. It possibly offers one way to solve that problem. However, it would seem anomalous to spend a large sum merely in order that a part of that sum might be credited to the prison system and eliminate the system's deficit. Obviously this would actually result in increased expenditures, not in economy.

The only other curtailment of highway expenditures which may be partially accounted for by statutes (other than statutes which force a curtailment merely by cutting appropriations) is that in administration expense. This may be partially accounted for by Chapter 172, Public Laws, fixing the compensation of members of the Highway and Public Works Commission and of its Chairman, and reducing from $10,000.00 to $6,000.00 per year the maximum salary payable to any Commission employee. It is also partially accounted for by those provisions of the Appropriations Act which require salaries of Commission employees to be reduced by at least 38 per cent of the salary schedules of July 1, 1930.

These curtailments of expenses and reductions in appropriations were motivated largely by the serious decrease in gasoline tax and motor vehicle license tax revenues. They were also motivated by a legislative desire to have a balance left in the Highway Fund sufficient to justify a sizeable contribution to the General Fund; and it provided, in the Appropriations Act, that if the balance proved to be sufficient, $1,000,000.00 should be transferred to the General Fund each year. This amount the legislature considered to be a "reasonable contribution"; and the reasoning by which it justified this tapping of highway funds is eloquent and worthy of quotation. "The State High-

way Commission," it said, "is established on a self-supporting basis through the levy of motor vehicle licenses and taxes, but being a part of the State Government, to be fully self-supporting, it should contribute reasonably to the cost of general government; there is preëmpted to it certain sources of revenue to which general government is denied, but the funded debt obligations of the State Highway Commission are also obligations of the State itself."

Attempts were also made to tap highway funds to assist in maintaining city streets over which State highways are routed and to pay counties the value of road machinery and equipment taken over by the State when county highways were taken over, but bills embodying these provisions were defeated.

In addition to the statutes already mentioned two other statutes are concerned with Highway Fund expenditures. Chapter 302, Public Laws, first provides that all roads not taken over by or abandoned by the Commission but which remain in use and all roads built or laid out with unemployment relief funds under the Department of Public Welfare are to be considered neighborhood public roads, and prescribes the character of proceedings to secure alteration, extension or discontinuance of these roads. The Chapter then provides that the Commission, at the County Commissioners' request may but need not assist in keeping these roads passable. The Commission, by lending its aid, will not become liable for further maintenance. Of course, any such work must be accomplished within the appropriations for maintenance already discussed.

Chapter 463, Public Laws, made it the duty of the Commission, as soon as practicable, to repair and make passable the so-called Turn Pike Road leading from Highway 97, through Wenona to the Beaufort County line. The avowed purpose of the legislature was to make the road passable for school trucks and Star Mail Route trucks, and to provide better access to the State's Black Land Test Farm. If this Chapter requires new construction it is, while not specifically labeled

as such, an exception to Chapter 87, which prohibited such construction.

On the other hand, Resolution 41, which was labeled as an exception to Chapter 87, does not necessarily constitute an exception. It declares that the surfacing of Route 90 from Columbia to Fort Landing and the extension of Route 91 from Englehard to Mann's Harber constitute an "emergency and necessity" within the meaning of Chapter 87. The purpose is to make these roads available for use during the celebration of the 350th anniversary of the birth of English-speaking civilization in America to be held on Roanoke Island during 1934. However, the Resolution closes with the provision that the Commission "shall give preferential construction to these roads out of the first Federal aid money coming into their hands." It will be recalled that Chapter 87 magnanimously did not interfere with the spending of Federal funds.

Two other Resolutions were clearly concerned with Federal funds only. These are Resolutions 32 and 33, which authorized the Department of Conservation and Development, with the Governor's approval to apply for Federal funds under the Robinson-Wagner Unemployment Relief bill for use on roads in and around Fort Macon State Park and Mount Mitchell State Park, respectively.

III. OTHER LAWS AFFECTING HIGHWAYS

Chapter 241, Public Laws, expressly authorized the Highway and Public Works Commission to issue a permit for the constuction by Cape Lookout Highways, Incorporated, of toll roads, causeways and bridges connecting the mainland with Harker's Island, Core Banks and Cape Lookout, provided construction plans meet with the Commission's approval. It further authorizes the Commission to fix a schedule of tolls as soon as the project is ready for traffic, the rates to take into consideration cost of construction and maintenance and a fair return on the investment. The Commission may also designate the project when completed, as an extension of the State's

highway system, giving the roads appropriate numbers and showing them on the Commission's maps.

Chapter 484, Public Laws, effects a limitation on the number of units permissible in motor vehicle trains. Whereas formerly trucks were permitted to haul one trailer and one semi-trailer, the new law allows but one trailer-type unit, regardless of whether it is a trailer or semi-trailer.

Chapter 517, Public Laws, authorizes the Commission to designate any roads in the State's highway system, except roads of standard concrete or material of equivalent durability, as "Light Traffic Roads," and to mark these roads as such and to show them on maps as such. The designation may be made whenever the Commission regards a road as inadequate to carry maximum legal loads, and a road so designated may not be traveled by vehicles carrying more than 80 per cent of the maximum legal load.

Resolution 60 authorized the Commission to convey to the U. S. Government, through the War Department, all rights and title necessary in connection with construction by the Government of a bridge on Route 91 over the Inland Waterway.

SOCIAL AND WELFARE LAWS

The writer has no particular love for the word "social" as applied to legislation. In his mind it raises a rather gruesome picture of learned sociologists beaming contentedly at a struggling human race, licking their chops the while over the last remnants of the Malthusian theory. It also is blissfully indefinite. Almost any law is "social" to the extent that the man who sponsors it will pretend that it is for the benefit of organized society. Nevertheless, the paucity of the writer's vocabulary is such that he could think of no other word which will adequately describe some of the laws not strictly concerned with welfare which, for lack of some other place to mention them, will be mentioned here. With apologies, therefore, the writer retains the word, but suggests that many laws just as "social" as those mentioned in this chapter may be found in the chapters on Crime, on Labor Law, on Domestic Relations, on Regulation of Business and Trade, on Education and elsewhere.

I. The State's Financial Contribution

The State's appropriations for charitable and correctional institutions have, like all other state appropriations, felt the heavy axe of economy since the inception of the depression. The extent of the curtailment may be best presented in table form, and comparative figures are given in the following table. The table includes all of the State's charitable and correctional institutions for which the legislature regularly makes a specific appropriation except the State's prison, which is now to be supported by the Highway Fund, and for which no specific appropriation was made during the present biennium. The table also includes a few non-institutional appropriations for welfare work. The figures given represent the average appropriations (not expenditures) made for each year of the respective two year periods. Except where indicated otherwise, the figures are taken from the Appropriations Acts.

	1929-31	1931-33	1933-35
N. C. School for the Deaf	$148,000	$133,000	$ 80,000
State School for the Blind and Deaf	145,550	130,400	80,280
Blind Student Aid	2,000	1,800	1,500
State Hospital, Raleigh	428,875	363,200	228,910
State Hospital, Morganton	430,312	377,894	243,980
State Hospital, Goldsboro	279,450	236,200	150,000
N. C. Orthopedic Hospital	121,500	100,800	70,560
N. C. Sanatorium	153,000	130,400	144,250
N. C. Extension Bureau	30,000	24,180	15,780
Board of Charities and Public Welfare for Mothers' Aid	50,000	55,000	32,500
Orthopedic Clinics	7,500	8,000	4,800
Vocational Education	175,000	140,000	90,000
Industrial Rehabilitation	15,000	12,000	7,200
Oxford Orphanage	30,000	30,000	21,000
Oxford Colored Orphanage	27,500	27,500	19,250
N. C. Soldiers' Home	41,000	22,500	14,000
Confederate Women's Home	14,000	13,500	11,220
Confederate Cemetery	500	500	350
Firemen's Relief	2,500	2,500	1,750
Efland Industrial School for Negro Girls	2,000	2,000	1,400
Stonewall Jackson Training School	150,000	117,500	76,080
State Home and Industrial School for Girls	108,500	89,700	50,750
Special Fund for accommodating Cherokees from Robeson County at last two named schools (See Ch. 490, Public Laws)	.....	.....	10,000
Eastern Carolina Training School	47,100	40,200	28,040
Caswell Training School	187,410	144,300	98,720
Morrison Training School (Colored)	28,800	30,700	26,080
State Industrial Farm Colony for Women	15,750	19,600	13,210

No appropration was made by the legislature for unemployment relief. In fact no measure was passed with respect

to unemployment except Joint Resolution 38, which authorized the Governor to appoint a commission to study unemployment insurance and report to the 1935 legislature. State agencies are required to coöperate with the commission, but no appropriation is made for carrying on the study.

In addition to the usual indirect contribution to charity made by the tax laws, by exempting charitable and educational institutions from taxation, such a contribution was made by Chapter 53, Public Laws, which provides that no privilege license, either State, county or municipal, shall be charged blind persons desiring to operate a business. The privilege does not extend to blind persons under 21 nor to those having an annual income, or whose husbands or wives have an annual income of $1,200.00 per year. The County Commissioners are charged with the duty of investigating applicants to determine whether they are deserving persons with the degree of blindness required by the statute and whether they are capable of operating the business involved.

This same policy was reflected in Chapters 339 and 538, Public Laws, which exempt blind persons from the license and stamp taxes imposed on others engaged in the business of making or renovating bedding. Apparently, in these cases there are no limitations with respect to age and annual income.

One other statute was designed to effect a minor indirect contribution by the State to private charitable institutions. Chapter 221, Public Laws, authorized the issue of motor vehicle licenses on motor vehicles used exclusively by orphanages on payment of $1.00 registration fee, without payment of the regular license fee. The statute apparently intended to extend the same exemption to busses owned by churches and used exclusively in transportation to and from Sunday School and church, though the language of this part of the statute is ambiguous. However the question is unimportant as the legislature, by Chapter 375, Public Laws, rewrote the sections of law amended by Chapter 221 and, through oversight, left out the amendment provided by Chapter 221. The effect of this omission

seems to be to repeal Chapter 221; and the Attorney General, in a letter of August 30, 1933, to Rev. E. F. Sullivan, of Hickory, expressed the opinion that such is the case.

In the interest not of making contributions but of receiving them Chapter 352, Public Laws, was passed. It provides that, where funds belonging to any patient or inmate have been deposited with officials of the State Hospital or any other charitable institution of the State, and the patient dies or leaves the institution while indebted to it for his care and maintenance, and the funds remain in the officials' hands unclaimed for a space of three years after the death or departure of the patient, the funds may be applied to the patient's indebtedness, with any balance being held for distribution as required by law. Ordinarily this balance will escheat to the University. The statute does not add a great deal to prior laws with respect to indebtedness accruing since 1925, when the prior laws were passed. All State institutions already were permitted to charge patients able to pay, and were given a lien on the estates of the patients for the amount of unpaid charges. Thus the chief contribution of the new statute seems to be to permit direct appropriation of the funds without the necessity of any formal proceedings. On the other hand the present statute requires a three-year waiting period which is not required under former laws. The new law may, however, authorize application of these funds to pay the cost of caring for patients before 1925.

II. Care and Treatment of the Mentally Defective

The most important law dealing with the mentally defective and the feebleminded is Chapter 224, Public Laws, dealing with asexualization or sterilization. The prior law on this subject had been declared unconstitutional by our Supreme Court because it attempted to authorize operations without adequate notice to the patient or his representatives and without a proper hearing of the facts. These omissions were regarded as creating a situation where the individual was deprived of his rights without that "due process of law" which

the Constitution guarantees and which courts recognize as the handiest of all reasons for holding statutes invalid. Meanwhile, however, before the statute was nullified by the court, operations were performed on forty or more individuals under its provisions. This is an unfortunate commentary on the efficiency provided by our famous governmental system of checks and balances.

The new statute does not merely refurbish the provisions of the old law with respect to notice and hearing. It rewrites the whole law. Changes made which have no reference to notice and hearing include: (1) the giving of express permission to operate upon epileptics, as well as other mentally diseased or feebleminded; (2) allowing the petition for the operation to be filed by the county welfare officer, as well as by the head of a State-supported institution or by the subject's next of kin or guardian; (3) requiring the head of any such institution to petition for operation upon a patient about to be paroled or discharged when requested by any public official or by the next of kin or guardian of the patient at least thirty days before the parole or discharge.

The provisions for notice and hearing are so complete that the procedure necessary to comply with them may be extremely slow and fairly expensive. There is no chance that this statute will be declared invalid for the same reason as the former one. It would be tedious to detail all these provisions. In substance they provide that, after notice to the patient and his next of kin or guardian, and appointment of some one to represent his interests, the matter is to be heard by the Eugenics Board of North Carolina, composed of the Commissioner of Public Welfare, the Secretary of the State Board of Health, the Chief Medical Officers of the State Hospital at Raleigh and of some other State institution for the insane, and the Attorney General. This Board considers not only the case history which must be submitted with the petition, but also any other evidence. The patient is entitled to have counsel at this hearing as well as at any subsequent proceedings. If

the Board decides against the operation, the matter is ended for at least a year, after which time the application may be renewed. If, however, the Board decides in favor of the operation, the matter may be appealed to the Superior Court and from there to the Supreme Court. There are conflicting provisions in the statute with respect to the ability of the Court to consider new facts; but apparently the intention is that the facts as found by the Board are controlling and that the Court is to review only questions of law.

As under the former law, those connected with the operation are exempted from any criminal or civil liability, but the new law excepts from this exemption cases of negligence in performing the operation. The new law also specifically provides that it does not prevent legitimate medical or surgical treatment which may incidentally result in sterilization.

Chapter 213, Public Laws, provides a new method for temporary confinement of insane persons needing immediate care, and of persons so addicted to drugs or alcohol that they have lost the power of self control. Such persons may be received, for not more than twenty days, by any public or private hospital or institution, on the written request of two physicians not connected with any hospital and of the husband, wife, guardian or next of kin of the patient. The institution and its personnel are exempted from liability for exercising the restraint involved, if administered humanely and without violence or personal injury. Liability for collusion in committing patients is expressly preserved.

The statute also specifies that devices restricting the patient's freedom may be imposed only in the presence of the hospital's superintendent, physician or assistant physician, except in emergency cases, and then the fact must be immediately reported to a proper official, who must conduct an immediate investigation and approve or disapprove the restraint imposed. Such devices may be used in the presence of a proper official "in cases of extreme violence, active homicidal or suicidal intent, physical exhaustion, infectious disease,

or following an operation, or accident which has caused serious bodily injury, or to prevent injury to such patient or others." In view of the character of some of these cases in which the use of restraining devices is specifically authorized, it is difficult to understand the previous provision of the statute that restraint, in order to excuse the hospital from liability, must be "without violence." This must mean unnecessary violence, as the use of a considerable degree of physical force will, no doubt, often be necessary.

Chapter 341, Public Laws, grants specific authority to the Superintendent of the State Hospital at Raleigh to transfer persons in the department for inebriates (alcoholics and drug addicts) to any other department when they develop criminal, mental or other symptoms which indicate that they can not be cared for properly in the department for inebriates. The effect of this is to allow treatment of these patients as insane persons without the necessity of a recommitment.

Chaper 342, Public Laws, provides that the State Hospital at Goldsboro, heretofore authorized to admit colored insane and inebriates, may also admit colored epileptics and feebleminded (the latter do not come within the statutory definition of "insane"). The feebleminded are to be admitted "in such numbers as the capacity and appropriations to the Hospital will permit." There is no provision in the Chapter thus limiting the number of epileptics to be admitted in the discretion of the authorities, but the practicalities of the situation will no doubt accomplish the same result.

III. Pension and Veterans' Funds

The total amount of pensions paid to Confederate Veterans and their widows is naturally constantly decreasing. Considering, however, that the Civil War closed sixty-eight years ago the annual appropriation made by the legislature still reaches a surprising figure. The appropriation for pensions in the 1933 Appropriations Act, including a small amount for the inmates of the Soldiers' Home and three small annuities,

is $722,415.00 for 1933-4 and $631,955.00 for 1934-5. These figures compare with an average annual appropriation for the same purposes of $1,120,320.00 in 1929-31 and of $824,225.00 in 1931-3.

The pension expenditure would have declined far more rapidly than it has except for the fact that a new list of pensions is added to the roll by each legislature. At least the legislature places the names upon the roll subject to investigation by the county pension boards (to ascertain if the pensioners are in fact confederate veterans and widows of veterans), and subject to approval by the State Board of Pensions. In most cases the legislature's action is tantamount to permanent enrollment.

Despite the passage of time since the war a considerable number of new names was included in Chapter 476, Public Laws, which is the 1933 roll of new pensioners. Eighty-seven new pensioners were added, sixty-six of these being women.

Only one other statute was concerned with pensions. Chapter 465, Public Laws, adds to the list of those eligible for membership on county pension boards the grandsons and granddaughters of confederate soldiers. The list already included the soldiers themselves and their sons and daughters. The inference to be drawn from this statute seems to be that pensioners are more easily available than their immediate progeny, which may be explained by the fact that the maximum compensation of a member of a county board is $6.00 per year, whereas the pensions are considerably more profitable.

In addition to the laws regarding investment of funds by guardians of war veterans, which are discussed in the chapter on Wills, Estates, Trusts and Guardianships, one other statute deals with veterans' funds. It is Chapter 554, Public Laws, and is concerned with the disposition of the fund designated as the "Interim Pay Fund" and as the "Spanish American War Relief Fund." The preamble of the Chapter recites that this fund was appropriated by the United States Government for pay of Spanish American War veterans for

the time served between the date of their call for duty and the date of their muster into service; that on January 4, 1933, the balance of this fund remaining in the State's possession, unclaimed by veterans, was $17,637.46; that claims against the fund have for many years been infrequent, and that the probabilities are that these claims will become even more infrequent. It then provides that the interest on this fund shall be paid semi-annually by the State to the Quartermaster of the Department of North Carolina United Spanish War Veterans for disbursement by him, upon written order of the Department Commander, "solely for welfare work among its needy comrades, their widows and their children, and current use of said organization." Apparently the only limitation actually placed on its use by this provision is that it may not be squandered for personal purposes. The Quartermaster is required to furnish a $500.00 bond. The principal of the fund will remain subject to any further valid claims which may be filed by individual veterans.

IV. MISCELLANEOUS SOCIAL LEGISLATION

A.—BASTARDY LAWS

The only statute concerned with this phase of the law is Chapter 228, Public Laws.

The Chapter rewrites the statutes on this subject, with the exception of those dealing with the legitimation of illegitimate children, and is of great importance. The chief changes effected by the new statute are: (1) The proceeding under the new Act is clearly a criminal one, with failure to support the child being made a misdemeanor, whereas under the former law the proceeding was largely a civil one, though its character was not altogether free from controversy. The effect of this is to allow arrest of defendants and also to allow the extradition of defendants who have fled to other states. It also makes more difficult the settlement of cases out of court, the criminal character of the action being a barrier to settlement without court approval. (2) The proceeding may now be

brought in any court inferior to the Superior Court, whereas formerly Justices of the Peace were given exclusive original jurisdiction. Justices of the Peace have no jurisdiction at all under the new law, because of the constitutional limitation on their jurisdiction. This limitation is contained in Article IV, section 27 of the Constitution. (3) Under the new law either the mother or the putative father may be prosecuted for failure to support the child, whereas formerly only the putative father could be proceeded against. The only comparable provision of the old law was that requiring the mother, if she refused to name the father, to pay a five dollar fine and give bond for the support of the child, on peril of being sent to jail for failure. (4) The responsibility of initiating the proceeding, where the mother does not do so and the child is likely to become a public charge, is shifted from the County Commissioners to the County Welfare Officer; and the mother's personal representative is expressly authorized to start the action. (5) The new law expressly authorizes proceedings to be brought even though the child was born outside of North Carolina. (6) The old law did not expressly set forth the county in which the action might be brought, though it seemed to mean that it could only be brought in the county where pregnancy or birth occurred. Under the new law it may be brought in the county where either the mother or putative father resides or is found or where the child is found. (7) The new law, in view of its criminal character, expressly provides that the mother may not be excused from testifying on the ground that her testimony will incriminate her; but no testimony given by her may be used in any prosecution against her. She may not, however, be forced to testify against her will. (8) The provision in the old law, making the mother's testimony presumptive proof of the paternity of the child, subject to be rebutted by other evidence, is omitted from the new law. Apparently this means that the paternity must be proved beyond a reasonable doubt, in the same manner in which the offense must be proved in

other criminal cases. It is very probable, however, that the courts will accord such weight to the mother's testimony that the effect will be the same as the effect of the former statutory presumption. (9) The provisions of the new law concerning the orders to be made regarding the child's support are much more specific than those in the old law. The court is required to fix a specific sum to be paid, either as a lump sum or periodically, which is subject to subsequent increase or decrease by the court. In fixing the sum the court must consider the financial ability and earning capacity of the defendant, the defendant's "willingness to coöperate for the welfare of the child," and the general circumstances of the case. The order may also provide for imprisonment of the defendant for not more than six months, for a suspended sentence and continuance of the case from term to term indefinitely, for release of the defendant on probation contingent on his payment of the amount awarded, for apprenticing the defendant to work at the county home or elsewhere at a compensation fixed by the County Commissioners and application of his earnings to support of the child, for the giving of bond by the defendant for compliance with the court's orders, and for payment to the mother of the necessary expenses of the birth of the child and suitable medical care for herself. (The amount payable to the mother under the old law was limited to $200.00). (10) A defendant directed to support a child may not, under the new law, escape imprisonment for failure to pay or give bond by taking the insolvent debtor's oath. He could do so under the former law. On the other hand there is no provision in the new law comparable to that in the old law which allows execution against the defendant's property to be issued if the award was not paid. Enforcement of awards under the new law must be by use of provisions, already enumerated, which may be incorporated in the court's order. (11) The new law is more specific than the old with respect to the length of time during which the defendant must support the child. It provides that "child" as used in the Chapter means "any person

less than ten years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain if such child were the legitimate child of such parent." (12) The new law contains no provision with respect to appeals to the Superior Court. Consequently, as the action is criminal, only the defendant may appeal ordinarily. Under the old law either party was allowed to appeal.

The new law, like the old, allows the trial court to continue the case, when brought during pregnacy, until after the birth of the child, and to require bond of the defendant for his appearance at the subsequent hearing. The new law applies only to actions which had not accrued prior to its ratification on April 6, 1933. This has been construed, in a letter of August 4, 1933, from the Attorney General to Gaston A. Johnson, Attorney, of High Point, to mean that cases in which conception occurred prior to April 6 must be prosecuted under the old law. Proceedings under either law are barred if not begun within three years after the date of birth. It is worth pointing out that this would seem to bar the action, even though the putative father actually supported the child during this three year period and thus may have induced the mother not to bring action.

B.—State Housing Law

Chapter 384, Public Laws, is a long and detailed statute authorizing the incorporation of limited dividend corporations for the purpose of developing housing projects. The activities of any such corporation are to be closely supervised by a State Board of Housing consisting of five members appointed by the Governor. The Supervision is to be so complete that a nominee of the Board must be on the corporation's board of directors, and it includes supervision of plan, sanitation, financial structure, dividends, debts, rents, and, in fact, almost every activity of the corporation. Dividends are limited by the statute to 6 per cent per annum, cumulative without interest, and any excess earnings will, on dissolution,

be paid to the State. Likewise interest on indebtedness is limited to 6 per cent which is the maximum rate now fixed by the State's usury law.

The statute outlines the procedure for securing opinions from the Board on various matters. It also authorizes the Board to make general studies of housing conditions; to prepare programs for the correction of unsanitary, congested or other undesirable conditions; to act as a clearing house for information regarding housing; to investigate costs of construction; to recommend areas for the operations of limited dividend companies; and to coöperate with local housing and planning commissions. Unfortunately for the real development of these general aims, the Board members receive no salary and may receive no expenses except as fees from corporations organized under the Chapter. Unless these corporations become numerous, which is doubtful, this ambitious program of activity for the public benefit will likely not be consummated.

C.—Vital Statistics

In addition to the provisions relating to vital statistics contained in the new law governing adoptions (Chapter 207, Public Laws), which relate to the issue of birth certificates for adopted children and which are discussed in the chapter on Domestic Relations, one other statute refers to vital statistics. Chapter 9, Public Laws, abolished the practice, initiated in 1930, of requiring local vital statistics registrars to file copies of birth and death certificates with the Register of Deeds each month. The registration book, containing such copies, must still be filed with the Register annually, to be indexed by the Register. The Chapter also allows one certificate to cover both birth and death of stillborn children. Separate certificates were required under the former law.

The Chapter specifically authorizes the State Board of Health to abolish or consolidate existing registration districts and to create new districts when it believes that "economy

and efficiency and the interests of the public service may be promoted thereby." Also the Board is authorized to appoint any whole-time county health officer as registrar of vital statistics for the whole county or any part of it. If such an appointment is made, all fees collected by the health officer in his capacity as registrar are to be used for health service by the local board of health. There is no provision which would require these fees to be spent for services rendered solely in that part of the county for which the health officer is acting as registrar and, consequently, from which the fees come.

D.—AUTOPSIES

Chapter 209, Public Laws, allows an autopsy to be authorized by the person having the duty of burial without restriction as to the reason for the authorization. Formerly such a person could only authorize an autopsy for the purpose of ascertaining the cause of death. The Chapter does not affect the status of autopsies otherwise legalized, such as those performed by order of coroners.

CRIME

I. New Crimes

To list all the new crimes created by the 1933 General Assembly would not only take more time and energy than is available to the writer at the moment, but would also be extremely dull. It must suffice to point out a few which are of importance either because of popular interest or because of the severe penalties prescribed.

Of most popular interest, because it deals with the crime of the year, is Chapter 542, Public Laws, which is the kidnapping law. It provides that the kidnapping or the holding for ransom of any human being shall be punishable by life imprisonment. As originally introduced the statute provided for capital punishment, but this was modified by amendment. The statute does not apply to parents taking their own children into custody. One entertaining, if not altogether practical, provision of the statute renders firms and corporations violating the statute through their agents liable for a $25,000 penalty in a civil action brought by the injured party.

Also of interest as a manifestation of the character of modern crime is Chapter 261, Public Laws, dealing with machine guns. By this Chapter it is made unlawful to "manufacture, sell, give away, dispose of, use or possess" a machine gun, sub-machine gun or similar weapon. The statute does not apply to automatic guns and pistols shooting less than sixteen shots (presumably at one loading). The Chapter permits possession of machine guns by United States troops and State militia or by State and local law enforcement officers when on duty. It further allows possession by banks, merchants and recognized business establishments holding permits from the Clerk of the Superior Court, and allows residents owning machine guns used in former wars, to retain them as souvenirs upon reporting the ownership to the Clerk. The penalty for violation of the statute is a minimum of $500 fine or 6 months imprisonment. No maximum is prescribed. If any person not

included in one of the excepted categories did possess a machine gun when the statute went into effect on April 11 he must have been, and may still be, in a hopeless quandary. Reference to the language quoted above will disclose that he is prohibited from disposing of it and equally prohibited from possessing it. The writer, possessing no machine gun, has not yet arrived at any satisfactory solution to this hypothetical dilemma.

Chapter 434, Public Laws, is designed to strengthen the law against the operation of lotteries, those popular pastimes which have often been regarded as taboo when conducted solely for private profit, but not subject to prosecution when conducted for charity and commissions. The new law makes the mere possession of lottery tickets, certificates or orders prima facie evidence of violation of the lottery law. As that law provides a maximum penalty of $2,000 fine and 6 months in prison, possession of the tickets becomes a rather serious offense.

Another criminal offense of considerable popular interest is that of violation of the new law regulating legislative lobbying. This law is Chapter 11, Public Laws, and requires registration with the Secretary of State by all lobbyists representing private interests, and likewise requires these lobbyists to file accurate reports of their compensation and expenses. While the statute resulted in disclosure of some interesting information, it has not yet been used as the basis for any prosecutions. If and when a prosecution is successfully brought, the maximum punishment will be $1,000 fine and 2 years imprisonment. The minimum penalty is $50 fine.

Two other statutes which are worthy of note because of the potentially serious penalties involved are Chapter 235, Public Laws, which imposes a minimum penalty of $1,000 fine or one year's imprisonment for depositing Japanese, Portuguese or Mongolian oysters in North Carolina waters, and Chapter 108, Public Laws, which imposes the same penalties

as a maximum for deceptive practices in the sale of gasoline, oil and grease.

In addition to these statutes a number of criminal offenses are specified by the laws regulating business and trade (which may be found in the chapter dealing with that subject), in the revenue laws, the beer laws, the game laws, the election laws and many miscellaneous general laws. Further, crimes created by local laws are numbered by the scores.

Of most popular interest in local laws involving criminal offenses, however, are those laws creating the famous "Agricultural and Breeders Associations" in six counties (Haywood, McDowell, New Hanover, Pasquotank, Polk and Rowan). In these counties popular elections are permitted to authorize horse-racing at which pari-mutuel betting will be legal. The question of whether the legislature, by these statutes, may authorize the partial withdrawal of counties from the operation of such a major State-wide criminal statute as that against gambling has not yet been settled.

II. Criminal Trials and Procedure

No laws were passed which affected criminal procedure before trial. Several laws, however, deal with procedure at the trial. The most important of these, assuming that it is valid, is Chapter 23, Public Laws. This statute, as originally passed, provides that a defendant in Superior Court, represented by an attorney, and charged with any crime not involving capital punishment, may waive trial by jury and enter a conditional plea of guilty or *nolo contendere*. The judge may then proceed to hear the evidence and either dismiss the case or find the defendant guilty and sentence him. The judge may find the defendant guilty of any degree of the offense charged, just as a jury might do. The defendant may appeal from the judge's decision.

By Chapter 469, Public Laws, the express reference to waiver of jury trial was stricken out. The reason the reference was eliminated may be found in section 13 of Article

I of the State's Constitution, which reads: "No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The Legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal." Our Supreme Court has held that under this section jury trial, except in petty misdemeanor cases, cannot be waived even by the defendant. Hence the reference to the waiver was unconstitutional, unless the court reversed its former opinion which, in view of the clear language of the section, would not be probable. While a defendant may plead guilty in the ordinary case, the "conditional plea of guilty" provided by this statute preserves the right to a trial on the facts; and the mere elimination of the express reference to waiver does not alter the fact that jury trial is actually waived. Consequently, despite the procedural form by which the statute attempts to attain the desired result, and despite the fact that the defendant himself consents to the procedure, it is highly possible that it will run afoul of the Constitution and be declared invalid, at least as to all crimes which may not be classed as petty misdemeanors. There are a number of crimes below the grade of capital felonies which may not be classed as such misdemeanors. However desirable it may be from the standpoint of speeding up court processes, a really certain and effective method of eliminating jury trials in these cases will probably not be secured without a change in this section of the Constitution. A method which, like the one provided by this statute, is purely optional with the defendant, and which may be subject to attack by the defendant after he has exercised the option, does not seem to offer a great measure of effectiveness.

Continuing with statutes affecting criminal trials, three statutes were concerned with evidence in criminal cases. Chapters 13 and 361, Public Laws, added to the very limited list of criminal cases in which a wife may testify against her husband, the cases of prosecutions for abandonment and nonsupport, respectively, of his children. She was already per-

mitted to testify in prosecutions involving his abandonment of or failure to support her.

The third statute, Chapter 189, Public Laws, permits, in cases of assault, assault and battery, and affrays, the introduction of evidence to show that threats made by the person assaulted were communicated to the defendant before the altercation. The permission extends only to cases in which deadly weapons are used and serious injury is inflicted, and the defendant pleads self defense; and the evidence is to be considered as bearing upon the reasonableness of the defendant's fear of his adversary and the justification for the amount of force he employed in the altercation. It is pointed out, in the June, 1933, issue of the *North Carolina Law Review*, at page 230, that the North Carolina cases regarding the admissibility of such evidence were in confusion. It is also there pointed out that the statute does not settle the status of uncommunicated threats as evidence, regarding which the cases are also in confusion. It seems to the writer that there is a reasonable argument that the legislature intended to exclude evidence of all types of threats not covered by the statute. If such be the intention and result of the statute there can be no particular quarrel, on legal grounds, over distinguishing between communicated and uncommunicated threats, as the latter do not influence the defendant's mind or explain his actions. But there does seem to be some logical inconsistency in excluding evidence of communicated threats in cases not involving serious injury. The defendant's action may be influenced equally as much in those cases as in cases where the resulting injury is serious. One other feature of the statute may be worth mentioning. The Chapter is cast in the form of an amendment to a section of the Consolidated Statutes which deals with punishment for the crimes concerned, whereas ordinarily one would expect it to be placed with the sections concerned with evidence.

One other statute has an indirect bearing on criminal trials. It is Chapter 40, Public Laws, and it provides that no law

enforcement officer, who receives compensation from any source other than fees is entitled to witness fees in any criminal court sitting in territory within which he has authority to make an arrest. By a subsequent amendment (Chapter 495, Public Laws), officers in Cleveland, Henderson, McDowell, Polk and Rutherford Counties, receiving fees as a part of their compensation, were excepted from the operation of this Chapter. The statute is, of course, primarily an economy measure.

Only one statute deals with criminal appeals. That is Chapter 197, Public Laws, and it provides that, in cases where a defendant who has been convicted of a capital felony is financially unable to perfect an appeal, the county in which the offense was committed must pay the cost of securing a transcript of the trial proceedings and of filing the record and briefs in the Supreme Court. The record and briefs are to be prepared as is usual in pauper appeals. The statute applies only in cases in which the defendant has not furnished his own counsel but in which counsel has been appointed by the court. This limitation was no doubt intended to prevent abuse of the statute by defendants who are able to pay, the reasoning behind the statute apparently being that if they are able to secure counsel it is conclusive evidence of the fact that they are able to finance an appeal.

III. The Sentencing of Convicted Defendants

Three statutes, completely dissimilar in character, deal, to some extent, with this phase of our criminal justice. The first is Chapter 39, Public Laws, and it reduced from 60 to 30 days the minimum length of time for which prisoners must be sentenced before they may be sent to the State's prison camps. The statute has no real connection either with the administration of justice or the treatment of prisoners, but, as pointed out in the chapter on State Economy and Finance, merely represents the result of a successful effort on the part

of the counties to shift to the State the burden of maintaining prisoners.

The second statute is Chapter 172, Public Laws, which requires that all defendants convicted of misdemeanors, if to be under State supervision, are to be sentenced to the highway prison camps. Those convicted of felonies may, if the judge believes that the character of the offense or the condition of the defendant renders it advisable, be sentenced to the central prison at Raleigh. Apparently defendants in other felony cases may be sentenced to the prison camps. The weakness of the statute in this respect seems to be the lack of any express authority to sentence to the central prison defendants who are convicted of misdemeanors only but who are physically unfit for highway camp work. The statute also permits the sentencing of prisoners to work for the counties. Finally, along this line, the statute permits judges sentencing prisoners for more than a year, to prescribe an indeterminate sentence. This will again be referred to in a later part of this chapter.

The third statute is Chapter 249, Public Laws, which allows the trial judge to fix the punishment for involuntary manslaughter, he being permitted either to impose a fine or to prescribe imprisonment. Formerly conviction of manslaughter, whether involuntary or not, necessarily entailed imprisonment of from 4 months to 20 years.

IV. The Treatment of Prisoners While in Custody

The statutes dealing with the employment of prisoners in highway work, prison industries and agricultural work will not be discussed here. They are discussed in the chapter on State Economy and Finance, as they are largely concerned with an attempt to make the prison system self-supporting; and they are likewise discussed in the chapter on Regulation of Business and Trade, as they involve the problem of competition between prison-made goods and private products, and are mentioned in the chapter on Agriculture, as they involve competition between convict-raised farm produce and the

products of privately owned farms. Nothing could be added here to the discussions in the chapters mentioned except that, as a by-product of these economic measures, there is something to be said, from the social and criminological standpoint, for the value of training prisoners in an industry or in agriculture. It is doubtful if any such value extends to the training received in highway work.

One of the statutes discussed in the above-mentioned places is Chapter 172, Public Laws, and it contains a number of provisions not elsewhere discussed which are properly cognizable here. They deal with the treatment and control of the prisoners under the control of the State. It has previously been mentioned in this chapter that this statute permits judges to prescribe indeterminate sentences for long-term prisoners. The purpose is to allow judges to fix a maximum and minimum sentence, to review the sentence at least once in each six months, to consider the prisoner's conduct, and to discharge him if his conduct seems to warrant the action, at any time after his minimum term has been served. The defendant may also be allowed the usual reduction in time for good behavior.

The Chapter carries the idea of rewards for good behavior considerably beyond this, however. It requires that prisoners be divided into at least three grades, according to conduct, and permits a system of rewards and privileges to be adopted in connection with the grades. The time allowed for good behavior may be made dependent upon the prisoner's grade, though no more time may be allowed than the maximum provided by existing laws. The different grades of prisoners may also be given different uniforms. The statute expressly does not undertake, by this system, to circumscribe the exercise of the Governor's discretion in granting paroles, but it is conceivable that a prisoner's grade might be influential in connection with paroles and pardons as well.

Other provisions of the statute dealing with the care of prisoners require the State Board of Health to supervise sanitary conditions and to inspect both the central prisons

and the prison camps. They also require separate eating and sleeping quarters for different races and different sexes, and "in so far as it is practical" require the segregation of youthful convicts. They also require children born to female prisoners, after attaining a "suitable age," to be turned over to the Clerk of the Wake Superior Court for disposition as in the case of an orphan or a child of pauper parents.

With respect to the harsher aspects of prison discipline the Chapter attempts to define the degree of force which the authorities may use when violence is attempted by prisoners. It is quite obvious that such a matter does not easily lend itself to statutory definition to a nicety, and here it is covered by the sweeping generalization that "the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, or to prevent an escape." There is no better way of emphasizing the necessity for prison officials possessed of intelligent discretion. The statute contains further provisions with reference to escape, attempt to escape and assisting in either the escape or the attempt, and makes these offenses misdemeanors subject to imprisonment in the court's discretion, the term to begin after the termination of the offender's initial term. Commission of such an offense forfeits all time previously earned for good behavior. Prisoners serving life terms may not be greatly perturbed by this statute. The escape provisions also allow the Highway and Public Works Commission to make "rules and regulations" providing for the recapture of escaped convicts. At first glance this may seem somewhat obscure to those who have never known a convict to be apprehended by rules and regulations, but its meaning is somewhat amplified by a provision permitting rewards to be offered. The statute also authorizes any citizen of the State to take escaped convicts into custody and deliver them to the Division of Prisons—a privilege which will no doubt be highly prized by the citizenry.

One other statute deals with escapes. It is Chapter 105, Public Laws, and expressly makes it the duty of all local peace officers in the State, upon information from the superintendent of any of the State's correctional or penal institutions that there has been an escape, to take the escaped person into custody, if found in their jurisdiction, and return him to the proper institution. The necessity of such a statute is not altogether apparent to those who, like the writer, have been under the impression that this duty was already incumbent upon local officers; but the writer understands that it grew out of the fact that local officers, in one or two instances, refused to coöperate in returning delinquent boys who escaped from correctional schools. This is supported by the fact that the Chapter expressly refers to "any person confined . . . by Juvenile or other court."

V. PARDON AND PAROLE

We have already touched upon the statutes dealing with the rewards of the virtuous prisoner while incarcerated and, to some extent, in the matter of indeterminate sentences, upon the rewards leading to early freedom. There remains to be discussed the legislation dealing with those supreme powers of criminal justice, rectification and forgiveness, as embodied in the gubernatorial powers of pardon and parole.

Formerly the Governor was assisted in matters touching upon pardons, commutations and paroles by the Executive Counsel, but that office was abolished by the 1933 Assembly. Chapter 111, Public Laws, however, authorized the Governor to appoint a full-time Commissioner of Parole (at a salary not exceeding $3,000 per year) to assist him in this work, and to perform any other duties the Governor may assign. The statute did not change any existing laws regarding pardons, reprieves and commutations, though it did expressly authorize the Governor to make rules for the initiation and hearing of applications for such relief. The statute did authorize a much more comprehensive parole system than was

formerly in existence. It allows the Governor to set up a complete system and to utilize four employees of the State Highway and Public Works Commission as parole supervisors. These supervisors are to maintain contact with paroled prisoners, assist them in finding employment, and see that the conditions of the parole are complied with. The statute does not undertake to limit the Governor in fixing parole conditions except to the extent that it requires service of a "reasonable" part of the sentence, to the extent that it provides that prisoners on parole shall involve no expense to the prison and to the extent that it requires one condition to be a return to prison for violation of the other conditions prescribed by the Governor. In examining into the record of any prisoner being considered for parole the Governor is authorized to require any employee of the State Department of Public Welfare or the State Highway and Public Works Commission or any County Superintendent of Public Welfare to prepare and submit a case history or any other desired information regarding the prisoner.

While this statute may result to some extent in a better penal system, that result is largely incidental, as the chief purpose of the statute is to accomplish a saving of State funds. This is clearly shown not only by the provision, already mentioned, that paroled prisoners shall be no expense to the prison, but also by the preamble, which recites the mounting cost of maintaining prisoners who cannot be put to profitable employment. The preamble does, however, recognize what it seems to regard as a happy, though incidental union between the State's financial and social interests by reciting that "a large percentage of these prisoners may be better prepared for a return to the duties of citizenship and the cost of prison administration be thus greatly reduced by parole and adequate supervision."

One other statute, while not concerned with pardon and parole, is concerned with the status of prisoners who have

served their terms, and seems appropriately mentioned here. Is is Chapter 243, Public Laws, and provides that a person convicted of a felony and hence having forfeited his citizenship may petition for restoration of citizenship at any time after two years from the date of his discharge from custody. The former law allowed such a petition to be made at any time after four years from the date of conviction.

PROHIBITION

The statutes dealing with the legalization of beer and with the repeal of the Eighteenth Amendment were attended by so much publicity and popular interest that there seems little need for lengthy discussion here. Consequently, this chapter will merely sketch these statutes in the briefest possible way.

I. Beer

After some hesitation, the legislature first legalized the sale of beer and light wines, containing not more than 3.2 per cent of alcohol by weight, by Chapter 216, Public Laws. This statute, passed on April 5 to take effect May 1, levied a tax of $2 per 31-gallon barrel and 2c per 12-ounce bottle, fixed the county license tax at $25 and the municipal tax at $10. No State license tax was levied. The statute forbade establishment of any place exclusively for the sale of the legalized beverages and forbade sales to minors under 18 years of age.

The day following passage of Chapter 216, Chapter 229, Public Laws, was passed, repealing all laws which formerly prohibited advertising of alcoholic beverages, so far as they concerned the newly legalized drinks. Shortly after this, on April 18, Chapter 276, Public Laws, was passed, permitting shipment of beer into the State to be stored for sale beginning May 1, the purpose being, of course, to have a supply on hand when legalized sale began.

On April 28, the Beverage Control Act (Chapter 319, Public Laws) was passed, and it supersedes Chapter 216 both as to regulation of sale and as to taxes imposed. As amended by Chapters 394, 444, and 558, Public Laws, it levied State license taxes of $500 on manufacturers, $250 on bottlers, $150 on wholesalers, $100 on railroad systems selling beer on their cars, $12.50 on salesmen, and $5 on retailers. The retailer's license increases by 10 per cent of the base tax for each license over one issued to the same retailer. State taxes of $3 per 31-gallon barrel and 1c per 12-ounce bottle were also levied.

Provisions were made for collection of the taxes by the Revenue Department, and for reports of shipments to the Department as a check on revenue collection. County license taxes for retailers were fixed at $25 and municipal license taxes at $10 for retailers selling beer for consumption only off the premises where sold, and at $15 for retailers selling for consumption on the premises. These municipal taxes increase by 10 per cent of the base tax for each license over one issued to the same retailer. All State and local licenses are annual and expire on April 30 each year. There is no authority, however, for apportioning the tax when the license is secured in mid-year.

Only restaurants, cafes, cafeterias, hotels, lunch stands, drug stores, filling stations, grocery stores, cold drink stands, tea rooms, and incorporated or chartered clubs may secure license to sell beer for consumption on the premises. This provision is designed, of course, to insure against return of the saloon; but experience has demonstrated that neither the saloon nor any other establishment devoted solely to sale of alcoholic beverages is likely to return so long as 3.2 only may be dispensed.

Retailers must first apply to city authorities for license if they are in an incorporated city, and to county authorities if they are not so located. Issue of city license automatically entitles the retailer to a county license on payment of the license fees, and the issue of county license entitles the retailer to a State license on proper payment. Information to be furnished the licensing authorities is specified by the statute. The chief requirement is a showing that the applicant has never been convicted of a felony involving moral turpitude and that he has not been convicted of violating State or Federal prohibition laws within two years preceding the application. Residence in the State at the time of the application is sufficient as a residence requirement except that one year's residence is required in Camden, Chowan, Currituck, Dare, Gates,

Henderson, Hertford, Pasquotank, Perquimans and Polk counties.

Beer may not be sold during church hours within 50 feet of a church in a town having police protection or within 300 feet of a church outside of such a town. Sale on the campus or property of schools and colleges is prohibited at all times.

Licenses may be revoked for violations of the Act or the regulations promulgated under it, for allowing the licensed premises to be used for unlawful or immoral purposes, or for hiring a salesman or dispenser whose criminal record does not meet the standards prescribed for licensees themselves. Licenses revoked may not be reissued for at least six months. Violation of the Act is also made a misdemeanor and conviction of such a violation, or conviction of selling beverages not legalized necessarily revokes the license.

The only provision of the earlier statute (Chapter 216) which was not superseded by the Act is that prohibiting sales to persons under eighteen. It is apparently still in force.

II. WHISKEY

The most important law affecting the hard liquor situation was, of course, Chapter 403, Public Laws, which called an election for November 7, 1933, for voting on the question of repealing the Eighteenth Amendment. As that election has been held and repeal was defeated the convention which would have been held formally to express the will of the people, had there been a majority for repeal, will never be held. While this did not serve to block repeal of the Amendment, it at least saved the State the expense of holding the convention. The statute which called the election has become a dead letter and discussion of its major provisions here would be useless.

There is, however, one technical question growing out of the statute which may be briefly mentioned. It will be recalled that, in an advisory opinion, our Supreme Court held that the question of repeal should be submitted at a general election. Accordingly, Chapter 403 designated the repeal election as a

general election, despite the fact that general elections in North Carolina ordinarily come in even-numbered years. However, the day before Chapter 403 was passed, the legislature passed Chapter 383, Public Laws, which calls for submission of the proposed new Constitution. This Chapter provides that the Constitution shall be submitted "at the next general election." At that time the next general election was scheduled for 1934 and undoubtedly the intention was to submit the Constitution in 1934, as, by Chapter 403, all questions not relating to repeal were barred at the repeal election. In point of fact, however, the repeal election became "the next general election" and, since the Constitution was not and could not then be submitted, the query is whether it may still be submitted in 1934. No doubt if the question is ever presented to a court, an answer will be found which will make submission in 1934 perfectly legal. The answer, however, must be found somewhere other than in the words used.

The only other statute of general application dealing with prohibition is Chapter 480, Public Laws. This Chapter repealed those provisions of the original State prohibition law which required $20 reward to be paid by counties to a law enforcement officer capturing a still. It is not apparent whether the legislature, by this law, intended to abolish still rewards except where authorized by local statutes (which were not repealed), though exceptions written into the statute for various counties seem to indicate that it did so intend. If such was the case it failed of its purpose, for it overlooked the provisions of the Turlington Act (which had superseded the former law) requiring payment of rewards of from $5 to $20, the amount being in the discretion of the county commissioners. These Turlington Act provisions are still in force.

Chapter 480 does not apply to Caswell, Wilson and Chowan counties. It also fixes the reward to be paid in Surry, Avery, Northampton, Greene and Alamance counties at $5 and allows commissioners in Yadkin, Graham and Jackson counties to pay not more than $5. With the exception of the provi-

sions exempting Caswell, Chowan and Wilson, these provisions regarding counties were apparently inserted so that rewards, even though reduced, might still be paid, on the theory that otherwise no rewards would be permissible. Since the Turlington Act provisions are still in force, however, counties not specially treated by this statute may pay larger rewards than those so treated, for the latter are limited by the new law despite the Turlington Act.

One other matter is worth mentioning in connection with this statute. As passed by the legislature the statute accorded special treatment to some eight other counties. Through an oversight in the enrolling office and on the part of the legislative committee proofreading the bill, these counties were omitted from the statute as finally ratified. These special provisions adopted, but omitted from the ratified bill do not become law, and probably should be classed as legislation lost in transit. It may also be said that in view of the quantity of legislation passed by this year's assembly, the overlooking of a bit here and there is quite understandable.

DOMESTIC RELATIONS

I. Marriage

The three laws relating to marriage requirements which were passed by the 1933 legislature are probably fairly familiar to most citizens of the State, as they received considerable publicity at the time of their passage.

The first, Chapter 12, Public Laws, repealed the statute, passed in 1929, which required persons under 21 to give five days notice of intended marriage. Chapter 256, Public Laws, is titled "an act to repeal Chapter 129 of the Public Laws of 1921" and the effect of its provisions probably is to repeal most of that Chapter by implication but nowhere in the statute itself is the Chapter mentioned, nor is there even a clause in the statute which expressly repeals any conflicting laws. The 1921 law required a health certificate from both bride and groom, signed by a physician showing freedom from tuberculosis in the infectious stages and stating that there had been no adjudication of insanity. In addition, the groom's certificate was required to show freedom from venereal disease. The new law requires an affidavit from the groom attesting to the fact that he does not have and has not had during the two preceding years, active tuberculosis or a venereal disease. If the affidavit is sworn to before the Register of Deeds he may make no charge for his services in connection with its execution. If he desires, the groom may file a certificate, under the old law, in place of the affidavit. With typical chivalric inconsistency the statute requires no affidavit to be filed by the bride, and expressly provides that she shall not be required to stand a physical examination. Likewise there is no reference in the statute to the previous insanity of either party as a bar to marriage. Were it not for the title to this Chapter it would be entirely possible that the old provision in this respect would still be in force. While the statements regarding insanity were, under the old law, nominally a part

of the physician's certificate, it is obvious that whether the applicant had been *adjudged* insane was not a matter disclosed by a physical examination, but was merely a statement by the applicant. There is nothing in the Chapter itself which necessarily conflicts with the old provisions in so far as they necessitated this statement regarding previous insanity. The Chapter merely provides that, after its requirements are met, "the Register of Deeds may issue a license to marry, provided the contracting parties are otherwise qualified to marry according to law";—and this is in no wise inconsistent with the old provisions regarding insanity. If those provisions have been repealed by Chapter 256 it can only be because a court decides that the language of the Chapter is ambiguous and that, therefore, it may consider the title in construing the Chapter's effect. It does seem that a statute affecting so important a matter as marriage should receive better draftsmanship.

It is the writer's understanding that both of these laws loosening marriage requirements were motivated solely by a desire to induce North Carolinians to marry at home rather than in the neighboring bailiwicks where the laws were not so strict, and thus to secure additional license fees for the State, additional hotel and restaurant expenditures for native proprietors, and additional marriage fees for Justices of the Peace (and mayhap a parson or two). The idea seems to be that, since finance is one aspect of our government and marriage laws are another, the two might as well dwell in harmony —that is, as long as finance is given proper consideration.

The same attitude is not reflected to a great extent in Chapter 269, Public Laws, which is the remaining marriage statute to be discussed. It provides that couples resident in the state who marry elsewhere must file a copy of their marriage certificate in the office of the Register of Deeds in the home county of the groom within thirty days after their return to the State as residents. It does not specify from whom the copy must be procured but the Attorney General has subsequently ruled

that it should be procured from (and signed by) the person performing the ceremony, if possible; otherwise from the person issuing the license.

Since the Chapter provides that the fee for filing and indexing the copy is 50c, it might at first be thought that the statute also was intended to keep the boys and girls at home by running up the cost of marriage elsewhere, and to penalize ever so slightly those who were stubborn and went elsewhere despite the new convenience of marriage at home. However, for reasons which were probably more or less valid, the legislature added a provision to the Chapter to the effect that failure to file the certificate should not invalidate the marriage; nor did it specify any penalty for such failure. Consequently the Chapter became little more than an invitation by the legislature to returning married couples, requesting that the certificate be filed, in the hope of obtaining a few stray half dollars for the counties in times of sore need.

II. DIVORCE

Two statutes were passed with reference to divorce, both of which followed the modern tendency to liberalize divorce requirements. Chapter 71, Public Laws, reduced from five to two years the length of separation required for a divorce to be secured by the aggrieved party on the grounds of separation. The legislature also excepted this type of divorce from the provisions of law which require, in most actions for divorce, that the grounds be in existence for six months prior to the beginning of the action. Finally, the statute reduces the length of time which the plaintiff must reside in the State before bringing any divorce action to one year. Formerly this was five years in cases based on separation and two years in other cases.

Chapter 71 did not reduce the length of the period of separation required in divorce actions brought by the party responsible for the separation. Chapter 163, Public Laws, did reduce that period from five to two years, and reduced the

period of residence in the State required of the plaintiff to one year. It also allows suit in these cases even though there are children of the marriage. Formerly the responsible party could not sue for divorce when there were children. Apparently, through oversight, however, the requirement that the grounds exist for six months before suit is begun was not eliminated in these cases. Consequently the real period of separation required in cases of suit by the party responsible for the separation is two and one-half years.

III. ADOPTION

Chapter 207, Public Laws, repealed the former adoption law in its entirety, and substituted a new law which makes a number of important changes. The major changes are: (1) The adopting parent or parents (defined as "any proper adult person or husband and wife jointly") must be residents of North Carolina, as must also the living parents of the child to be adopted. There were no residence restrictions under the old law, and this change has met with some criticism on the ground that it will decrease the number of adoptions. With respect to the restriction as to adopting parents this criticism may be partially answered, for as will subsequently appear, the statute sets up a procedure which calls for a period of supervision by the court, and the court could not exercise any real supervision if the adopting parents reside in another state. (2) Whereas formerly the petition for adoption could be filed only in the county of the child's residence, it may now also be filed in the county of the adopting parents' residence, in the county of the child's residence at the time it became a public charge, or in the county in which is located any agency or institution having custody of the child. (3) When the petition is filed, an investigation of the child's antecedents to determine if the child is a proper subject for adoption, and an investigation into the fitness of the proposed foster home must be made by the County Superintendent of Public Welfare or by a representative of some child-placing

agency licensed by the State Board of Charities and Public Welfare. The investigating official must report to the court. Formerly the only requirement was that the court regard the petitioner as a "proper and suitable person." (4) The court being willing and the necessary person (parent, guardian or person with whom the child lives or who has charge of the child) consenting, the first order of the court may tentatively approve the adoption. After this tentative arrangement has been esablished for one year, and before the lapse of two years, the order may be made permanent and letters of adoption granted as of the date of the tentative adoption. During the interval the child is under the court's supervision, though the statute does not prescribe how the supervision shall be exercised and does not direct that he call upon welfare officers or others to report to him upon the success of the trial. Presumably, however, he may utilize the services of these officers. Under the old law no such probation or trial period was provided. (5) A change of the child's name sanctioned by the court must be reported to the Bureau of Vital Statistics, and there the change may be entered on the child's birth certificate. Subsequently, upon request, certificates may be issued in the child's new name without reference to the adoption, though the original record will remain at the Bureau undisturbed. The former law, while permitting changes of name, contained none of these additional provisions; but the new law permits similar certificates to be issued in cases of adoption made under the prior law. This is a fitting concession to sentiment in one of the most human of all legal proceedings. (6) The place for recording the final order in the Clerk's office is specified, and the Clerk is required to send a copy to the State Board of Charities and Public Welfare. (7) The final order may be revoked, for good cause, at any time within two years after it is made, but not thereafter. Under the old law there was no limitation upon the time within which the order might be revoked; and the original parents were permitted to seek to have the child restored to them at any time.

The new law holds out to the foster parents a much greater certainty of a permanent relationship. (8) The new law ratifies all prior adoption proceedings.

IV. Abandonment

Chapters 13 and 361, Public Laws, permit a wife to testify against her husband in criminal cases in which he is accused of abandonment or non-support of their children. She already was permitted to testify against him in cases where the charge is abandonment or non-support of herself.

GAME AND CONSERVATION

Throughout the entire session of the legislature the State's game laws were under fire, with particular reference to their game license provisions. There were numerous bills introduced to abolish hunting and fishing licenses in various counties, the preambles of some of which professed the right to hunt and fish without a license to be among those rights of the individual supposedly protected by the Constitution. One proposed bill would have abolished county resident licenses in 28 counties. Another apparently would have made the matter a party issue, as it would have abolished licenses in the 8 counties represented by Republicans. None of these bills advocating such complete abolition were passed. A reasonable number were passed, however, which permit fishing without county resident licenses in particular streams, and a few were passed permitting the hunting of particular game without such a license. Each of these bills applied only to one or two counties.

The more general attacks on licenses were probably grounded in part on politics, in part on natural antipathy to any type of game laws, and in much larger part on the depression, during which sentiment for a game conservation program has naturally ebbed, at least with respect to that part of the program calling for financing from license fees. Whatever the cause, however, the attacks were fairly successful with respect to hunting licenses, and the result was a considerable reduction in price. Chapter 422, Public Laws, reduced the total cost of a county resident license (for hunting only in the licensee's home county) from $1.25 to 60c, the cost of a State resident license (for hunting by a resident anywhere in the State) from $3.25 to $2.10, and the cost of a non-resident license (for hunting by a non-resident anywhere in the State) from $15.25 to $10.10. As 25c of the old cost was the fee of the officer selling the license and only 10c of the new cost

goes for that purpose, the net reduction so far as the State is concerned is 50 per cent in the case of county resident licenses and 33 1/3 per cent in the other two cases. The State does not, however, retain all of the amount collected, as Chapter 422 requires that 5 per cent of the first $25,000 collected, 10 per cent of the second $25,000 and 15 per cent of all over $50,000 must be paid to the counties for use as bounties on predatory birds and animals. This money is to be divided evenly among the counties.

Licenses to fish for game fish were not reduced in price. The only change made was to create a new type of license, which allows non-residents to fish in the State for 60c per day. This was accomplished by Chapter 236, Public Laws, the proponents of which believed that it would attract a larger number of non-resident fishermen, increase the State's license receipts and increase incidental spending in the State.

Licenses for the propagation of trout and bass were reduced from $25 to $5, and commercial fishermen paying license fees on their commercial equipment were authorized to deal in fish for propagation purposes without paying even the reduced license. These changes were made by Chapter 430, Public Laws.

Though there were some attempts to lengthen open seasons for hunting, and though some few local attempts were successful, the general effort along this line was neither so pronounced nor so successful as the effort to reduce license fees. In fact, in many instances, open seasons were sharply curtailed. Consequently, though hunting licenses may be cheaper they are also less useful.

Chapter 422, Public Laws, which has already been mentioned, fixed hunting seasons. Its chief innovation was the division of the State into three zones, corresponding roughly to the mountain, the piedmont and the coastal plane regions of the State. The western zone begins at the Tennessee line and stops at the eastern borders of Alleghany, Ashe, Watauga, Avery, Mitchell, Yancey, Buncombe and Henderson counties.

The central zone begins at the western zone's boundary and stops at the eastern borders of Warren, Franklin, Wake, Chatham, Lee, Moore and Richmond counties. The eastern zone includes all the remaining part of the State.

The general open season is from November 15 to January 1 in the western zone, from November 20 to February 20 in the central zone and from November 20 to February 1 in the eastern zone. There are special seasons for opossum, raccoon, bear, squirrel and deer, with the dates varying in the different zones. There is no open season in any zone on beaver, buffalo, elk, doe deer, pheasants and grouse, the last two named being the new additions to this list. Seasons on all migratory wild fowl are left as fixed by the Federal Government.

To attempt to detail all the changes in the dates of seasons as the result of the new law and the zoning would be extremely confusing and would hardly serve any useful purpose. A comparison of the length of seasons in terms of days is, however, fairly enlightening. The table printed below makes these comparisons. It takes no account of local modifications of either old or new laws, except to the extent that Chapter 422 itself sets up special seasons in Bertie, Halifax, Hertford, Martin, Northampton, Person and Washington counties for squirrel, deer, quail, turkey and raccoon. These seasons are reflected in the last column in the table, designated "Special seasons." Wherever there is no entry in that column the season in those counties is governed by the zone in which they lie.

Game animal or bird	No. days under former law	No. days in western zone (new law)	No. days in central zone (new law)	No. days in eastern zone (new law)	Special seasons
Wild turkey and quail	88	48	93	74	93
Rabbit, dove and woodcock	88	48	93	74	
Deer	109	62	62	106	123
Bear	107	107	107	None	
Squirrel	122	61	92	92	140
Opossum	137	92	92	92	
Raccoon	137	92	92	92	123
Mink, otter and muskrat	93	48	93	74	
Grouse	88	None	None	None	
Pheasant	91	None	None	None	

The other game provisions of Chapter 422 reduced the minimum size of public hunting grounds from 3,000 to 1,000 acres, and made it a misdemeanor to hunt on another's land without obtaining permission from the owner. The permission, when given, is good only for one season. The Chapter also provides that, in counties where the Game Commission is not created by legislative act, it is to be composed of the Chairman of the Board of County Commissioners, the Clerk of the Superior Court and the County Game Warden.

Only one statute related to commercial hunting. That was Chapter 337, Public Laws, which substantially reduced the license taxes levied on non-resident fur dealers, and reduced, to a lesser extent, some types of licenses for resident fur dealers. However, two types of resident licenses were apparently increased. The "apparently" is used advisedly, as the effect of section 4 of this Chapter is not altogether clear.

There were five statutes dealing with commercial fishing. Most important of these was Chapter 106, Public Laws, which made substantial reductions in various license taxes imposed on the State's depression-ridden (and latterly storm-tossed) fishing industry. The parts of the industry particularly affected are those dealing in oysters, clams and crabs. One

or two slight increases were also made. Subsequently, and along the same line, Chapter 433, Public Laws, made a 50 per cent reduction in the license taxes on fyke nets and motor boats used in hauling nets.

The third statute dealing with commercial fishing was Chapter 346, Public Laws, which reduced by 50 per cent the rental to be charged by the State in leasing bottoms for clam or oyster culture by the lessee. These leases are for twenty year periods, and the authorized annual rental, as now reduced, is 50c per acre for the first 10 years and $1.00 per acre for the balance of the time.

Apparently this did not affect any leases already in force.

The remaining two statutes regarding commercial fishing are regulatory. The first, Chapter 235, Public Laws, prohibits the planting, storing, distributing or depositing in North Carolina waters of Japanese, Portuguese or Mongolian oysters, and prescribes a minimum penalty of $1,000 fine or 12 months imprisonment for violation of the prohibition. The second, Chapter 438, Public Laws, eliminated the exception formerly existing for Sunday fishing with nets fastened to stakes, so that now fishing on Sunday with any type of seine or net is prohibited.

There were only a few other laws of general application relating to conservation. Chapter 178, Public Laws, authorizes the formation of limited dividend corporations for the development of forests in the State, and for related purposes. The incentive for the statute was the fact that the Reconstruction Finance Corporation, the purse with a thousand strings, has authority to loan money to such corporations if their projects are self-liquidating and are regulated by the State. The statute is an altogether interesting one, and there is no doubt but that it supplies the proper amount of State regulation. The Director of the State Department of Conservation and Development is given almost as much authority as if the State itself were undertaking the project. He must approve the planting and cutting of timber, loans, interest

rates, transfers or mortgages of real estate, capitalization, the valuation of property taken for stock, distribution of income, dissolution, and any reorganization undertaken. The corporation must agree in its charter to abide by the Department's regulations, though it may appeal to the Governor if dissatisfied. Dividends on the corporation's stock are limited to 6 per cent on preferred and 8 per cent on common. They may be cumulative, without interest. Excess earnings, if any, are payable to the State and a few rules for determining such earnings are prescribed by the statute. If the corporation is dissolved, its assets may be distributed in kind to the stockholders. The provisions of this statute are undoubtedly acceptable from the State's standpoint; and the wisdom of thorough-going State regulation of lumbering is not open to tremendous doubts in the light of the record of private industry in lumbering. It is somewhat doubtful, however, that this type of project will attract much private capital when the field is, at the same time, left open for much more unrestricted private enterprise.

Also connected with Federal conservation projects was Resolution 37, endorsing President Roosevelt's proposal to develop the Tennessee River Valley. The facilities and cooperation of the State's Departments were pledged "so far as the law and available financial resources will permit." Along the same line, Resolution 54 requested the President to allow use of funds available under the Reforestation Act on "private lands in North Carolina for the public benefit." The Resolution refers chiefly to preservation of timber resources, flood control and erosion control.

Another statute to be mentioned is Chapter 516, Public Laws, and is designed to enable the State better to protect its interests in State-owned lakes. It first authorizes the State agency in charge (at present the Department of Conservation and Development) to regulate fishing in streams feeding the lakes, in order that the lakes themselves may be adequately protected as breeding grounds. Secondly, it authorizes the

Department to sell short-term licenses for hook and line or rod and reel fishing to non-residents of the counties in which the lakes are situated. These licenses, which may be used instead of the ordinary State-wide license, will sell for 35c for a one day permit, 50c for two days and $1 for a week. Finally the statute prohibits the creation of any structure on or over the waters of the lakes without a permit from the Department. This includes all such structures as piers, boat houses and bath houses, and violation of the prohibition is not only made a misdemeanor but also marks the offending structure as a nuisance and permits the State to remove it.

Little was done with respect to State and National Parks. A bill introduced to create the Daniel Boone National Forest Park, comprising all or a part of the territory in 13 counties in the northwestern part of the State, was defeated. It would have allowed any private lands in the territory to be placed under Park supervision. It attempted to guard against serious losses in tax revenues on the part of the counties, such as are now being suffered by Swain and Haywood counties as the result of the creation of The Great Smoky Mountains National Park. There Swain lost approximately 30 per cent of its taxable property and Haywood about 4 per cent, leaving indebtedness outstanding to be paid, if possible, from taxes levied on the remaining property. The legislature refused to appropriate any State funds to help pay the debts of these counties, but by Resolution 27 earnestly requested Congress to do so, and, by Chapter 419, Public Laws, appointed a commission to press the case.

Other park legislation included Resolution 32 and 33, which authorized the Department of Conservation and Development to seek Federal unemployment relief funds for use in improving, reforesting and building roads in the vicinity of Fort Macon State Park and Mount Mitchell State Park, respectively. The legislation also included Chapter 537, Public Laws. This Chapter provides that moneys paid to eleven western counties (Avery, Buncombe, Burke, Haywood, Hen-

derson, Jackson, Macon, Swain, Transylvania, Watauga and Yancey) by the National Forest Commission, hitherto earmarked for roads and schools, might be used for general purposes. The theory of the Chapter is that roads and schools have both become State functions. It is very doubtful, however, that this money can be diverted from roads and schools without the consent of the Federal Government, particularly as the counties still have road and school debt service and some maintenance expenses. The Chapter also attempts to safeguard the State's rights to sell game licenses in Federal areas, with the exception of The Great Smokies Park. The right to do this also may be doubtful, particularly with respect to all land already owned by the Federal Government, unless licensing privileges were expressly reserved when the Government acquired the land.

It seems fair enough to remark here, by way of summarizing the 1933 Assembly's attitude toward parks as expressed in legislation, that the State is perfectly willing these days to adopt a park program to the extent that the Federal Government will finance it.

As has been fairly obvious from the foregoing, the administration of all game and conservation laws was left under the supervision of the Department of Conservation and Development. There were several bills introduced at the session to abolish the Department, but none of them came close to passage. There were more serious attempts made to abolish the office of Commissioner of Inland Fisheries and the office of State Game Warden. The result of these efforts was Chapter 357, Public Laws, already mentioned in the chapter dealing with State Economy and Finance, which, in effect, combined the two offices. The most serious blow at the Department's activities, however, was struck, as in the case of most Departments, by the Appropriations Act. By it the appropriation was fixed at $29,645 for each year of the next biennium, as

compared with $101,005 per year from 1929-31 and $80,800 per year from 1931-3. This represents a considerably larger percentage of reduction than the average made in Departmental budgets, and no doubt reflects, to some extent, the same opposition incurred by the game license laws.

RELIEF OF DEBTORS

I. Mortgage Legislation

While not approaching the record of legislatures of middle western states in the matter of statutes designed for the relief of mortgage debtors, North Carolina's 1933 legislature did pass three statutes designed to effect such relief. All of them are concerned with attempts to alleviate hardships caused by actions brought to collect deficiency judgments obtained after the mortgage security has been sold for a more or less nominal sum in the present abnormally depressed market. No State-wide moratorium on foreclosures was attempted to be required, though local statutes were passed providing, in effect, for a moratorium in several counties. The legislature did, however, by Resolution 16, request all mortgage holders to allow a moratorium on principal payments, if interest and taxes are paid by the property owner, until November 1, 1934.

The first statute to be mentioned is Chapter 36, Public Laws, and is purely prospective in effect. It abolishes deficiency judgments in all cases of mortgages or deeds of trust executed after the Chapter's ratification on February 6, 1933, and given to secure the balance of the purchase price for real property. For the case to come within the statute the note or other evidence of the debt must recite that it is for the balance of the purchase price; but wherever the papers are prepared by the seller it is made his duty to include the recital. Failure of the seller to do this renders him liable to the purchaser for any loss suffered by reason of the omission. These references to the seller, without any reference to a "lender," seem to indicate that the statute is not intended to cover cases where the purchaser borrows from some person other than the seller, and mortgages the property as security, in order to obtain the balance of the purchase price. It clearly does not include cases of straight mortgage loan transactions in which the purchase of the property is not involved.

Of more importance in cases of purchase money mortgages

executed before February 6, and in all cases of other types of mortgages, is Chapter 275, Public Laws. It is designed primarily to give courts the right to inquire into the adequacy of prices paid at mortgage sales. Legislation was necessary to do this as our court had previously ruled that it possessed no such power.

The power conferred has its limitations, however. The statute provides that any person having an interest in real property being sold by a mortgagee, trustee, commissioner or other person authorized to sell may petition a Judge of the Superior Court for an injunction restraining either the sale or the confirmation of sale, on the ground that the price offered is inadequate and will result in irreparable damage to the petitioner, "or upon any other legal or equitable ground which the Court may deem sufficient." This quoted catch-all phrase is probably broader than the power of courts, already recognized, to enjoin sales for fraud and similar grounds. Before granting the injunction, however, the Judge must require a bond for costs, interest and other damages which may be suffered. The Judge is also permitted, in his discretion, and assuming a proper bond is filed, to order a resale of the property. He is further permitted to appoint a receiver pending any sale or resale, and to direct that income be used to pay taxes or prior liens. All of these actions of the Judge are subject to appeal to the Supreme Court. It is possible that the provisions requiring the posting of an indemnity bond, while fair enough in the ordinary case, may prevent utilization of this part of the statute in some cases where its benefit would be substantial.

The remaining protection to mortgage debtors afforded by the statute requires no bond, but applies to fewer cases, as it does not apply to foreclosures conducted by court proceedings. It provides that in cases of foreclosure by power of sale, when the holder of the debt secured takes title to the property, either directly or indirectly, and subsequently sues for a deficiency judgment, the defendant may allege that the price

paid at the sale did not represent the fair value of the property, or that the property was worth the amount of the mortgage at the time of sale. The facts so alleged may be used to reduce or defeat the deficiency judgment, but may not be carried so far as to require the plaintiff to pay any excess of the true worth of the property over the amount of the mortgage. No doubt the average jury will be receptive to proof of this character, and mortgage debtors would probably be pleased to have the privilege extended to cases of foreclosure by court action. Presumably the theory of excepting those cases was that, since the court supervises the sale, it will protect the debtor's rights.

This latter part of the statute does not affect the rights of third persons who buy at mortgage sales, nor does it affect the negotiability of the obligations secured by the mortgage. Also, it is made clear that none of the statute's provisions applies to tax foreclosures or tax sales.

It seems somewhat inconsistent that the latter part of this statute only applies in cases in which the holder of the obligation or his nominee becomes the purchaser. The "true value" of the property is the same, regardless of who purchases, and the mere presence of a disinterested bidder at the sale does not insure that a real market for the property has been created. In fact, more often than not he is merely hoping to pick up a great bargain. If the debtor has no assets from which a deficiency judgment may be collected, the mortgagee will outbid the bargain offers of this disinterested bidder in order to protect his investment, just as he would have done in the absence of this statute. On the other hand, if a deficiency judgment can be collected from the debtor, he will be inclined to let the bargain hunter have the property and, unless the debtor can enjoin confirmation of the sale under the first part of the statute, he is then free to secure and collect his deficiency judgment. The theory of a statute of this character would normally be that the mortgagee is under obligation to see that the property brings a fair price, on

peril of losing his right to further recovery. It would normally be expected that this would apply to all cases. As it is, if the factual analysis outlined above is correct, the present statute will be effective, where the debtor is solvent, only in cases where the property attracts not even a bargain hunter, and these cases normally will be the ones in which proving that the property's value is greater than the sale price will be most difficult. The only explanation is that, under the injunction proceedings allowed by the first part of the statute, the court will force payment of an adequate price by the mortgagee, regardless of bids made by the bargain hunters. This procedure, however, is cumbersome and may be costly, and may very well not be as effective as it was intended to be.

The remaining statute dealing with mortgages is Chapter 529, Public Laws, which provides that actions for deficiency judgments after mortgage or deed of trust foreclosures must be brought within one year from the date of sale. Where sales took place before the Chapter was ratified on May 15, 1933, the actions must be brought within one year from that date, though this does not extend the time for bringing any such action.

II. OTHER LEGISLATION

Several laws designed primarily for the benefit of debtors are discussed elsewhere. They are Chapters 160 and 437, Public Laws, regarding the fees for filing Federal crop liens and chattel mortgages, and Chapter 219, Public Laws, regarding waiver of landlords' liens in agricultural tenancy cases, discussed in the chapter on Agriculture, and Chapter 482, Public Laws, regarding the filing of increased bids in sales under execution, discussed in the chapter on Courts and Civil Procedure. The only other statute to be mentioned here is Chapter 55, Public Laws, which allows the Commissioner of the Veterans Loan Fund, with the approval of his Board of Advisers, to extend the time for payment of the State's mortgage loans to war veterans on such terms as are deemed for the best interests of the State and the veteran.

PROFESSIONS

Fourteen statutes were passed by the 1933 General Assembly dealing with the regulation of eleven different professions in the State. The professions affected are attorneys, physicians, dentists, optometrists, chiropractors, nurses, barbers, cosmetologists, pharmacists, plumbing and heating contractors, and pilots. As there is little connection between the various statutes, except for the fact that at least seven of them represent what might be termed by the man on the street as protection for the insiders against the outsides, they will be dealt with separately by professions.

I. Attorneys

Chapter 210, Public Laws, creating the North Carolina State Bar (not to be confused with the Bar Association, which is a trade guild and not a State agency), is the most important statute affecting attorneys in many years. It is also the most important statute affecting any profession passed by the 1933 legislature. As amended by Chapter 331, Public Laws, its effect is to place the admission of new lawyers in the hands of the lawyers themselves and, in the first instance, to place in their hands also suspension and disbarment proceedings. In so doing it accomplishes the object of long-standing agitation by many of the State's leading lawyers.

The Bar is organized by Judicial Districts (of which there are 20), and each District has one representative, elected by the District's lawyers, on the Council, which is the central governing body. Membership in the Bar is prerequisite to the active practice of law, and the annual membership fee is $3. With due regard for the earning capacity of young lawyers, the statute allows them two years free membership after admission.

Examinations for admission to practice, beginning with that to be given in February, 1934, will be conducted by a

State Board of Law Examiners, composed of one member of the Supreme Court, selected by the Court, and six members of the Bar, elected by the Council. Law teachers are barred from membership, presumably on the grounds of possible prejudice. Thus the conduct of the examinations is almost completely removed from the hands of the Supreme Court, where, amid much carping, it rested for many years. The Board is empowered, subject to the Council's approval, to change the rules of admission, but must give two years notice of any change in educational requirements. It is impossible to predict how much the Board's examinations will differ in type from those given by the Court, but general supposition is that the variance will be considerable. It is also impossible to predict what change, if any, will be made in the qualifications prerequisite to admission.

Disciplinary measures are under the control of the Council or a committee of its members, and in this connection it is empowered to formulate rules of professional ethics and conduct. The Council is to act as a sort of Grievance Committee with judicial powers, as it may hear all complaints against attorneys and may make any one of four decisions: it may dismiss the complaint as unfounded, administer a private reprimand, suspend the offender, or disbar him. Reprimands, suspension and disbarments may be meted out for any type of unprofessional conduct, which offers a much broader field of activity than the old laws, the latter having limited disciplinary measures to specified cases.

Cases in which the complaints are dismissed or in which private reprimands only are given apparently end with the Council. Cases ending in suspension or disbarment may be appealed to the Superior Court by the accused attorney, and there he is entitled to jury trial. As the statute requires such appeals to be conducted in the same manner as in cases heard before a referee, the jury apparently will be limited to a consideration of the evidence heard by the Council. The Council also has power to reinstate attorneys.

The statute tremendously increases the responsibility of the organized Bar, in the first instance, to pass sentence on its wayward members. At the same time, the statute destroys the monopoly formerly enjoyed by the Bar Associations and Judges of the Superior Court to initiate such proceedings. Under the new law, apparently any person may make a complaint to the Council, and that body is charged with the duty of investigating. The new law does not, however, expressly charge any particular group or committee with the primary responsibility of initiating proceedings, which may or may not affect the degree of diligence with which house cleaning will be undertaken by the profession.

The only other statute relating to attorneys is Chapter 15, Public Laws, which makes it quite clear that Registers of Deeds, as well as most other county officials, are prohibited from practicing law while in office. This statute was probably passed as much for the protection of Registers as for the protection of attorneys, as Registers are frequently besieged for aid in drafting deeds and other documents and for help on other legal matters.

II. PHYSICIANS

Two laws related to physicians. Chapter 32, Public Laws, rewrote the statutory provisions regarding revocation of physicians' licenses by the State Board of Medical Examiners. In so doing, it effected three change in those provisions. First, it eliminated willful violation of the Board's regulations as an express ground for license revocation. This elimination does not seem to have great importance as any serious violation would almost certainly fall under the general grounds for revocation still contained in the law. Second, it added, as a ground for revocation, the conviction of any criminal offense involving moral turpitude. This is of considerable importance as, while the old law allowed revocation for "dishonorable conduct" it seems to have meant only such conduct affecting the physician's professional life. Third, it abolished the

accused's right of appeal from the Board's decision to the courts, and made the Board's decision final. This is an interesting contrast to the provisions for attorneys, already discussed.

Chapter 506, Public Laws, accomplished a change in the provisions of the Workmen's Compensation Act which has been sought by many physicians ever since the Act was passed. It gave to the injured employee the privilege of selecting a physician of his own choice to treat his injury. Heretofore the physician was selected by the employer except in emergency cases and except in special cases where a change in physicians was ordered by the Industrial Commission. The Commission's approval of the employee's choice is still required, but presumably no objection will be raised to any reputable physician. The potential result, of course, is to divide compensation cases and fees among a much larger number of doctors. The statute will also be acceptable to employees who have particular preferences in doctors.

III. DENTISTS

Chapter 270, Public Laws, added to the specific grounds for revocation of dentists' licenses by the State Board of Dental Examiners that of the solicitation of professional business. Thus dentists are, in this respect, in the same category as doctors and lawyers. This is probably the hardest of all grounds of revocation to enforce, and has certainly never been strictly enforced in other professions.

IV. OPTOMETRISTS

Chapter 492, Public Laws, made two changes with respect to the annual fees payable by optometrists to the State Board of Examiners in Optometry. First, it raised the maximum fee which may be fixed by the Board from $3 to $5, and, second, it prescribed the character of notice to be given a delinquent optometrist before his license may be revoked for non-payment. Notice was already required but its character was not prescribed.

V. CHIROPRACTORS

Chapter 442, Public Laws, raises the time to be spent in a chiropractic college before applying to take the chiropractic examination from three to four years. The particular part of the Chapter which made this change amended the wrong line in the old statute, and there may be some doubt as to whether it is effective. The Chapter also exempts chiropractors from jury service, and provides for automatic lapsing of licenses on failure promptly to pay the $2 annual fee to the Board of Examiners. The license may subsequently be reinstated on a showing of good character and proficiency and payment of $10. Finally, the Chapter substituted the North Carolina Chiropractic Association for the North Carolina Board of Chiropractors as the body which nominates the candidates for the Board of Examiners, the members of which are appointed by the Governor. This seems to have been merely the result of a change in the organization's name.

VI. NURSES

Chapter 203, Public Laws, increased the membership of the Joint Committee on Standardization from six to seven. The old Committee was composed of three members from the State Nurses' Association and three from the State Hospital Association, which may have resulted in a few deadlocks. The new member was given to the Hospital Association, thus resolving the tie. The Chapter also made it clear that the power to prescribe standards for nurses' education, heretofore nominally held solely by the Committee, should be exercised jointly with the Board of Nurse Examiners. One interesting result of this Chapter was that it eventually required two elections by the Hospital Association, the first having been held in South Carolina and consequently being void.

VII. BARBERS

Chapter 95, Public Laws, increased the power of the State Board of Barber Examiners considerably. First, it made any

violation of its sanitation rules for barber schools a misdemeanor. Second, the Chapter eliminated the provision which formerly required all prosecutions for violation of the Board's regulations for barber shops and schools to be brought by local health officers, after notification by the Board and an independent investigation by the local officer. The Board may now initiate its own prosecutions without consulting local officers. Finally, the Chapter enlarged the territorial application of the Barbers License Law to include rural as well as urban communities. Heretofore there was some confusion as to whether the law applied to all towns of 500 or more or to all towns of 2,000 or more, but the new law eliminates that. The only exceptions made by the new law are for persons performing barber's work for their families, employers, employees, landlords or tenants, and for persons occasionally performing such work more than five miles from any town, whether the town is incorporated or not. As the old law, which was passed in 1929, excused barbers already practicing from taking the State examination, there may be a question as to whether barbers already practicing in the new territory included must be so excused or whether they must have been practicing prior to 1929.

The new law engendered considerable opposition, and from it were excepted Alleghany, Bertie, Camden, Clay, Carteret, Dare, Davie, Duplin, Gates, Hertford, Hoke, Hyde, Jones, Lincoln, Martin, Mitchell, Pamlico, Person, Pender, Rockingham, Stokes, Tyrrell, Wilkes and Yadkin counties. (A total of twenty-four.) Also at the 1933 session Davie County was exempted completely from the License Law.

VIII. Cosmetologists

Cosmetologists are the most recent group to obtain legislative recognition in the family of professions, and to secure a measure of statutory protection from outsiders and from unduly competitive and unduly unsanitary insiders. This was accomplished by Chapter 179, Public Laws, and with it went

the usual paraphernalia of a State Board of Examiners (in this case the Cosmetic Art Examiners), examinations for all except those already practicing, the serving of apprenticeships, the payment of fees, the requirement of certificates issued by the Board, the regulation of sanitation and the creation of sundry misdemeanors for violation of regulations and for deceptive trade practices. Licenses may also be revoked by the Board for a number of sound reasons, but revocations are subject to review in court. Minimum age for a Registered Apprentice is 18, for a Registered Cosmetologist it is 19. The Board consists of three cosmetologists with at least five years experience, appointed by the Governor.

IX. PHARMACISTS

Chapter 206, Public Laws, made a transitory amendment to the laws governing the qualifications necessary to take the State's pharmacy examination. It allowed two classes of persons to take the examination provided they applied for the privilege before July 1, 1933. The first class consisted of persons licensed in another state and with fifteen years continuous experience under the supervision of a licensed pharmacist in this State. The second class consisted of persons with two years of college training and twenty years of experience in filling prescriptions in a drug store. It takes no great amount of cerebral effort to conclude that this statute was designed solely to cover a couple of specific cases. It also seems that gentlemen falling in these classifications ought to be pharmacists if for no other reason than the peace of mind of those imbibing their prescriptions.

X. PLUMBING AND HEATING CONTRACTORS

Chapter 57, Public Laws, provides that the annual license fee, payable by these contractors to the Board of Examiners of Plumbing and Heating Contractors, is $25 with respect to contractors doing business in towns of less than 10,000 population. This $25 rate, which is half the regular rate,

formerly applied only to contractors in towns of less than 5,000 population. The Chapter also permits the fee to be paid in two installments, 50 per cent in January and 50 per cent in June.

XI. PILOTS

Chapter 325, Public Laws, slightly changed the penalty for piloting without a license. Whereas formerly the offense, except in emergency cases, was punishable by forfeiture of $40 for the use of the Commissioners of Navigation it is now, except in the same cases, made a misdemeanor, punishable by a fine of from $25 to $50 or imprisonment of not more than thirty days.

REGULATION OF BUSINESS AND TRADE

The new laws dealing with the regulation of business and trade are so diverse in character and content that they cannot be discussed with any great degree of coherence. Nevertheless, they may be divided roughly into two classes, the first consisting of laws designed to protect the public and the second consisting of laws designed to protect a business. A third class which some might expect to find here consists of laws designed to protect employees, but these are discussed in the chapter on Labor Laws. Laws primarily designed to protect agriculture, though incidentally involving trade regulation, may be found in the chapter on Agriculture. The laws in this chapter will be discussed in loose outline form; and, as the great majority of them fall in the first class, that class will, for convenience, be divided into several subdivisions.

I. Laws Designed to Protect the Public

A.—Laws Designed to Prevent Deceptive Sales Practices

At least three statutes may be mentioned under this category: (1) Chapter 108, Public Laws, is perhaps the most important, and is intended to prevent deceptive practices in the sale of motor fuels, with respect to which existing laws were inadequate. In general it prohibits selling, or attempting to sell, "liquid fuels, lubricating oils, grease or other similar products" in any manner deceitful as to the "nature, quality or quantity of the products." More specifically, it is made unlawful to sell from a pump, tank or distributing device which bears a trademark or recognized symbol, or to sell the products under a recognized trade name, unless the products sold are those of the owner of the trade-mark or symbol. It is made unlawful to camouflage privately owned distributing equipment to simulate the equipment from which recognized brands are sold. It is made unlawful to mix or adulterate

standard brands of these products. Finally, it is made unlawful to aid in committing any of these offenses, particularly by depositing in tanks or pumps any brand except that indicated by the name or symbol on the equipment. The penalty for violation is a maximum of $1,000 fine and 12 months imprisonment. This statute may well have been passed as much for the protection of the sellers of standard brands of these products as for the protection of the public, but certainly its effect is a measure of protection for the public.

(2) Chapter 535, Public Laws, provides that all electric storage batteries assembled or rebuilt for use in automobiles, containing any used material, must have the word "rebuilt" placed in the side of the battery container. This, of course, is designed to prevent the sale of rebuilt batteries as new ones, and violation of the Chapter is punishable by a maximum of $250 fine and 6 months imprisonment.

(3) Chapter 284, Public Laws, prohibits the use of milk bottles, milk or milk product containers bearing a trade name or trade symbol by any person except the owner of the mark or symbol. Presumably an authorized agent of the owner would be permitted to use these bottles, but the Chapter does not so specify. The other provisions of the Chapter are designed primarily for the protection of dairymen, and will be subsequently mentioned. In fact, this provision, like the gasoline and oil statute already mentioned, also may have been designed primarily to protect dairymen, but it results in some measure of protection to the milk-buying public. The penalty for violation of the statute is a maximum of $50 fine or 30 days imprisonment.

B.—Laws Designed to Prevent Financial Fraud

(1) Section 152, of the Revenue Act, requires small loan agencies, making personal loans on the security of wage assignments or personal property, to give the borrower, at the time of the loan, a written statement showing the amount of

the loan, the amount to be repaid, the time of repayment, and the rate of interest and discount.

C.—Laws Designed to Protect Public Health or Safety

(1) Chapter 343, Public Laws, prohibits the sale, in any city or county which has adopted the Public Health Service Milk Ordinance, or within one mile of the adopting unit, of milk or cream in a container indicating that the milk or cream has been graded, unless it conforms with the Ordinance. Penalty for violating this prohibition is a fine of from $10 to $50. Imprisonment is not authorized. It is interesting to note the disparity between this $50 maximum fine for an offense which may be injurious to human health and the $1,000 maximum fine (and 12 months in jail), authorized by the gasoline and oil statute already mentioned, for an offense which may be injurious to the efficient performance of automobiles (or result in infringement of patent rights). Other laws affecting dairy farming are discussed in the chapter on Agriculture, and one such law will subsequently be mentioned in this chapter.

(2) Chapter 431, Public Laws, expanded the statute which already allowed the Department of Agriculture to inspect and regulate sanitary conditions in ice cream factories, creameries and cheese factories, to allow similar inspection and regulation of plants making "frozen custard, milk sherbet, water ices and other similar frozen food products." Establishments included in the new provisions must pay the same annual inspection fees as ice cream factories ($20 for wholesale sellers and $5 for retail sellers). The Chapter also provides that whole milk, sweet cream and ice cream mix shipped into the State must conform to the same standards as the local products. Finally, the statute slightly increases the administrative power of the Department by permitting it to promulgate definitions as well as ordinary rules and regulations. This will no doubt aid the Department in making the statute

broad enough to cover changing conditions without the necessity of again amending it. The new law does not apply to Mecklenburg and Cabarrus counties.

(3) Chapter 339, Public Laws, expressly intended to improve sanitary conditions in the manufacture of bedding, requires inspection by the State Board of Health of establishments making mattresses, upholstered springs, comforters, pads, cushions and pillows "used in reclining or sleeping." All these are defined as mattresses by the Chapter. The annual inspection fee is $50. All mattresses must be tagged, with tags procured from the State Health Officer, and the tag must show whether the mattress is made from new material or previously used material, or whether the mattress is second hand. Second hand mattresses and mattresses made from used material must be sterilized by a process approved and licensed by the Health Officer. Maximum penalty for violation of this statute is $50 fine or 30 days.

(4) Chapter 555, Public Laws, is intended to safeguard the purchasers and recipients of electrical appliances. It requires that all electrical material and appliances sold or given away as premiums must bear the maker's trade-mark and other markings showing the character of the appliance and the use for which it is intended. It must also be approved as to safety by an Electrical Inspector, who may accept as evidence of safety the listings of the Underwriters' Laboratories, Inc., covering the types of appliances involved, and may also accept the Insurance Commission's ratings with respect to particular stocks. The inspection provided does not affect any civil liabilities growing out of defects in the appliances. Violation of the statute is punishable by a maximum of $50 fine or 30 days.

(5) Chapter 392, Public Laws, recites that it is intended to protect "life, health and property," and so will be mentioned here. It creates a Building Code Council consisting of an architect, a general contractor, a structural engineer, a plumbing and heating contractor and a representative of or-

ganized labor, all appointed by the Governor. Apparently it is to promulgate regulations embodying a State-wide building code not inconsistent with statutory provisions already in existence. The administration of these regulations is the duty of the Insurance Commissioner. The Code will not be exclusive, but will merely embody standards of construction, and substitutes for materials specified by the Code may be permitted. In fact, the Council is to make recommendations to the Commissioner regarding acceptable substitutes. Local ordinances may be more stringent than the Code, but may not otherwise conflict with it. The Council may also be called upon to review decisions of the Commissioner regarding the Code, but its findings will be advisory only, and the Commissioner may refuse to abide by them. Further, the right of appeal to the Superior Court is expressly preserved. Violation of the statute (whatever that may mean) or of the rulings of the Insurance Commissioner may be punished by a maximum fine of $50. Apparently the only change in the existing status effected by the rather confusing provisions of this statute is to set up a body to advise with the Insurance Commissioner in enforcing building permit laws. Despite the prohibition regarding local ordinances and the criminal provisions, the new Council does not seem to be clothed with any real authority.

II. Laws Designed to Protect Those Engaged in Business or Trade

A.—General

The statutes to be mentioned in this category all deal with convict-made goods. The first passed, and most inclusive is Chapter 146, Public Laws, which prohibits sale in the State of any goods manufactured, produced or mined by convicts or in prisons, except goods produced by prisoners on parole or probation. The statute does not apply to use by State agencies and by local governmental institutions of goods produced by the State's prisoners, nor does it apply to agricultural products, stone, coal or chert. It does expressly apply

to goods produced by convict labor in other states, and this provision is similar to a statute now before the Supreme Court of the United States for a decision as to its validity. The statute becomes effective on January 19, 1934. The provisions of the statute are apparently not affected by the provisions of Chapter 172, Public Laws (the statute which consolidated the Highway and Prison Departments). Despite the clear purpose of Chapter 172 to provide all possible gainful employment for the State's prisoners, it does not seem to have broadened the field for the disposition of convict-made goods except to the extent that it expressly permits agricultural lime produced by prisoners to be sold to the farmers of the State. The Chapter also expressly preserves the right to hire out convict labor to private employers, but the prohibitions contained in Chapter 146 and in similar laws in other states against sale of goods produced by this labor, may to some extent reduce the demand for it. One field in which it has been used in North Carolina, however, is in the production of stone, and Chapter 146 does not interfere with its continued use there. The privilege of selling lime was subsequently revoked by Chapter 300, Public Laws, but Chapter 300 was in turn repealed by Chapter 518, Public Laws. Thus the situation was finally left as prescribed by Chapters 146 and 172. The result is that goods manufactured by prisoners are removed from competition with goods produced by private business in every market except that created by governmental purchases, while agricultural products may be sold in any market. Apparently the industrialist is more favored than the farmer, except for the minor consideration that the latter may sometimes buy his lime from the State.

B.—Tobacco Trading

Two statutes were passed with regard to the purchase and sale of tobacco on warehouse floors. The first, Chapter 268, Public Laws, authorized the organization of Tobacco Boards of Trade by warehousemen and buyers in towns and cities in

which leaf tobacco is sold at auction on warehouse floors. A schedule of membership fees is prescribed by the statute, and membership on the Board is allowed to be made a prerequisite for operating a warehouse or buying tobacco. The Board may also make any reasonable regulations regarding sales. The statute also allows appeal to the Superior Court by persons suspended or expelled by the Board.

The second statute is Chapter 467, Public Laws, which made misdemeanors of the practices of nesting, shingling or overhanging tobacco when arranging it upon warehouse floors. This law is mentioned here rather than in the group regarding deceptive sales practices because it has no direct effect on the general public. The statute also requires the name of the true owner of the tobacco to be registered in the warehouse sales book and prohibits the offering of the tobacco for sale in any other name. Finally, it provides that in weighing tobacco for sale, the basket and truck used must weigh within two pounds of the standard weight for such equipment. Violation of any of these provisions is punishable by a maximum of $50 fine or 30 days. This statute is inapplicable in Alamance, Person, Rockingham, Surry, Vance and Warren counties.

C.—Dairies

Attention has already been called to those provisions of Chapter 284, Public Laws, which prohibit the sale of milk or milk products in trade-marked bottles or containers except by the owner of the trade-mark. The other provisions of the Chapter are entirely designed for the protection of dairymen. They prohibit use of such bottles and containers for any purpose other than as containers for milk and dairy products, and prohibit the purchase of milk bottles from or sale to anyone except a regular dealer or dairyman. Penalty for violation is a maximum of $50 or 30 days. This is the dairymen's answer to the problem of the disappearing milk bottle. Other laws dealing with dairy farming are discussed in the chapter on Agriculture.

D.—Battery Service Establishments

Chapter 185, Public Laws, is the batterymen's answer to the problem of the disappearing storage battery. It permits rented batteries to be marked "rental" and marked to identify the owner. It then prohibits alteration and defacing of these markings, prohibits any person except the owner from disposing of or charging a battery so marked, and prohibits retention of such a battery for more than 10 days without the written consent of the owner. Maximum punishment for violating any part of the statute is the familiar $50.00 fine or 30 days, but demand for return of the battery must be made five days in advance of any prosecution for unlawful retention under the statute.

E.—Granite Quarrying

Resolution 17 embodies a request to the North Carolina delegation in Congress to continue their efforts to secure more liberal use of granite in memorials and buildings erected by the Federal Government. The legislature thought and said that Indiana limestone had been receiving too great a preference.

The fact that stone produced by convict labor is excepted from the general prohibition against convict-produced goods has already been mentioned.

III. Miscellaneous

Three minor statutes which are concerned to some degree with the regulation of business do not seem to fit logically into either of the above general classes.

(1) Chapter 162, Public Laws, adds to the list of standard weight packages for hominy or grits packages of two pounds and twenty-five pounds.

(2) Chapter 190, Public Laws, amends the law regulating sales in bulk of merchandise stocks to require the seller to notify his creditors of the proposed sale seven days in advance,

rather than at any time within the seven days preceding the sale as formerly.

(3) Chapter 432, Public Laws, amends the State's Capital Issues Law (Securities Law) to include within its purview "any contract or agreement in the promotion of a plan or scheme whereby one party undertakes to purchase the increase or production of the other party from the article or thing sold under the plan or scheme, or whereby one party is to receive the profits arising from the increase or production of the article or thing sold under the plan or scheme." This is apparently designed to cover cases of profit-sharing schemes, such as exclusive agencies of some kinds, which are not strictly investment contracts, and hence were regarded as not covered by the Securities Law.

LABOR LAWS

I. Hours for Women

Chapter 35, Public Laws, which went into effect on June 1, 1933, regulates the hours of women employed in "any retail, or wholesale mercantile establishment or other business where any female help is employed for the purpose of serving the public in the capacity of clerks, salesladies or waitresses and other employees of public eating places." The hours are limited to 10 hours per day and 55 hours per week; and employees may not be worked for more than 6 hours continuously without at least a half hour rest period unless the day's work is not longer than 6½ hours. The statute does not apply to bookkeepers, cashiers or office assistants, to establishments employing less than three persons at any one time, or to establishments in towns of less than 5,000 as shown by the 1930 census. Notice of the provisions of the statute, to be furnished upon request by the Commissioner of Labor, must be posted in every room in which women are employed. The maximum penalty for violation of the law is $100.00 fine or 60 days imprisonment, with each day's violation being regarded as a separate offense.

The definition in the statute of employees to which it is applicable is not broad enough to include factory labor of any kind. Neither is it broad enough to include women employed in such establishments as beauty parlors, who, though they sell personal services to the public, do not sell articles of merchandise. The Attorney General has ruled on both of these matters. In a letter of May 29, 1933, to Dillard S. Gardner, a Marion Attorney, he expressed the opinion that the statute is inapplicable to women employed in cotton mills, as they do not serve the public in any capacity. In a letter of July 27, 1933, to A. L. Fletcher, State Commissioner of Labor, he ruled that the statute is inapplicable to beauty parlor employees who do not regularly sell merchandise to

the public, and that sales of cosmetics made only occasionally do not make such employees salesladies within the meaning of the statute. So, all in all, this statute is one of very limited application and merely scratches the surface of the problem of regulating the hours of employed women. For the time being, at least, much more has been accomplished by the NRA.

There is one question of construction which has not yet been but may be presented, and that is, what is meant by an establishment which "does not have in its employment three or more persons at any one time." This might be construed to mean either three employed but not working simultaneously, or three working simultaneously. A literal construction of the language would result in the first of these alternative constructions.

II. WORKMEN'S COMPENSATION ACT

Three statutes affect the type of employees to whom the Compensation Act applies. First passed was Chapter 401, Public Laws, which makes the Act applicable to employees of electric street railways. Hitherto these employees were apparently excepted by virtue of a general exception for railroads. Mecklenburg County is excepted from this Chapter. Almost passed at one time was a bill excepting Mecklenburg from the entire Act, but at the last minute the effect of the bill was realized and it was defeated.

Chapter 448, Public Laws, excepts from the Act employees of sawmills and logging establishments in which less than fifteen employees are regularly employed. In other businesses, establishments regularly employing five or more employees are subject to the Act. At one time in its legislative career this Chapter contained a similar exception for retail merchants, but this provision was eliminated.

Chapter 562, Public Laws, exempts from the Act all school employees paid from State funds except school bus drivers, mechanics and janitors. Public school teachers, of course, form the largest group affected by this exception.

In addition to these laws, three other statutes are concerned with other phases of the Workmen's Compensation Act. Chapter 449, Public Laws, seems to modify the option which was formerly allowed to injured employees, and to the representatives of deceased employees, either to proceed under the Act or to sue some person other than the employer, in cases where there is a right of action against some third party. Under the present statute the intent seems to be that the employee or his representatives must first proceed under the Act and, if an award is issued, the employer may sue the third party, applying any amount recovered first to reimburse himself the cost of litigation and the amount of the award, and paying any excess to the employee or his representatives. This right was given to the employer under the old law wherever the employee elected to proceed under the Act and received an award. The Chapter also provides that if the employer does not bring the action against the third party within six months after the accident, the employee or his representative "shall thereafter have the right to bring the action," with the proceeds of any recovery being distributable in the same manner as if the employer has brought the action. The language of this provision is unfortunate, as it seems susceptible of the construction that the employer loses his right to bring the action six months after the accident. If such were the case the result would be unfortunate. The claim for an award under the Act may be filed by the employee at any time within one year after the accident, and hence the employer's right to sue would be lost before it accrued, as the statute does not allow him to sue until after the award is made under the Act by the Industrial Commission. The statute therefore must mean, that the right of the employer to sue the third party accrues at the time of the award and the right of the employee accrues six months after the accident; but that the expiration of the six months does not deprive the employer of the right to sue if and when the award is made. This means that in some cases both the employer and employee will have a right to sue at the

same time; but, though the statute does not expressly cover the situation, it probably intends that, in such a case, the beginning of an action by one will bar an action by the other.

There is a further question under the statute with reference to the rights of the insurance company. The new Chapter, like the former law, subrogates an insurance company paying or assuming payment of an award to the employer's rights, but only to those rights "existing in the employer at the time of the injury or death of the employee." The aboslute right to sue a third person is not possessed by the employer at that time, but presumably this means that the insurance company is subrogated to the contingent right to sue if and when an award is made under the Act, which right probably is possessed by the employer at the time of the accident. At any rate substantially this same question was inherent in the former law and does not seem to have caused any difficulties to the insurance companies.

One remaining feature of Chapter 449 is worthy of mention. It provides that, upon final rejection of a claim as not properly cognizable under the Act, the employee or his representative is allowed one year after the rejection in which to begin an action at law. Presumably this refers to an action against the employer as well as to an action against a third party.

Chapter 474, Public Laws, which deals with the collection of awards against insurance carriers withdrawing from the State, is discussed in the chapter on Insurance. Chapter 506, Public Laws, which allows injured employees to select their own physicians, is discussed in the chapter on Professions.

III. PRISON LABOR

The laws dealing with prison labor are discussed both in the chapter on Regulation of Business and Trade and in the chapter on State Economy and Finance. As there pointed out Chapter 172, Public Laws, expressly preserves the privilege, long criticized by organized labor, of hiring out convict labor to private employers. It is also pointed out that the useful-

ness of such labor to private employers may be curtailed by Chapter 146, Public Laws, which, effective January 19, 1934, prohibits the sale of convict made goods, but that agricultural products, stone, coal, chert and agricultural lime are excepted from Chapter 146, either by that Chapter itself or by Chapter 172. To these comments may be added here the comment that convict labor may still be useful to private enterprise for agriculture, the production of coal, stone or chert for sale in this State, the production of any commodity for sale in states having no laws comparable to Chapter 146, or for any type of labor, such as road building, which does not result in the production of salable articles or commodities.

AGRICULTURE

I. Laws Affecting Farmers as Consumers

Chapter 324, Public Laws, designated as "The North Carolina Fertilizer Law of 1933," and which is effective on January 1, 1934, is a comprehensive statute regulating the manufacture and sale of fertilizers in the State. It is much too long to permit a complete summary here. Its most important provisions specify that sellers of mixed fertilizers and fertilizer materials must register their brands with the Commissioner of Agriculture and file a guaranteed analysis of the plant food content of each; that the analysis must also be furnished when the product is sold, either by stamping it on the container or by printing it on accompanying tags or certificates; that the Commissioner must make whatever inspections are necessary to determine whether sellers are complying with the Chapter and to determine whether their brands actually conform to the filed analyses; that the sellers must pay an inspection tax to defray the costs of inspections; and that the Commissioner may condemn fertilizer which does not meet the requirements of the Chapter. There are numerous provisions fixing maximum and minimum percentages of the various ingredients which may be used in fertilizers; and numerous offences are made misdemeanors, including the making of deceptive representations regarding the content of the fertilizers sold. Also of considerable importance is a provision that purchasers may have samples taken for analysis by the Department of Agriculture. This privilege, in fact, is of particular importance in the light of the fact that the Chapter provides that a certificate of the Department's Fertilizer Chemist setting forth the result of his analysis is prima facie evidence in any lawsuit that the fertilizer in controversy corresponds to the analysis. However, the protection afforded by the privilege may be somewhat lessened, particularly in the case of small purchasers, by the rather technical character of the procedure specified for tak-

ing such samples. Requirement of written notice to the seller and similar provisions give the proceeding a distinctly legal tone, which may or may not be necessary. Probably, as in the case of most regulatory laws, the protection afforded will be measured by the efficiency of administration accorded the law by the Department of Agriculture.

Also concerned with fertilizer is Chaper 551, Public Laws. It provides that, upon the application of any commercial laboratory which engages in the business of analyzing fertilizer and fertilizer materials, the Commissioner of Agriculture must examine into its work, and if satisfied with its calibre, must certify its accuracy and reliability. The statute also requires the Commissioner to furnish, upon request, a list of the laboratories whose work he has certified.

Chapter 340, Public Laws, prohibits sellers of seeds, tubers, plants and plant parts from using any evidence of certification, such as a blue tag or the word "certified," either on the packages sold or in advertising their wares, unless the seeds, etc., have been inspected and certified by the Farm Crop Seed Improvement Division of the State College Extension Service (through the North Carolina Crop Improvement Association), or by "a similar legally constituted agency of another state or foreign country." Violation of the statute is a misdemeanor, punishable in the discretion of the court. It is somewhat doubtful that this statute is of any real value as to products from other states, as there is no definition of what constitutes a similar agency of another state or foreign country, and the phrase itself is extremely indefinite from the standpoint of criminal law enforcement.

Chapter 233, Public Laws, amends the law which required all manufacturers of and dealers in insecticides and fungicides to report all shipments, deliveries and sales to the Commissioner of Agriculture. The Chapter restricts the requirement of such reports to cases involving paris green, calcium arsenate, lead arsenate and poisonous insecticides and fungicides.

Finally, with respect to farmers as consumers, are the laws dealing with the sale of surplus agricultural lime, produced by the State's convict labor, to the State's farmers. As pointed out in the chapter on State Economy and Finance, the permission to sell such lime to the farmer was granted by Chapter 172, was revoked by Chapter 300, and was again granted by Chapter 518, which was and is the latest word on the subject. All the Chapters mentioned are Public Laws.

II. LAWS AFFECTING FARMERS AS PRODUCERS

Two laws were passed which, in a minor way, attempt to promote the sale of North Carolina farm products. The first, Chapter 168, Public Laws, requires the Division of Purchase and Contract and all other agencies purchasing food and other supplies for State institutions, wherever prices are equal and supplies available, to give preference to products and supplies grown or produced in the State. This reminder of the "live at home" campaign of other years is broad enough to cover commercial and industrial as well as agricultural products, but its title ("an act to facilitate the sale and consumption of North Carolina farm products") seems to classify it as primarily an agricultural measure. The second law, Chapter 473, Public Laws, requires County Boards of Education to investigate the local supply of wood, and the fuel needs of school houses and, if they deem it to be practical and economical, to use wood as fuel in school buildings. The Division of Purchase and Contract and the State School Commission are directed to coöperate in this enterprise. While this statute does not concern farm produce in the ordinary use of that phrase, the writer is following the viewpoint of the statute itself, the preamble of which recites that the plan "will afford a much-needed market for farm products and turn into the channels of the local trade a large sum of money annually."

To offset these measures is Chapter 146, Public Laws, which is discussed in the chapter on Regulation of Business and Trade. As there pointed out, the Chapter bars convict produced goods from competition in the public markets with the products of

private industry, but does not bar convict produced agricultural products from competition in the same markets with private farm produce—a difference in treatment which may or may not be compensated for by the privilege, already mentioned, accorded to farmers to purchase, if there is a surplus, convict produced agricultural lime.

Chapter 350, Public Laws, makes two significant amendments to the laws governing farmers coöperative associations. First, it provides specifically that the association may exercise any degree of control over any subsidiary corporations (organized for marketing, warehousing or kindred activities) that is agreed upon by the association and the majority stockholders of the subsidiary. Thus the association may nominate directors for the subsidiary, own any amount or class of voting stock, and participate in the subsidiary's profits. Second, the prohibition against dealing in the products of non-members was eliminated by the Chapter; and these associations may now contract with and market the products of non-members, the only restriction being that not more than 50 per cent in value of the products marketed by the assocation may be the products of non-members.

Finally, affecting farmers as producers, there are several regulatory laws. Chapter 467, prohibiting the nesting, shingling or overhanging of leaf tobacco when selling the weed on warehouse floors, and regulating the weight of baskets and trucks used in sales, is discussed in the chapter on Regulation of Business and Trade. Likewise there discussed are several laws dealing with milk bottles and the grading of milk which affect dairy farming. One statute regarding dairy farming was not mentioned there. It is Chapter 550, Public Laws, and it gives to the dairy division of the Department of Agriculture full power to promulgate general regulations in connection with its inspection and control of the purchase and sale of milk and dairy products in the State. Its regulations may establish grades, but may not be inconsistent with the standards of the American Public Health Association.

Particular authority is given to inspect and license Babcock testers, glassware and scales, and to condemn those found to be inaccurate or not in good repair. The Commissioner of Agriculture is also given authority, when called upon by either party, to settle disputes between buyers and sellers of dairy products where the disputes concern the weight or tests of the products. It is provided that the Commissioner's tests of products in dispute shall be regarded as correct and used as a basis for settlement, but no machinery is provided to compel the settlement.

III. Laws Affecting Farmers as Debtors

The legislature did not attempt to give any direct State financial aid to farmers. It contented itself with the passage of several laws designed to make it cheaper and easier for farmers to borrow from the Federal Government.

Chapter 160, Public Laws, limits to 25c the fee of the Clerk of the Superior Court for the probate of a crop lien or chattel mortgage given to secure a seed and fertilizer loan from the Federal Government, and limits to 50c the fee of the Register of Deeds for registering these instruments. By Chapter 266, Public Laws, these limitations were extended to include crop production loans, live-stock loans and other loans made by the Regional Agricultural Credit Corporation at Raleigh. By various amending statutes, Brunswick, Caswell, Harnett, Haywood, Hertford, Jackson, Johnston, Macon, Moore, Person, Polk, Richmond, Stokes, Surry and Wilson counties are excepted from these two Chapters. There are no exceptions from Chapter 437, Public Laws, which limits to 50c the fee of the Register of Deeds for preparing and issuing a certificate of encumbrance in connection with a Federal crop lien or chattel mortgage.

The remaining statute affecting Federal loans is Chapter 219, Public Laws, which authorizes the guardians, executors and administrators of landlords to waive the first lien, given by our statute to landlords in agricultural tenancy cases, in favor of Government agencies making advances to the tenant

for planting, cultivating or harvesting crops. The waiver is not compulsory, of course, and the statute merely gives to these fiduciaries the certainty that it is legal for them to subordinate the estate's rights in the matter if they have a mind to do so.

Before closing this chapter, it may not be inappropriate to mention the fate of one other bill affecting tenant farmers which was introduced at the 1933 session. It would have required that all agricultural tenancy contracts permit tenants to maintain a garden, potato patch, cow, pigs and chickens on the rented premises. Before the bill was definitely discarded, amendments were offered seeking to exempt forty-one counties from its application.

CORPORATIONS AND PUBLIC UTILITIES

I. Corporations

Comparatively few statutes were concerned with business corporations. Chapter 124, Public Laws, provides that wherever a corporation organized under North Carolina laws has forfeited its charter for failure to make the necessary reports to State authorities, and a new corporation has been formed under the same name, the new corporation may succeed to all the property and all the rights of the old corporation. The new corporation, which must issue to the stockholders of the old the same amount and type of stock they held in the old, takes the place of the old corporation "as if the defunct corporation had never expired." The Chapter says nothing with regard to succeeding to the liabilities of the old corporation, but presumably, as it takes the place of the old and receives the benefits, it would be required to assume the liabilities, including the liability for taxes due the State, failure to pay which is the chief cause of the forfeiture of corporate charters. If this is true, the Chapter seems to do little except to provide an alternative method of reviving defunct corporations. Under other laws, it can be done by paying the taxes due and restoring the status of the old corporation.

Chapter 354, Public Laws, attempts to clarify the laws respecting payment of dividends by corporations which are also members of partnerships, by authorizing dividends (except in cases of public service corporations) whenever the corporation's own debts plus its proportionate share of the partnership debts do not amount to more than two-thirds of its assets. These assets include the value of its interest in the partnership. The Chapter also provides that where corporations are members of partnerships, they may manage the partnership by their officers, stockholders or employees, and the persons acting for the corporation are not liable for the obligations of the partnership. It is not clear whether this statute

authorized participation in partnerships by corporations not already so engaged, but it need not necessarily be constructed to do so.

Chapter 408, Public Laws, authorizes merger by any two or more "charitable, educational, social, ancestral, historical, penal or reformatory corporations not under the patronage and control of the State, and any two or more corporations without capital stock organized for the purpose of aiding in the work of any church, religious society or organization, or fraternal order." The procedure for effecting the merger is fairly simple and is set forth in the statute. The consolidated corporation succeeds to all properties of the old, including trust properties.

Chapter 412, Public Laws, provides that in all cases where a corporate deed, executed before January 1, 1918, is properly executed and recorded in all respects except for the fact that an error was made in the name of an officer in the probate, the deed is to be regarded as proper in every way. Cases involved in litigation already pending (on May 10, 1933) were excepted from the statute.

Chapter 432, Public Laws, amending the Capital Issues Law, is discussed in the chapter on Regulation of Business and Trade. Likewise discussed elsewhere are two laws authorizing the organization of new types of limited dividend corporations. Chapter 178, Public Laws, providing for forestry corporations, is discussed in the chapter on Game and Conservation, while Chapter 384, Public Laws, providing for housing corporations, is discussed in the chapter on Social and Welfare Laws.

II. PUBLIC UTILITIES

The first and most important statute affecting the regulation of Public Utilities was Chapter 134, Public Laws, which, effective January 1, 1934, abolishes the Corporation Commission and substitutes in its stead a single Public Utilities Commissioner. There is also a provision for two Assistant Commissioners who are to serve with the Commissioner, on a per

diem basis, in handling cases involving more than $3,000.00. More details with respect to this part of the statute may be found in the chapter on State Economy and Finance.

The Commissioner succeeds to the old powers and duties of the Corporation Commission, to the duty of administering all utility laws, and to the duty of investigating and fixing rates charged by and the service rendered by public service corporations. Such corporations specifically mentioned by the statute (though the list is not exclusive) include all common carriers (railroads, bus lines, etc.), telephone and telegraph companies, electric power and light companies (including hydro-electric companies), water companies, gas companies, and public sewerage companies. Municipally owned utilities are excepted. The Commissioner is specifically charged with the duty of keeping himself informed regarding rates, and his consent is necessary before any public service corporation may raise its rates. With fitting magnanimity, the legislature expressly allows the reduction of rates without such formalities. The other provisions of the Chapter are concerned with directing the Commissioner to continue investigations pending when he succeeds the Corporation Commission, and with prescribing the procedure for hearings before the Commissioner and appeals from his rulings.

Subsequently Chapter 307, Public Laws, was passed, further outlining the powers of the Corporation Commission (and hence of the Public Utilities Commissioner) with respect to the fixing of rates. The definition of companies whose rates are subject to regulation includes all of those enumerated by Chapter 134, with steam companies and pipe line companies added, and taxicabs operating on call and truck transfer systems operating in cities and towns expressly excluded. Rates may not be changed without 30 days notice to the Commission and, whenever necessary, a hearing, and this seems to supersede the provisions of Chapter 134 regarding reduction of rates. The procedure for hearings, for suspension of new rate schedules and for enforcement of rulings is outlined by

the statute. Also contained in the statute are numerous provisions regarding the powers of the Commission with respect to valuation of utility property, compelling adequate service, utility accounting systems, investigation of utility management, control over utility financing plans, coöperation with other State agencies, and penalties which may be imposed for infractions of law or regulations. Further, one provision requires all municipal water, gas, telephone and electric companies to make the same annual reports as are made by private companies. This, no doubt, is for comparative purposes.

Chapters 124 and 307 do not by any means represent the sum total of laws still in effect regarding the regulation of utilities and the fixing of rates. Many provisions of prior laws are still in force, though there may be considerable question regarding what parts of those laws have been superseded by these Chapters.

The only other statute dealing with the regulation of utilities generally is Chapter 519, Public Laws, which appropriated, in addition to the appropriations made by the Appropriations Act ($23,500 per year), $10,000 per year for rate investigations, and $25,000 per year for appraisals and audits of utility properties.

In addition to these laws, four laws were passed with regard to specific classes of utilities. Chapter 440, Public Laws, authorizes the Utilities Commissioner to refuse to permit operation of a motor vehicle freight line by any applicant if permission to operate would result in duplication of all or part of a similar service already in operation. This power to prevent useless competition was already recognized with respect to passenger bus lines and is, in fact, one of the corner stones in our accepted theories of utility regulation. The statute also repealed some provisions of the former laws regarding special licenses for motor vehicle carriers.

Chapter 489, Public Laws, extended to busses operated in urban, interurban and suburban transportation of passengers

for hire, some provisions of the laws regarding the seating and conduct of passengers. These provisions include the requirement that races be separately seated, the prohibitions against profanity and boisterous conduct, and the prohibitions against riding on front platforms, fenders and bumpers.

Chapter 528, Public Laws, authorizes the Corporation Commission or its successor, the Utilities Commissioner, in any case in which continuance of passenger train service is not necessary for the convenience of the traveling public, to authorize discontinuance of such service by a railroad. The motor vehicle era has rendered this problem a common one, but heretofore it has been thought that the Corporation Commission had no power to authorize the discontinuance where the railroad's charter requires the service. The present statute is an attempt to remove that obstacle, but the equities of discontinuance must still be proved to the satisfaction of the Commission or the Commissioner, as the case may be. The statute specifically does not authorize discontinuance of daily freight service where charter provisions are involved.

Chapter 61, Public Laws, provides that the statutory provision which permits railroads to employ special police shall not have the effect of relieving the railroads of any civil liability for acts of their policemen committed on railroad property. The Chapter does not apply to causes of action already in existence on February 16, 1933 (date of the Chapter's ratification).

Laws dealing with the taxing and licensing of motor vehicles might have been discussed in this chapter. The writer, however, for reasons which may or may not be sound, has placed them in the chapter on Highways, and there they may be found.

BANKING LAWS

The 1933 laws affecting banking are both numerous and important. It is not easy to divide them into exclusive categories. Almost all of them grew out of the depressed condition of the banking business in recent times, either as a direct result of that condition or the result of prosperity practices which have been discredited by depression disclosure. However, for convenience only, and not by way of creating classifications which are mutually exclusive, the writer has decided to discuss these laws under the three classifications of laws designed to meet the emergency of last spring, laws designed to establish lasting regulation of the banking business, and laws affecting the liquidation of banks.

I. Laws Designed to Meet the Emergency Situation

The first law passed was Chapter 103, Public Laws, which was ratified on March 3, when the banking crisis was well under way and had, in fact, almost reached its climax. It authorized the Commissioner of Banks to permit banks to postpone the payment of time deposits and to postpone or limit the payment of demand deposits provided the banks agreed to accept any terms imposed by the Commissioner in return for the privilege. Acceptance of terms imposed by the Commissioner entitled them to continue to receive deposits, subject to the Commissioner's supervision, to be segregated from other deposits and to be subject to withdrawal without restriction. The expense of handling such deposits was required to be paid by the bank, which excludes even the service charges usually made by banks for the handling of small accounts. The Commissioner was expressly excused from taking charge of banks operating under this statute.

On March 7, after the bank holiday declared both by the Governor and by the President was already in effect, Chapter 120, Public Laws, was passed. This statute specifically ratified the calling of the holiday by the Governor, and also gave

him authority, with the consent of the Council of State, to declare other bank holidays if occasion should arise. It also authorized the Commissioner of Banks, with the Governor's approval, to allow some or all banks to perform any or all banking functions during the holiday. Further, it authorized the Commissioner, with the Governor's approval, to permit or require banks to postpone payment of time or demand deposits, to allow or require their issue of clearing house certificates, to allow or direct the creation of special trust accounts for deposits not subject to the restrictions imposed on existing deposits (to be kept in cash, or deposited in banks designated by the Commissioner, or in United States or North Carolina bonds), and to allow banks to meet any Federal regulations prescribed. The Commissioner was specifically authorized to make any regulation necessary to effectuate action taken under the statute; and, as in Chapter 103, was expressly excused from taking direct charge of banks operating under the statute as he would do in ordinary cases of failure to meet deposit liabilities.

Chapter 120 is much broader, of course, than Chapter 103, and largely supersedes the earlier Chapter. The chief difference between the two with respect to the subject matter covered by Chapter 103 is that Chapter 103 merely authorized the Commissioner to permit banks, when requested by the banks, to operate under restrictions. Chapter 120 allows him to require operation under restriction. Another difference is that Chapter 120 requires the action of the Commissioner to be approved by the Governor. A final difference is that Chapter 120 contains no specific requirement that the bank must pay the cost of handling special trust deposits, though that the Chapter contemplates that the bank pay the cost is indicated by the provision that these deposits "shall be subject to withdrawal on demand without any restriction or limitation." If the bank is subsequently liquidated there is a serious legal question as to whether these costs may properly be charged to the bank, as it, in effect, charges those who were creditors

and depositors before imposition of the restrictions with the cost of handling accounts accepted thereafter. A court might well hold, however, that these cost provisions were necessary to secure new deposits, that the privilege of taking new deposits was necessary to retention by the bank of some semblance of a status as a going concern, and that the retention of this status was to the advantage of existing depositors and creditors, the conclusion being that charging the cost indirectly to the latter was not subject to attack. Furthermore, once the service has been rendered it would be extremely difficult to collect minor sums from scattered trust depositors, and the practicalities of the situation will favor the validity of the law.

The effectiveness of Chapter 120 is not limited as to time, and it remains on the statute books as a possible method for meeting any other banking emergency which may arise.

The third statute to be discussed is Chapter 155, Public Laws. It is largely a replica of the emergency bank reorganization statute passed by Congress on March 9, 1933. It allows the Commissioner to appoint a conservator for any bank where he regards the appointment as necessary for preservation of the bank's assets for its creditors and depositors. The conservator has all the necessary management powers, and his salary and expenses are to be paid from the bank's assets. His status is that of an operating receiver. His employment is terminated either by returning the bank's affairs to its own management when the bank is declared solvent or is reorganized, or by the appointment of a liquidation agent if the bank is insolvent and efforts at reorganization are unsuccessful. During his tenure, the conservator, at the Commissioner's direction, may pay out a uniform percentage of the claims of creditors and depositors, and may also receive new deposits, which, like the special trust accounts, must be segregated and are not subject to restrictions as to withdrawals.

The bank may be reorganized under any plan approved by the Commissioner, by 75 per cent in amount of creditors and

depositors and by the owners of 66 2/3 per cent of the capital stock. When the bank is reorganized or otherwise turned back to its own management and after due notice to the depositors whose deposits are segregated, those deposits need no longer be segregated.

The statute also permits issue of preferred stock by any bank. This stock is not subject to assessment and is entitled to cumulative dividends of not more than 6 per cent per year. It has a preference over common stock both as to dividends and as to assets distributed on liquidation. It has none of the characteristics of the common stock except that the issuing bank may not loan money on its security.

One other major reorganization statute was passed and became Chapter 271, Public Laws. It allows reorganization either by reorganizing the capital structure of the old bank or by the organization of a new bank, the stock of which is owned by the old. In the latter case, two or more old banks may join in organizing the new.

The plan is to be filed in the office of the Clerk of each County in which the old bank maintained an office, and notice of the filing must be published and be mailed to stockholders, depositors and creditors. If at the end of thirty days less than 1/3 of the creditors and depositors and less than 1/3 of the stockholders have filed objections, the plan becomes effective. The dissenters may have their interest appraised by the court on the basis of what they might reasonably expect to receive if the bank were liquidated, and the value then determined will be paid them either in cash, in assets, or in certificates evidencing participation in assets, as the court orders. These provisions regarding the method of adoption of the plan embody the most radical departure from former laws contained in the Chapter. They do not, however, relieve the stockholders of the old bank of their stockholders' liability. The Chapter only applies with respect to reorganization plans submitted to the Commissioner prior to January 1, 1935.

The provisions of the statute with respect to the trust business of the old bank are discussed in the chapter on Wills, Estates, Trusts and Guardianships. Likewise there discussed is Chapter 267, Public Laws, which permits fiduciaries to enter into agreements with other depositors, designed to reopen closed banks.

II. Regulatory Statutes

Chapter 159, Public Laws, represents an extremely important change in the laws regarding the capital structure of State banks. It requires, in the case of all State banks organized after its ratification on March 17, 1933, that in lieu of the liability formerly imposed on stockholders, the stockholders must pay, in addition to the face value of their stock, an amount equal to 50 per cent of the face value. This 50 per cent must be invested in bonds of the United States or of North Carolina, and the bonds must then be deposited with a Federal Reserve Bank or some other bank approved by the Commissioner. The interest must be used to purchase additional bonds of the same type until the aggregate value of the bonds equals the face value of capital stock, after which time the interest may be paid to the bank. These bonds form a fund for the protection of creditors and depositors, and completely replace the stockholder's liability imposed by former laws. Presumably this fund may be included in computing, under existing laws, the amount of surplus which a bank must have before it can pay dividends.

Banks already operating when the statute was passed are permitted, with the approval of the Commissioner of Banks and after the proper formalities, likewise to deposit such bonds in a special fund and relieve their stockholders of double liability. It is the duty of the Commissioner to see that a bank is not permitted to do this where the action would weaken the bank's financial condition. As the June, 1933, *North Carolina Law Review* points out, at page 201, this presumably means that banks may not be allowed to segregate assets in this way when those assets are needed to preserve the bank's

liquidity and give it a margin of active capital sufficient to meet its needs. All bank advertisements referring to this surplus fund must be approved by the Commissioner.

There were three other regulatory laws which tightened existing restrictions on banks. The first, Chapter 239, Public Laws, amends the law which permits the Commissioner of Banks to suspend the limitations imposed by our statutes on the percentage of a bank's capital and surplus which may be invested in securities of any one type or in loans to any one borrower. The Chapter, effective as of January 1, 1934, abolishes entirely the authority to suspend the restrictions on investments. Effective as of the same date, it likewise abolished his authority to suspend the limitations on loans, with the exception that he may permit the carrying of an "amply secured" excessive loan for not more than 120 days, and that he may permit the carrying of an excessive loan provided one-half of the excess is paid in 1934 and the balance of the excess is paid in 1935. Presumably this last exception is intended to apply only to such a loan made before passage of the statute and, like the period allowed between the time of the passage of the statute and the time the statute becomes effective, is designed to allow a reasonable time for the liquidation of excessive loans already existing. The wording of the statute, however, does not necessitate such a construction.

The second statute in this category is Chapter 303, Public Laws, which prohibits dealing in investment securities by banks, either directly or through subsidiaries. Banks may still buy and sell securities for their customers if they act solely as agents in the transaction; and the statute does not apply to the bonds and notes of the United States, North Carolina, and North Carolina's cities, towns and other political units. The statute, unlike the Glass-Steagall bill passed by Congress, contains no provision specifying the time within which banks must get rid of securities affiliates.

Third, there is Chapter 359, Public Laws, which tightens the regulations on investments by a bank in the securities of a corporation owning its bank buildings. The Chapter repealed the provisions which allowed such an investment to amount to 50 per cent of the bank's capital and permanent surplus, and which allowed the Commissioner to permit banks in towns of 5,000 or more to invest more than 50 per cent in such a corporation. The result is that the bank can now invest in such a corporation only 20 per cent of the first $250,000 of its capital and surplus and 10 per cent of the balance. The Chapter contains no provision regarding the disposition to be made of investments made under the authority of the repealed statutes (which were passed partly in 1921 and partly in 1927), but presumably banks having made such investments will be allowed a reasonable time to dispose of them, even if not allowed to retain them permanently. The Chapter did not change the provisions which allow banks to invest, directly rather than through a subsidiary corporation, up to 50 per cent of their capital and surplus in bank buildings and which also allow the Commissioner to permit a larger percentage of investment by banks in towns of more than 10,000. This may offer one way for banks to dispose of existing excessive investments made through subsidiaries. At any rate, leaving unchanged the provisions regarding direct investments in bank buildings seems at least partially to nullify whatever was sought to be accomplished by restricting investments through subsidiaries. The chief change effected is with respect to investments in buildings made by banks in towns having between 5,000 and 10,000 population.

In addition to these laws which tightened regulations there are several statutes which amend existing banking regulations without enacting further restrictions. Chapter 451, Public Laws, the most important of these, while not particularly liberalizing existing laws, provides an alternative method for establishing branch banks. It allows the Commissioner to permit banks having a common and preferred capital stock of

$1,000,000 or more to establish branches, provided it maintains its capital and surplus in a ratio of one to ten as compared with its deposits. The $1,000,000 capital must also be maintained unimpaired. The only method of establishing branches existing prior to this Chapter requires banks to have a specified amount of capital for the home office and for each branch, the amount being dependent on the size of the town in which each office is located.

Chapter 461, Public Laws, was passed in anticipation of the Federal law providing for bank deposit insurance. It provides that if the Council of State approves the "character and extent" of the guarantee, the funds of the State and of local units may be deposited in banks properly designated as depositories without requiring a bond or any security other than the guarantee. The Council of State must approve all banks named as depositories for State funds, however, and the Local Government Commission must approve all banks named by local authorities as depositories for local units. The Chapter also provides that where deposits are guaranteed only in part, the bank "shall" be required to furnish security only to the extent of the unguaranteed portion of the deposits. Despite the mandatory wording of this provision it probably does not interfere with the power of the Council of State to pass on "the character and extent" of the guarantee plan.

Chapter 175, Public Laws, allows the Governor and Council of State to fix the interest rate to be paid by banks on State deposits. From 1931 to February 1, 1933, the rate was fixed by statute at 2½ per cent and from February 1, 1933, to the date of ratification of Chapter 175 on March 23, 1933, was fixed at 3 per cent, likewise by statute. The Chapter also authorized the Governor and Council to fix the interest rate to be paid on deposits, made by the Commissioner of Banks, of funds belonging to banks in liquidation. This was formerly fixed by statute at not less than 3 per cent. The purpose of the Chapter is to provide a flexible interest rate which may be varied to meet changing conditions.

Finally, Chapter 50, Public Laws, amended the law which required that certified checks deposited by bidders in connection with the letting of contracts by local governing boards should be drawn on a bank "organized under the laws of" this State. The amendment changed the quoted phrase to "authorized to do business in" the State; and the result is to permit the use of checks drawn on National as well as State banks. The previous discrimination was probably invalid.

III. LAWS AFFECTING LIQUIDATION OF BANKS

There were five laws primarily concerned with the liquidation of closed banks.

Chapter 238, Public Laws, prescribes the manner of selling stocks, held by closed banks, which are not listed on any stock exchange. The Commissioner is required to sell them at public auction at the courthouse door of the county where the bank was doing business, after four weeks advertisement of the sale in a local paper and at the courthouse door. The Chapter does not specify in which county the sale shall be where the bank was doing business in more than one county. It does specify that the Commissioner may reject the price bid and, after notifying the bidder of the rejection and re-advertising for two weeks, conduct another sale. He may continue to conduct re-sales until he is satisfied with the price received.

Chapter 376, Public Laws, authorizes the governing boards of all cities, towns and other local units in the State to accept, at par, bonds of their own unit in settlement of claims for funds of the unit deposited in closed banks and in settlement of any judgments secured against sureties or others on account of these deposits.

Chapter 483, Public Laws, required the Commissioner of Banks to file with the Secretary of State, not later than June 1, 1933, a report showing all banks in liquidation, the names of and amounts paid to all auditors employed in the liquidation, the names and amounts paid or promised to all attorneys employed, and a statement summarizing contracts with at-

torneys employed at a fee contingent upon the recovery of assets by them. Similar reports are required on January 1 and July 1 each year. The Secretary of State must publish these reports in each county in which a bank is under liquidation. The publication must be made once in some county newspaper if there is a newspaper in the county; if not, the report must be posted at the courthouse door.

Chapter 540, Public Laws, unlike the other banking laws so far mentioned, does not apply throughout the State. It amends the so-called Sullivan Act, which had previously been passed and which permits sale of deposits in closed banks in Buncombe County to purchasers permitted to use them, at face value, in paying off debts to the bank. Chapter 540 restricts the Sullivan Act's application to banks closed for eighteen months or more prior to the Act's ratification, but extends the Act's geographical application to include fifty-three other counties (Alexander, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Catawba, Chatham, Cherokee, Chowan, Cleveland, Craven, Duplin, Edgecombe, Gaston, Gates, Halifax, Haywood, Henderson, Hertford, Hoke, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Pamlico, Pasquotank, Perquimans, Pitt, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Transylvania, Tyrrell, Wayne, Wilkes and Wilson). This statute has been held unconstitutional by one Superior Court and upheld by another, and the question is, at this writing, pending before the Supreme Court.

Chapter 546, Public Laws, gives to the University of North Carolina by way of escheat, dividends accruing, in bank liquidations, by virtue of valid liabilities of the bank (including deposits) for which no claim is filed "and/or any liability for which claim has been filed and disapproved." The quoted phrase probably refers to instances where a liability exists but a claim is filed by the wrong claimant. While the language is broad enough, it cannot reasonably mean to include cases

where claims are rejected because the liability sought to be proved is not recognized.

The dividends accruing on the liabilities covered are to be paid into the office of the Clerk of the Superior Court and held there until three months after the liquidation is completed, at which time they are to be paid to the Escheator of the University. The rights of claimants who file claims after their dividends have been paid to the Clerk are not entirely clear, but apparently, if the court decides that they could not have filed claims sooner, they may be permitted to secure their share of the fund. Once the money has been paid to the Escheator, any recourse they might have would be governed by the laws governing escheats rather than by the banking laws.

INSURANCE AND BUILDING AND LOAN LEGISLATION

There is really no great justification for grouping under one chapter the laws dealing with insurance matters and the laws dealing with building and loan companies, unless justification may be found in the fact that the State regulates both of these businesses through the same administration agency (the Insurance Commissioner). However, as the chapter is being divided into two distinct classifications it makes very little difference anyway.

I. Insurance Laws

A.—General

Chapter 121, Public Laws, was an emergency act necessitated by the banking holiday. It was recognized that with banks closed insurance companies would be unable to carry on their normal business, and that problems of premium and benefit payments, and the handling of applications for cash loans or cash surrender values would be particularly difficult. Consequently this statute gave to the Insurance Commissioner the power, with the Governor's approval, to promulgate any regulations deemed necessary for "establishing safe and sound methods" for the transaction of insurance business, "for the purpose of safeguarding the interest of policy holders, creditors, and bondholders, respecting the withdrawal or payment of funds, and to provide for the extension of the days of grace for policies of life insurance in time of emergency." The authority thus delegated, which was great, included the power temporarily to abrogate existing laws. The authority expired at midnight May 1, 1933.

Chapter 47, Public Laws, made several changes in the law which requires deposits to be made with the Insurance Commissioner by insurance companies operating on the assessment plan. First, it restricted to farmers mutual fire insurance companies only the exception from the requirements formerly

accorded to all companies doing business in not more than two adjacent counties. The territorial restriction still applies to the excepted fire companies and even these fire companies may not be excepted unless they were already doing business in the State. Second, the Chapter allows the deposit to be made by giving bond in any corporate surety company authorized to do business in the State as an alternative to the method already prescribed of depositing securities.

Chapters 182 and 24, Public Laws, respectively, allow suits, in the association name, by and against unincorporated associations issuing insurance in the State, and provide for service of process on these associations in the same manner as on a corporation. Both of these statutes affect only suits which are concerned with the insurance issued by the association.

B.—Life Insurance

Chapter 34, Public Laws, relates only to life insurance companies operating on the assessment plan, and deals with the reserves required of these companies in return for the privilege of omitting reference, in red ink, on policies and circulars, to the fact that they operate on the assessment plan. It allows the reserves to be based on any recognized mortality table rather than solely upon the American Experience Table, as under the former law, but it raises the amount of reserve required from 3½ to 4 per cent.

C.—Casualty and Surety Companies

Chapter 60, Public Laws, requires all insurance companies doing a fidelity, surety or casualty business in the State to deposit securities, with the Insurance Commissioner, amounting to $25,000 in cases where the company's annual premium income is less than $100,000 and to $50,000 where the premium income is in excess of $100,000. The securities must be United States bonds, North Carolina bonds, bonds of North Carolina's political subdivisions or first mortgages on real estate and must be approved by the Commissioner. They are

solely for the protection of policy holders. Along with them the company must deliver a power of attorney to the Commissioner permitting him to transfer the securities and the Commissioner is required to see that the company makes good any depreciation in the value of the securities. This Chapter was added to a statute containing similar requirements for foreign fire insurance companies, but apparently both foreign and domestic casualty, fidelity and surety companies are affected. Undoubtedly this statute was prompted by recent failures of companies in this field.

D.—Automobile Liability Insurance

Chapter 283, Public Laws, requires that the classification of risks, rules, rates and rating plans used in the State in the transaction of automobile liability, property damage or collision insurance must, before becoming effective, be approved by the Insurance Commissioner. It also permits the Commissioner to order changes in rates and classifications of risks whenever he believes the rates to be excessive or discriminatory. Appeal from his rulings is allowed to the Wake Superior Court. The statute expressly further requires those authorized to transact this type of business to abide by the rules and rates of the rating organization to which they belong or whose rates they have adopted or by the rate they have filed with the Commissioner. Bureaus organized to make rates and rating plans are required to provide for equal representation on all committees by stock and non-stock insurers, and are required to admit any insurer applying for membership. The statute expressly does not limit the rate-making method of mutual companies and inter-insurance exchanges, or any refund, to all policy holders of the same class, of any portion of the premiums not used to defray the expense of the insurance.

E.—Workmen's Compensation Insurance

Chapter 474, Public Laws, provides that whenever any insurance carrier withdraws from doing business in the State

having an outstanding liability under the Workmen's Compensation Act, the Insurance Commissioner must immediately notify the Industrial Commission. That Commission is required to issue an award against the insurance company for the present value of the payments due the injured employee involved, docket the award as a judgment in the office of the Clerk of Superior Court of the county in which the employee resides, and sue on the judgment in the state in which the insurance company is doing business (which probably means the state in which it is incorporated). After deduction of the costs of the suit, the proceeds are to be turned over to the employee. This method of collecting for the employee has very distinct advantages, assuming that costs are kept within reasonable bounds by the Commission, and assuming that courts in other states will lend full faith and credit to judgments secured in this manner.

Other statutes dealing with the Workmen's Compensation Act, since they deal only indirectly with the insurance business, are discussed in the chapter on Social and Welfare Laws.

F.—Mutual Burial Associations

Chapter 222, Public Laws, represents a material tightening of the regulations on mutual burial associations which operate on the assessment plan and provide benefits of $100.00 or less. It requires the associations to make provisions in their contracts or otherwise covering situations where the insured dies in a distant place, to pay whatever benefits may be paid from assessments levied even though 100 per cent of the benefit is not available, to include in each contract a schedule of merchandise and services to be supplied, and to file semi-annual statements of membership, assessments and burials. No white association may continue in business if for three months it has less than 800 members, and the Insurance Commissioner may require any colored association to discontinue business if he believes it will probably be unable to carry

out its contracts. In fact, the Commissioner may revoke the license of any association if its financial condition is hazardous, or if it has disobeyed the laws or if it files false statements. Appeal may be taken in such a case to the Superior Court.

II. BUILDING AND LOAN ASSOCIATIONS

Eight statutes have reference to building and loan associations.

Chapter 17, Public Laws, imposes a fee of $5.50 for the certificate which agents and solicitors for building and loan associations must procure from the Insurance Commissioner, attesting to the fact that the association they represent is licensed to do business in the State. The Chapter provides that no other license or fee may be charged these agents and solicitors, which seems to preclude the levy of any local license fees by cities or counties.

Chapter 18, Public Laws, allows associations to borrow a total of not more than 30 per cent of their gross assets, as distinguished from the limitation contained in prior laws of 30 per cent of the amount actually paid in as subscriptions or dues on installment series. The Chapter also specifically authorizes an association, as collateral for loans, to assign any of its assets, including the right to repledge shares of its own stock already pledged with it, without securing the consent of the owner. With the possible exception of the power to assign the right to repledge shares without the owner's consent, associations probably already had authority to assign their assets as collateral for loans wherever their charter or by-laws authorized borrowing, as the power to borrow money ordinarily implies the power to give security. However, this statute leaves no doubt about the matter of security, once the right to borrow has been recognized by charter and by-laws.

Chapter 19, Public Laws, requires that, in addition to the notice provided by the by-laws, notice of the annual or a special meeting of such an association's shareholders must be published, once a week for the two weeks preceeding the meet-

ing, in a paper published in the county or city where the association has its principal office. If there is no such paper the notice must be posted in the association's office and at the courthouse door. The statute also provides that, unless otherwise provided (presumably in the charter or by-laws), a quorum at any meeting shall consist of twenty-five shareholders either present in person or represented by proxy.

Chapter 20, Public Laws, clarifies what was formerly a moot question by specifically authorizing associations to become members or stockholders of Federal Home Loan Banks.

Chapter 26, Public Laws, amended the law which requires associations to keep a reserve of 5 per cent of their paid-up stock outstanding. It first includes stock and bonds of Federal Home Loan Banks in the list of investments authorized for the reserve, which already included United States and North Carolina bonds, and deposits in banks approved by a majority of the entire board of directors. Second, the requirements that these investments and deposits be "immediately available funds" was eliminated. This seems to allow deposits in restricted banks (though hardly in closed banks) to be treated as part of the reserve. It would also allow the deposits to be time rather than demand deposits. Third, the Chapter makes it clear that the prohibition against new loans in cases where the reserve has dropped below 5 per cent does not prevent renewal or refinancing of old loans or of loans made as a result of foreclosing mortgages held by the association.

Chapter 38, Public Laws, attempts to make certain that associations will not be thrown into receivership without an opportunity for a full appraisal of the facts. It provides that no judge or court shall appoint a receiver for an association incorporated in the State unless five days notice of the application for the receiver has been given both to the association and to the Insurance Commissioner. Since the lapse of five days will ordinarily not seriously prejudice the rights of those seeking the receivership (particularly as there is no prohibition against the issue of restraining orders during the

interim), and since receivership is an extraordinary remedy to be utilized only with becoming restraint there can be no serious quarrel with the Chapter.

Chapter 122, Public Laws, provides that any shareholder in an association may withdraw all or part of the value of his unpledged shares after one month's notice of intention to withdraw given to the assocation's secretary. The Chapter further provides that when the notice has been given and the shareholder is not paid, or when stock maturing in the normal course of business is not paid because of insufficient funds, the association must set aside one-half of its net receipts each month for the ratable payment of these two classes of shareholders. Net receipts for the purpose are defined as all income less operating expenses and reserves for bills and notes payable. The payments from the fund are to be made as ordered by the directors. Finally the statute provides that shareholders shall have no right to "demand or receive" any funds in excess of their ratable share of the fund, except by permission of the board of directors or the Insurance Commissioner. The purpose of vesting this discretion in the Board and the Commissioner is not altogether clear, but they would certainly have to exercise it equitably. But the mere privilege of exercising it may be invalid, as permitting discrimination.

This statute was passed during the late lamented banking holiday, and was no doubt a product of that occasion, passed in anticipation of difficulties brought on by frozen investments and deposits, and shortages in the supply of available cash. However, it remains in force and provides a situation where a kind of receivership is declared with respect to 50 per cent of net income, without restrictions on the use of the remaining 50 per cent, and without judicial supervision of even the impounded 50 per cent. No express restrictions are placed by the statute on the right to demand a receivership, though the right of a shareholder to do so is uncertain, not only because the privilege of stockholders to secure a receivership is limited by general legal theories, but also because the statute

gives the shareholder no right to demand more than he receives from the special fund, which if valid and construed literally, might give him no standing in court on which to base a receivership application.

Chapter 549, Public Laws, permitting investment of trust funds in the stock of building and loan associations approved by the Insurance Commissioner, is discussed in the chapter on Wills, Estates, Trusts and Guardianships.

WILLS, ESTATES, TRUSTS AND GUARDIANSHIPS

I. Fiduciaries Generally

Two statutes are concerned with the duties of all types of fiduciaries, including guardians, executors and administrators as well as trustees. The first of these is Chapter 267, Public Laws, and it authorized "executors, administrators, guardians, trustees, commissioners, and others occupying and acting in fiduciary capacities" to enter into agreement with other depositors, affecting funds held in their fiduciary capacity, looking to the reopening of banks which were doing business prior to March 6, 1933. The reopening plan must have been approved by the Comptroller of the Currency, in the case of a National Bank, or by the Commissioner of Banks, in the case of a State Bank. Further, the fiduciary must have secured the approval of the Clerk of the Superior Court in the county and the Superior Court Judge holding courts in the district in which he was appointed. The statute provides that it shall not be construed to release the bondsman of the "guardian, ward or other fiduciary." Of course this statute is emergency legislation passed in the public interest and as such should be construed liberally; but it would at least be the policy of wisdom to secure the surety's consent to the agreement also, as there is a possibility that he could not be bound by the statute. The statute is probably broad enough to include Clerks of the Superior Court.

The second statute is Chapter 549, Public Laws. It allows "guardians, executors, administrators, clerks of the Superior Court and others acting in a fiduciary capacity" to invest in the stock of building and loan associations organized and doing business under North Carolina laws. No funds "may be so invested unless and until authorized by the Insurance Commissioner." The wording last quoted seems to be so narrow that it requires approval by the Commissioner of each investment, and precludes issuance by him either of a list of as-

sociations whose stock is approved or of a certificate of approval to acceptable associations.

The statute, in form, seems intended as an enabling law, granting permission to make investments not formerly authorized. As a matter of fact, however, under our court's decisions, most fiduciaries are permitted to invest in almost any type of security, provided good faith and reasonable care are exercised. As to those fiduciaries, the statute in effect limits their discretion by requiring the Insurance Commissioner's approval of this type of investment. It does enlarge the investment field for Clerks of the Superior Court, who are governed by a strict, special statute. The question as to whether it has enlarged the field for investment by war veterans' guardians will be subsequently discussed in this chapter.

II. WILLS

Only two statutes were passed by the 1933 General Assembly which relate to wills, and both are concerned with probate proceedings. The first, Chapter 114, Public Laws, allows the testimony of subscribing witnesses who live in another county to be presented by deposition rather than in person. The deposition must be forwarded by the notary who administers the oath to the Clerk of the Superior Court in charge of the probate. This procedure was already allowed in cases where witnesses resided in another state; and the new statute merely recognizes that distance inside the State are often great and that the use of depositions is much less expensive than traveling.

The second statute is Chapter 133, Public Laws, and requires Clerks of the Superior Court to notify, by mail, all legatees and devisees, whose addresses are known, named in wills filed with them for probate. The cost of sending the notices is made an administration expense to be paid by the estate. The notice is not the same as a formal citation, and no publication is required where addresses are unknown. The statute seems designed merely to insure that, in the average case, these interested parties will receive immediate notice that they have an interest under the will proposed for probate.

III. DECEDENTS' ESTATES

Probably the most important 1933 laws in this field are four laws designed to make more flexible the time limitations prescribed for the settlement of estates and the discharge of decedents' obligations.

Chapter 188, Public Laws, provides that, upon a proper petition of the executor, administrator or collector of the estate, on registered mail notice to all parties in interest, the Clerk of the Superior Court may extend the time for final settlement of the estate from year to year for a total period not exceeding five years from the date of the representative's qualification. The Clerk's order is not effective unless approved by the Resident Judge of the Superior Court. The wording of this statute is susceptible of the construction that, where the original executor dies, resigns or is removed, and an administrator with the will annexed is appointed, the time for final settlement may be extended for a total of five years from the time of the administrator's qualification. In fact it is susceptible of a similar construction in any case where one representative succeeds another in the administration of the estate. It is probable, however, that the legislature only intended to permit extensions aggregating five years from the date of qualification of the original representative. This represents a total permissible extension of three years beyond the two years allowed for the settlement of estates under former laws.

As a corollary of this, Chapter 498, Public Laws, allows estate representatives to extend notes, bonds and other obligations of the decedent, without becoming personally liable, so as to become payable at a date not beyond that fixed by the order extending the time for settlement of the estate. Under laws in force prior to 1933 such extensions or renewals could not be made payable at a date beyond the two year period fixed for settlement of the estate.

Before the enactment of Chapter 498, however, the 1933 legislature had given representatives another method by which

they may extend such obligations without incurring any personal liability. Chapter 161, Public Laws, allows the court to permit extensions or renewals beyond the two year period, wherever it appears to be for the estate's best interest, for an additional period of not more than two years. There is no express provision which limits the renewals or extensions authorized by the statute to a total of two years additional, but such may have been the intention of the legislature. Taking Chapters 161 and 498 together, the latter allows additional extensions or renewals from year to year without a court order providing time for settling the estate is extended, while the former allows such extensions or renewals for two years by court order without specific reference to the time for settlement of the estate. Each has its particular utility in particular cases.

Finally, the definition of obligations which may be renewed or extended was broadened by Chapter 196, Public Laws, to include notes, bonds and other obligations of which the decedent was a guarantor. The definition already includes those of which the decedent was a maker, surety or endorser.

Four other statutes deal directly with matters involved in the administration of estates. The first, Chapter 113, Public Laws, renders amounts recovered in actions for wrongful death, hitherto not subject to liability for the payment of any debts or legacies, subject to liability for the payment of the decedent's burial expenses. The second, Chapter 199, Public Laws, amends the law with respect to the devolution of powers of sale and rights to foreclose possessed by a mortgagee under a mortgage or a trustee under a deed of trust, so as to allow such powers to devolve, at the death of the mortgagee or trustee, upon any collector of his estate appointed, as well as upon an executor or administrator. The third, Chapter 219, Public Laws, authorizes executors and administrators of landlord decedents to waive the landlord's lien, given by our statutes as a prior lien in agricultural tenancy cases, in favor of the Federal Government or any of its agencies making loans

or advances to the tenant for planting, cultivating or harvesting crops. This, of course, is discretionary with the executor or administrator. It is intended to open the way for tenants to secure Government loans by giving crop liens superior to landlord's liens, required by the Government as security. It is interesting, in view of Chapter 199, just mentioned, that Chapter 219 makes no mention of collectors.

The fourth statute is Chapter 344, Public Laws, which provides that upon receipt of a certified copy of a will, letters of administration, or a certificate of a Clerk of the Superior Court showing that a decedent's automobile has been assigned to his widow as a part of her year's support, the Revenue Department, upon payment of transfer fees, shall transfer the title and license to the new owner. The chief change from the former procedure embodied in the new law is that it does not require, as the old law did, purchase of a new license.

In addition to the laws already mentioned and to several laws regarding the status of reorganized banks as executors and administrators, which will be mentioned under "Trusts" in this chapter, there are two statutes which are indirectly concerned with estate administration. Chapters 99 and 100, Public Laws, require Sheriffs to serve, without demanding their fees in advance, the orders of the Clerk issued to compel the filing of an estate inventory or report of sale and the order issued to compel the filing of an estate accounting. The provision regarding the fees is the new provision in each case.

IV. LIFE ESTATES

The only new laws dealing with life estates are two statutes concerned with sales of real estate at the instance of life tenants. The first, Chapter 123, Public Laws, amends the statute which allows real estate producing no income to be sold at the request of the life tenant to secure funds for reinvestment (thus producing income), by allowing the proceeds of sale also to be used to develop other unproductive realty into income-producing property. The wording of the Chapter does not limit this privilege to other property which is held

for life by the life tenant who owns the life estate in the property sold and the remainder interest in which belongs to the same remaindermen. The legislature probably intended, however, that the privilege be so limited, as this type of proceeding may be brought without joining the remaindermen as parties, and the legislature hardly intended that, under such circumstances, the proceeds of the remaindermen's interest in the property might be used to develop property in which they have no interest. At any rate, the disposition of the proceeds must meet with the court's approval, and the court will no doubt protect the rights of the various parties.

The second statute in this category is Chapter 215, Public Laws. It undertakes to validate judgments which ordered partition of real estate which was subject to contingent remainders or other uncertain interests, provided the judgment was sought by the life tenant and all persons then in being who would have taken the property had the contingency then happened were parties to the proceeding, and provided the interest of unborn remaindermen was represented by a guardian *ad litem.* The statute expressly provides that it is not to be construed to impair any vested right or estate. It does not attempt to authorize the bringing of any further such actions; and there is some possibility that its attempted ratification of past judgments is of no effect.

One non-legal point of interest in the statute is its title, which, by virtue of a typographical error, reads like an approval of a medieval execution. It reads: "An Act to validate judgments under which contingent remainders and executory devisees have been partitioned."

V. TRUSTS

With the exception of the statutes dealing with fiduciaries generally, which were mentioned at the first of this chapter, only three laws are directly concerned with trusts. Two of those are concerned with corporate trustees. They are Chapters 271 and 499, Public Laws. Chapter 271 is the State's emergency bank reorganization statute and it allows banks re-

organized under its provisions to retain all appointments in any fiduciary capacity, or, in case a new bank is organized under the Chapter, the capital stock of which is held by the old bank, the Chapter authorizes transfer of such appointments to the new bank. Chapter 499 extends these privileges to include National Banks reorganized under the provisions of the Bank Conservation Act passed by Congress on March 9, 1933.

Of course these provisions are broad enough to cover cases where the bank is acting as executor, administrator or guardian, as well as where it is acting as trustee. But if any legal problem is presented by the statutes it is presented in its most serious form in connection with trusteeships. Executors, administrators and guardians are appointed solely in accordance with rules prescribed by the legislature, and all their rights and duties may be prescribed by the legislature. Consequently there seems to be no real question presented concerning the right of the legislature to transfer these appointments to the new bank. A somewhat different question is presented in connection with trusteeships, as trustees are often appointed by instruments having the force of contract. Even in the case of trusteeships, however, it is probable that, in view of the emergency character of the situation, the courts will uphold this legislation. A further reason for doing so is the cost of bringing special proceedings in each case, and such special proceedings will be necessary if the transfer cannot be accomplished under these statutes. The most doubtful cases are those in which the old bank as trustee was given great discretion, and in those cases it is equally doubtful that a substitute trustee appointed in a special proceeding would be permitted to exercise the discretionary powers. Some light might be thrown on the matter if our courts had construed the similar statute which authorizes the consolidated bank to assume all the fiduciary appointments of the merging banks in the case of a merger, but this statute has not been tested in court. At any rate, it seemes almost certain that wherever the reorganized bank is the same corporation as the old bank, the fiduciary ap-

pointments may be retained under the statute (unless objection is made and a court removes the trustee for cause). The question is only uncertain, if at all, in cases where a new corporation is organized.

The third statute concerned with trusts applies to individual trustees. It is Chapter 493, Public Laws, and allows the Clerk of the Superior Court to appoint a substitute trustee when the sole trustee under a will or deed of trust disappears and his whereabouts remain unknown for three months, despite diligent inquiry.

VI. GUARDIANSHIPS

In addition to the laws mentioned at the beginning of this chapter, and to the statutes regarding reorganized banks more recently discussed, there are five statutes which deal with guardianships. They will be discussed in the order in which they were passed.

Chapter 49, Public Laws, allows a guardian to be appointed for any person missing from his residence three months, whose whereabouts cannot be ascertained by diligent inquiry. This statute and the statute regarding the appointment of substitutes for missing trustees, already mentioned, probably were the result of several disappearance cases which received wide publicity shortly before the legislation was enacted. The guardian is given the ordinary powers and duties of guardians, with some additional powers with respect to the management or liquidation of the missing person's affairs, and with the exception that the guardian is not liable except for misconduct, bad faith and mismanagement amounting to gross carelessness. The procedure for appointment is similar to that for appointment of a guardian for an infant or incompetent, and the appointment may be made by the Clerk of the Superior Court of the county of the last residence of the missing person, or after six months disappearance, by the Clerk of any county where there is property of the missing person. The guardian must account for and turn over the estate within six months after the missing person returns and petitions the

proper Clerk to be restored to the management of his property. There is no express provision governing the case where the missing person does not return and is never heard from. Presumably such a case would be governed by the laws establishing a presumption of death after long continued and unexplained absence.

Chapter 219, Public Laws, has already been mentioned in connection with executors and administrators as permitting waiver of landlord's liens in favor of the Federal Government or its agencies advancing money to tenants for the planting, cultivating or harvesting of crops. The statute also permits guardians for landlords to waive these liens under the same circumstances.

Chapter 262, Public Laws, applies only to guardians for war veterans but, with respect to them, is extremely important. It deals first with annual accountings, and requires the guardian, when he files an account, to exhibit to the Court his investments and bank statements. The Clerk is then to certify on both the original account and the copy for the Veterans Bureau that he has examined the investments and cash balance and that they are correctly stated in the account. If objections are made to the account the Court is to fix a hearing date, the date to be from 15 to 30 days from the date of the notice, which must be sent to the Veterans Bureau and the State Service Officer, as well as to the guardian. One feature of this law can, in many cases, be extremely difficult of administration, and that is the provision that the investments must be exhibited to the Clerk. In cases where the securities are not kept in the vicinity of the Clerk's office it apparently will entail the carrying of securities, with the attendant risk of loss and theft, to and from the courthouse. The risk is considerable where the amount is large, even if the distance is comparatively short. Further, if the securities are in bearer form, or if they are merely certificates representing a participating interest in bonds or mortgages, it is doubtful that

the statute, despite the trouble it necessitates, really results in giving the protection it intends to afford.

The second part of the statute deals with the investments of these guardians. It limits them, in making investments, to U. S. Government bonds, N. C. State bonds issued since 1872, and first mortgages on real estate. Mortgage loans are restricted to 50 per cent of the assessed value or the tax value of the land, whichever is the lower, and the guardian must secure an attorney's certificate stating that the mortgage is a first lien and setting forth the current tax valuation. The guardian is also permitted, if authorized by the resident or presiding Judge of the Superior Court, to purchase a home or farm for the use of his ward or his ward's dependents.

Guardians who already had funds invested in other ways when the statute was passed were allowed one year from April 11, 1933, to liquidate those investments and place the funds in approved securities. To avoid disastrous forced liquidation, the Clerk, with the approval of the Judge, may extend, from year to year, the time for sale or collection of any investments. The statute does not operate to mature any investments held by the guardian before their maturity dates.

It will be recalled that Chapter 549, ratified after the ratification of Chapter 262, authorized guardians generally to invest in building and loan stock approved by the Insurance Commissioner. It was at first thought that this subsequent law liberalized the provisions of Chapter 262 and permitted war veterans' guardians to invest in these stocks. The Attorney General, in a letter of August 18, 1933, to J. D. DeRamus, Chief Attorney of the Veterans Administration at Charlotte, has ruled to this effect. This ruling, however, was subsequently withdrawn, and the question apparently must be decided by court action. Meanwhile, not a few such investments have been made in reliance on the first ruling.

Returning to other legislation relating to guardianships in general, Chapter 317, Public Laws, amends the statute which already authorized the Clerk to jail guardians refusing to ac-

count, by allowing the Clerk to jail officers or employees of corporate guardians who intentionally default in filing proper accounts. The Chapter also permits the corporation to be fined and removed as guardian.

Chapter 363, Public Laws, while not strictly concerned with guardianships, is concerned with avoiding the expense and trouble of having guardians appointed in cases where the sums involved are comparatively inconsequential. It amends section 962 of the Consolidated Statutes, which already permitted sums of $300.00 or less, owed to minors, to be paid to the Clerk of the Superior Court for distribution under his supervision. The amendment permits payment to the Clerk of similar sums owed to incompetents. The amendment is so worded as to make it seem probable that the meaning of the entire section has been changed. The new statute covers not only all cases of payments for incompetents, but also all cases of payments for minors, whereas formerly the section applied only to cases where no one would become guardian for the minor. Further, whereas the section formerly was permissive only, the new statute makes it the duty of the persons owing the money to pay it to the Clerk. There is not even an express exception for cases where a guardian has actually been appointed, but presumably such an exception would be implied. A similar procedure for paying small debts to incompetents was enacted in 1927, but the enactment was repealed in 1929.

One other statute (Chapter 192, Public Laws) is indirectly connected with guardianships. It provides that when the Clerk summons a jury to pass on the sanity of a person and determine whether a guardian or trustee will be appointed, the sheriff must notify the jury and the jury must serve without demanding their fees in advance.

COURTS AND CIVIL PROCEDURE

I. Courts

A.—Jurisdiction

Only three general statutes deal with the essential jurisdiction of our various courts. The first, Chapter 127, Public Laws, allows the Judges of General County Courts to transfer civil cases to the Superior Court, either by consent of all parties or on motion of any party, whenever the transfer is deemed advisable. The statute also allows similar transfers from Superior Court to the General County Court, but this power already existed. The result of the provisions is to allow more flexibility in the trial of cases, with an eye to relieving congested calendars. The new provision may also permit the saving of time and expense by transferring cases to the Superior Court which would, in all probability, be appealed to that court anyway.

Chapter 128, Public Laws, makes it clear that petitions or motions for removal of cases from the General County Court to the Federal District Court are to be heard and decided, in the first instance, by the Judge of the General County Court. The decision may be appealed to the Superior Court.

Chapter 166, Public Laws, increases the number of instances in which county commissioners are allowed to confer civil jurisdiction on municipal recorders' courts. The former law allowed the jurisdiction to be conferred on courts in cities of from 10,000 to 25,000 population. Chapter 166 removed the 25,000 maximum provision so that such jurisdiction may now be conferred on a recorder's court in any city having a population of 10,000 or more.

B.—Judges

In addition to Chapter 22, Public Laws, regarding the salaries of Supreme and Superior Court Judges, which is discussed in the chapter on State Economy and Finance, there

are three general laws concerned with Judges. Of these, one deals with Superior Court Judges and the other two with Justices of the Peace.

Chapter 217, Public Laws, reënacted the authority biennially given to the Governor to appoint four special Judges of the Superior Court, for two year terms, and to appoint two additional Judges at any time during the biennium if conditions necessitate. No change was made in the powers and duties of these special Judges. They have practically the same duties and authority as a regular Judge.

Chapter 488, Public Laws, is the biennial statute appointing Justices of the Peace throughout the State. By it the legislature appointed 1,367 Justices, most of them for terms of six years. A number of the Justices appointed were not able to qualify, however. The statute required qualification within 60 days after April 1, 1933, and, as it was not ratified until May 13, the list was not certified to Clerks of the Superior Court in time to allow all the appointees to qualify. Any appointees who were allowed by Clerks to qualify before the statute was ratified had their qualification validated by the Chapter.

It seems, however, that some Justices whose terms expired on April 1 and who were slated for reappointment by Chapter 488, which was then pending, were inclined to overlook the technicalities of the situation, and continued to act as Justices. This procedure was to some extent justified when the legislature, by Chapter 570, Public Laws, validated all acts performed by such Justices before May 12, 1933. The legislature is ordinarily very helpful along this line. There have been cases where Justices acted as Justices for months after the expiration of their terms, only to have the legislature ratify all their unauthorized acts.

II. CIVIL PROCEDURE.

Not all of the 1933 statutes which concern all of the phases of civil procedure will be discussed in this chapter. A number of statutes which involve procedure in some of its aspects

will be found mentioned in other parts of the book, particularly in the chapters on Debtors' Relief and on Wills, Estates, Trusts and Guardianships.

A.—SUITS BY AND AGAINST UNINCORPORATED ASSOCIATIONS

Chapter 182, Public Laws, allows unincorporated associations, societies and fraternal orders which issue insurance certificates or policies to sue or be sued in the name of the association, without joining as parties any of the individual members of the association. The privilege only extends to actions concerning the insurance.

B.—STATUTE OF LIMITATIONS

With the exception of one other statute regarding deficiency judgments, mentioned in the chapter on Debtors' Relief, Chapter 167, Public Laws, is the only statute making a change in the Statute of Limitations. It reduces from three years to six months the time within which a landlord, mortgagee or lienor must begin action for conversion against the purchaser of a crop on which he has a lien.

C.—PROCESS

Chapter 24, Public Laws, provides for service of process on the same unincorporated assocations, societies and orders as were permitted to sue and be sued in the association name by Chapter 182, already mentioned. The service is to be made in the same manner as service on corporations. Like Chapter 182, this Chapter applies only to actions concerning insurance.

D.—AMOUNT OF BOND REQUIRED IN CLAIM AND DELIVERY ACTIONS

Chapter 131, Public Laws, provides that a person seeking to intervene, in a claim and delivery action, must, in order to secure possession of the property, post bond in double the value of the property as fixed in his own affidavit. Under the former law a bond double the value fixed by the plaintiff's affidavit

was required. The Chapter also makes it clear that no bond is required of the intervener where he does not seek possession of the property before trial of the action. This probably was intended to refer only to the bond given as security for the value of the property, but it is so worded that it may also have eliminated the necessity of the intervener's giving bond for costs.

E.—CHALLENGING JURORS

Chapter 130, Public Laws, a depression measure, provides that jurors may not be challenged for nonpayment of taxes for the two years preceding the trial. The section does not apply to tales jurors not drawn from the jury box. Due to the history of the statute of which the Chapter was made a part, it has also been suggested that it does not apply to regular jurors, and applies only to tales jurors drawn from the box (see the June, 1933, *N. C. Law Review* at page 218). The writer sees no compelling reason for giving this narrow construction.

F.—JUDGMENTS

Chapter 435, Public Laws, provides that the fee for docketing, indexing and filing transcripts of judgments in the office of the Clerk of the Superior Court, when the transcript comes from another county, shall be the same fee as that charged for the same service in the county from which the transcript is sent. This, of course, is an attempt to clear up, in one particular, the tremendous confusion caused by the fact that the fees for services performed by local officers are different in almost every county.

G.—APPEALS

Chapter 109, Public Laws, requires, in civil appeals from the General County Court to the Superior Court, that the case on appeal be filed in duplicate, containing exceptions and assignments of error, which, with the original record, shall be transmitted by the Clerk of the County Court to the Superior Court as the complete record on appeal. It likewise specifies

that no briefs need be filed unless requested by the Superior Court Judge.

Chapter 251, Public Laws, provides that, when the party giving an appeal bond in a Justice's court goes bankrupt before the final judgment is entered, the sureties on the bond remain liable and the action may be continued against them as codefendants. Our courts held many years ago that bankruptcy under such circumstances released the sureties on the bond, and this statute is designed, at last, to change the law in that respect.

H.—SALES UNDER EXECUTION AND OTHER JUDICIAL SALES

Chapter 79, Public Laws, validated all execution sales of realty and personalty made by sheriffs on any day other than the proper day. The only exception made was for sales involved in litigation pending on February 27, 1933, when the Chapter was ratified. Statutes of this character may serve to clear up titles, but are hardly conducive to strict adherence to the law.

Chapter 96, Public Laws, amends the law with regard to the advertisement of sales to be held under judicial foreclosure proceedings. The former law required newspaper advertisement of the sale once each week for four successive weeks of not less than twenty-two days, and advertisement of any resale once each week for two weeks of not less than eight days. The new law reduces these periods to twenty-one and seven days, respectively. The reason for the change was to allow consecutive publications in weekly newspapers. The same change was made with respect to all other judicial sales requiring four weeks or two weeks publication. The Chapter also validates all sales and resales made since February 21, 1929 (the date of the statute which contained the twenty-two and eight day definitions) where the advertisement was made for four weeks or two weeks, respectively. Apparently, this is intended to ratify such sales if the advertisement met either the old or the new definition of the length of the period in terms of days.

Chapter 482, Public Laws, includes execution sale of real estate under the statute which already required mortgage sales and sales by executors or administrators to be held open for ten days for the filing of increased bids. The inclusion is a logical one and may assist in securing more adequate prices for real estate sold in this way. Attention has already been called to the fact, in the chapter on Education, that the 1933 Assembly, by Chapter 494, Public Laws, also provided a similar procedure in the case of sales of school property.

Only two other statutes remain to be mentioned in this chapter. One of them, Chapter 187, Public Laws, is concerned with the manner of advertising resales in cases of sales by administrators or executors to make assets and in cases of partition sales. It prescribes a procedure which is identical with that for resale in judicial foreclosures and resales under execution, with the exception that the prescribed length for the two weeks publication is eight days. This exception is particularly anomalous as, in both of these cases, the formalities with respect to the original sales are the same as that with respect to original sales under execution, and hence under Chapter 96, already mentioned, the four weeks publication period is twenty-one and not twenty-two days. Apparently Chapter 187 was copied from the old law, and the fact that the length of the advertisement period had been changed escaped notice. It will, no doubt, be conformed at the next session.

The final statute to be mentioned here is Chapter 98, Public Laws. It gives to the Clerk of the Superior Court powers to compel proper accounting by commissioners appointed to sell property in special proceedings very similar to the powers already possessed by the Clerk to compel proper accounting by guardians. It allows the Clerk, after proper notice and continued default, to attach the commissioner for contempt and send him to jail until he files a proper account or posts a satisfactory bond. The bond premium is to be deducted from the commissioner's fee.

MISCELLANY

The writer has attempted, with no little diligence, to press into the foregoing chapters all of the laws of Statewide application and all of the Resolutions which are worthy of mention. In pursuit of this goal he has no doubt placed a few laws in categories in which their presence is not supported by the best of logic. Despite the strained quality of this arrangement of material, however, several laws and quite a few worthy Resolutions have defied efforts to include them within the bounds of the regular chapters. In order to make this monograph a complete survey of public legislation, it becomes now the writer's duty to impound these recalcitrant laws and Resolutions in this his final chapter, and there to arrange them in conglomerate, illogical, ignominious juxtaposition.

I. The "Lame Duck" Amendment

By Resolution 1, the legislature ratified the so-called "Lame Duck" amendment, which has since become the 20th amendment to the Federal Constitution. The usual method of ratification by vote of the various state legislatures was employed with respect to this amendment, as distinguished from the unusual method of popular elections and conventions employed in the case of prohibition repeal.

The twentieth amendment terminates the tenure of office of all Senators and Representatives at noon on the 3d of January following the elections in which their seats were at stake. Formerly they served until the end of the short session which began in December following those elections; and thus, at each short session, there were members still serving who had been repudiated at the polls. As the amendment also provides that all regular sessions of Congress, including short sessions formerly beginning in December, are to begin at noon on January 3, the terms of these members will now expire at the commencement of the next regular session following the election, and their successors will serve at that session. Thus

the only possibility of having "lame ducks" in Congress is in the case of a special session held between election day and January 3—a possibility which is fairly remote.

The amendment shifts the date for the inauguration of the President and Vice-President from March 4 to January 20, thus considerably shortening the period between the date of a President's election and the date at which he takes active charge of affairs. The amendment also specifically covers the case, often formerly discussed, of death of the President-elect before inauguration. The Vice-President-elect will now be entitled to the Presidency. If a President is not chosen or fails to qualify, the Vice-President-elect may act as President until a President qualifies. If neither qualifies, Congress is empowered to provide for the situation by law. Congress is also empowered to provide for the situation where the duty of choosing a President has devolved upon the House, or the duty of choosing a Vice-President has devolved upon the Senate, and death has taken one of the persons eligible for the job.

These latter provisions are designed to supply omissions of which our forefathers were guilty when framing the Constitution. The need for supplying these omissions is amply demonstrated by the fact that over the course of a century and a half the contingencies not provided for have never occurred. Meanwhile it is only fair that Congress and the legislatures, having now amply covered these hitherto hypothetical contingencies, should devise for the public some new riddle as enchanting as that which they have answered.

II. The Legislature and National Economy

According to its lights, the legislature showed a commendable interest in national economy (as it well might, having devoted much of its time to State and local economy). The matter began, so to speak, with Resolution 18, which urged Congress to stop encroaching on sources of revenue which the legislature had regarded as state preserves. The particular taxes stressed were those on gasoline, lubricating oils and electricity. But the Resolution also urged that "the Congress

balance its budget in so far as possible by further economies in government and without additional excise tax levies."

Closely following this came Resolution 22, which happily combined the advocacy of national economy with recognition of the attainments of local talent. It resolved "that the sentiment recently expressed by the Honorable E. W. Pou in the National Congress urging that authority be placed in the hands of President-elect Roosevelt to reduce the enormous costs of operating our national government is hereby commended and endorsed."

As late as Resolution 25 the legislature was still in laudatory vein. It resolved "that the North Carolina Senate, the House of Representatives concurring, commend President Franklin D. Roosevelt for his economy program and the National House of Representatives for their promptness in approving the same and urge immediate passage of the economy measure by the United States Senate." This laudable sentiment was expressed on March 16.

By April 28 a very small fly had appeared in the economy ointment. By that date a bill had been introduced in Congress proposing that the Regional Office of the Veterans Administration at Charlotte, together with other regional offices in other states, be abolished. The legislature thereupon adopted Resolution 45. In the preamble of this Resolution it was disclosed that this bill, if adopted, would involve sending over 2,000,000 pending cases to Washington; that it would mean the discharge of over 6,000 employees; that humanity and mercy demanded the handling of these cases "in the field" (Charlotte being a field now sparsely occupied by some 80,000 souls, with more recent claims yet untabulated); that 17,459 North Carolinians were drawing veterans' compensation, and that "all but 5,579" (a trifling matter of 32 per cent) of these cases involved disabilities directly connected with war service. Accordingly it was urged that Congress "enact unto law some measure that will provide for the maintenance of the Regional

Office of the U. S. Veterans Administration at Charlotte and all of the other regional offices in the country."

On second thought, the writer believes that he may have erred in placing this last-mentioned Resolution with the Resolutions dealing with national economy, as it makes no reference to that subject whatever. Further, no other reference was made to the subject in any subsequent Resolution. The only subsequent Resolutions affecting the national government were 48 and 54. The first of these requested issue of $500,000,000 in currency for use in purchasing state bonds bearing 2 per cent interest, the bonds being designed to fund the assorted state deficits. The second requested that Federal reforestation and forest conservation funds be made available for use in North Carolina on "private lands for the public benefit."

III. Celebrations and Expositions

Resolution 11 empowered the Governor to appoint a State Capitol Centennial Commission to lay plans for a celebration of the 100th anniversary of the laying of the corner stone of the present capitol building—an event which took place on July 4, 1833. It was indeed fitting to commemorate the birthday of this pile of stately stone, which, serene and unperturbed, has witnessed the steady turning of history's pages throughout the course of a long and fulsome century.

Delving far more deeply into the State's history, the legislature, by Resolution 57, urged schools and citizens to join, during 1934, in fitting commemoration of the 350th anniversary of the visit of Sir Walter Raleigh's expedition to Roanoke Island in 1584. It seems that historians appointed for the task have determined that 1584 was the true date of this visit, which resulted, in 1585, in the founding of a colony on the Island which, though ill-fated, marked the beginnings of English-speaking civilization in America. All State agencies were directed to coöperate in this celebration, in which the nation as well as the State, is expected to join.

Turning to other quarters, the legislature, by Resolution 23, lent its approval to the Century of Progress Exposition in Chicago, and recommended that North Carolina be represented by exhibits, and particularly by exhibits dealing with "those imports and products in which North Carolina leads: tobacco, cotton, furniture, power, agriculture, seafoods, truck, textiles, history and great natural scenic grandeur." No appropriation was made to finance any exhibits by or from the State.

IV. Interstate Legislative Assemblies

Resolution 12 authorized appointment of three delegates (one by the Governor, one by the President of the Senate and one by the Speaker of the House) to attend the First Interstate Legislative Assembly. This Assembly was formed chiefly for discussion, by state legislators and Federal representatives, of problems of conflicting and overlapping taxation, and for the promotion of coöperative effort in solving the problem. The delegates to this First Assembly were allowed $120 as expenses.

The legislature evidently was satisfied with the first meeting as, by Chapter 223, Public Laws, it authorized appointment of two delegates (one by the President of the Senate and one by the Speaker of the House) to attend the Second Interstate Assembly, which will be held while the legislature is not in session. These delegates, who will be allowed a maximum of $300 for expenses, are expressly without power to commit the legislature in any way without specific authority.

V. Registry of Old Deeds

Chapter 439, Public Laws, empowers the Clerk of the Superior Court to order registry of any deed, where the deed and probate are dated prior to January 1, 1907, where the proof of execution was made before a notary residing in the county where the land is located, where the notary failed to affix his seal, and where the notary's certificate appears otherwise to be genuine.

VI. CONSTRUCTION OF STATUTORY CITATIONS

Chapter 443, Public Laws, declares that all references in 1933 laws to *The North Carolina Code*, to *The North Carolina Code of 1931* or to *Michie's North Carolina Code*, shall be construed liberally as intending to refer to "the apposite, related or cognate" sections of the Consolidated Statutes (this latter being the official, though more antiquated, compilation).

VII. THE CHICKADEE

The story of the short-lived honor accorded to the Carolina Chickadee as the State's official bird is well known throughout the State. The honor was accorded on May 8 by Resolution 51. It was accorded on the basis of the facts that the bird is beneficial to agriculture, that it lives on insects and bugs harmful to crops, and that it won a newspaper contest sponsored by the State Federation of Women's Clubs. The honor was revoked on May 15, by Chapter 521, Public Laws, after the legislature had begun to be haunted by the horrifying thought that light-minded fellows might forsake the bird's immediate name for that of his family and refer to our noble commonwealth as the "tom tit state." Such is the influence of Messrs. Gilbert and Sullivan on the course of weighty legislation.

PROGRAM

Based on

"LEGISLATION GENERAL ASSEMBLY 1933"

(Popular Government, Vol. I, No. 3)

Prepared by

HENRY BRANDIS, Jr.

Associate Director The Institute of Government

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EDWARDS & BROUGHTON CO., RALEIGH

PREFACE

This pamphlet contains a series of ten suggested programs for use in studying important changes made in North Carolina's laws by the 1933 legislature. The programs are designed for use in connection with the monograph recently published by the Institute of Government under the title, "Legislation of General Assembly, 1933."

The programs are intended largely as a key to the material in the monograph dealing with particular subjects, and it is not pretended that they cover every problem which might be raised in connection with those subjects. Further, it is fully realized that the programs themselves are far from perfect in arrangement; and the Institute will welcome any suggestions for their improvement. It will also welcome criticism and suggestions pointing out ways in which the material in the monograph might be better presented from the standpoint of coördinating the monograph and the programs.

The same technique has not been followed in arranging all programs, as the writer felt that the material did not lend itself completely to a uniform method of treatment. However, wherever he felt that the same underlying problem was involved in all legislation covered by a program, the program was cast in question and answer form. In these cases an attempt was made to phrase the question in such a way that it would refer to the problem as it existed at the time the legislature was in session.

Reference has been made at several points in the programs to the summaries of local legislation for each county prepared by the Institute. As explained in the last program, these summaries were distributed to all newspapers in each county by the Institute during the latter part of the fall of 1933; but if you are unable to obtain a copy from the newspaper, the Institute will be glad to furnish you with a copy.

Finally, with respect to these programs, no attempt has been made to cover all the important legislative changes or all the material contained in the monograph. If you are interested in going beyond the matters mentioned in the programs, you may find some acceptable material in connection with the new steriliza-

tion law, and other laws regarding the treatment of mental defectives on pages 142-5 of the monograph, the emergency banking laws on pages 222-32, the law with respect to the hours of labor for women on pages 206-7, the ratification of the "Lame Duck" amendment on pages 258-9, the laws designed to aid mortgage debtors on pages 185-8, the laws affecting farmers on pages 211-16, the new law respecting the admission and disbarment of attorneys on pages 189-91, the resolutions relating to national economy on pages 259-61, or elsewhere in the monograph.

The Institute will be glad to coöperate with you if you have any questions either with respect to the last-mentioned laws or with respect to any laws mentioned in the programs.

HENRY BRANDIS, JR.

THE INSTITUTE OF GOVERNMENT
Chapel Hill, N. C.

ALBERT COATES, Director

Associate Directors

HENRY BRANDIS, JR. DILLARD S. GARDNER
T. N. GRICE

PROGRAM

BASED ON

"LEGISLATION OF GENERAL ASSEMBLY 1933"

PROGRAM 1

TOPIC:—Legislation affecting the relation of the State government to public schools during 1933-5.

THE QUESTION:—What part should the State assume in the financing and the management of the public schools?

THE LEGISLATIVE ANSWER:

I. The State's part in financing the schools.

A. The history of State support of schools.

1. State support prior to 1931—the equalization fund, pp. 78-80.
2. State support during 1931-3—the assumption by the State of the burden of operating the six months term of school required by the State Constitution, pp. 80-3.

B. State support under the 1933 laws.

1. The assumption of the support of the eight months term, and the appropriation of $16,000,000 per year to finance it, pp. 85-8.
2. The creation of the State School Commission to supervise the spending of the State's appropriation, pp. 91-2.
3. The things for which the State's money is spent, and how the money is allocated between these items.
   a. General control, with comparative expenditures and appropriations for prior years, pp. 92-3.
   b. Instructional service, with comparative expenditures and appropriations for prior years, pp. 93-4, 97-9, 102, 105. (Including salaries of superintendents, principals and teachers.)
   c. Operation of plant, with comparative expenditures and appropriations for prior years, p. 94.
   d. Auxiliary agencies, with comparative expenditures and appropriations for prior years, pp. 94-6.

(Note:—It is suggested that discussion of controversial matters regarding school finances be deferred until after discussion of the program dealing with the part of the local units in the support of schools. For this purpose it is difficult to disentangle considerations affecting the State and considerations affecting only local units.)

II. The State's part in managing the public school system (other than management of the State's funds).

A. Management prior to 1933.

(Note:—It is suggesteed that it may be sufficient here merely to point out that the State, for some years, has controlled such matters as the selection of basal textbooks and the rating of teachers' certificates.)

B. New management features in the 1933 laws.

1. The power vested in the School Commission to reorganize school districts, and the results of the reorganization, pp. 99-101.
2. The power vested in the Commission to vary the length of school terms, p. 99.
3. The increased powers granted to the State Textbook Commission, pp. 114-6.

PROGRAM 2

TOPIC:—Legislation affecting the part which local governmental units play in school financing.

THE QUESTION:—During 1933-5, what part should local units play in the financing of the public school system?

THE LEGISLATIVE ANSWER:

(Note:—It is suggested, in connection with this program, that it would be helpful to read through all the material in the monograph from page 102 to page 112 inclusive, before attempting to separate the material in the manner outlined below. The financial status of the old school districts, the new school

administrative units, and the counties as governmental agencies is one of such interdependence that it is well to have the status of all in mind before approaching the problem from the standpoint of the three types of units individually.)

I. The status of the new county and city administrative units.

A. Power to have taxes levied when the levy is approved by the voters.

1. Taxes to supplement the funds furnished by the State for the operation of the eight months term, pp. 88, 102-4, 105-6.
2. Taxes for the support of a ninth month of school, and the limitation placed on the right to levy such taxes when the unit is in default, pp. 88-90.
3. The elections during 1933 and their results, pp. 90-1.
4. The State's indirect control over the amount of such tax levies, by virtue of the power of the School Commission to approve or reject local budgets, pp. 96-7.

B. Lack of power to levy any taxes except by authority of an election.

(Note:—The reason for this lack of power, and the specific cases in which it is illustrated, will be apparent in the discussion of the levy of taxes by the county as a governmental agency. It is very important, in understanding the material in the monograph, and particularly the rulings of the Attorney General mentioned there, to distinguish between the county as a school administrative unit, and the county as a governmental agency. The theory of the distinction is that as a school unit, it has, like all other school districts in the State's history, no power to levy taxes unless authorized by popular vote; while as a governmental agency it is required by the Constitution to levy taxes for the support of a six months term of school, regardless of any vote.)

II. The status of the county as a governmental agency.

A. The constitutional requirement that the counties must support a six months term of school, Constitution Art. IX, sec. 3.

B. Typical taxes which must be levied by the county under this constitutional requirement because of the fact that the State has not undertaken to pay for the items involved.

1. Taxes for capital outlay purposes (such as construction of school buildings), pp. 108-9.
2. Taxes for purchase of school busses. (This is really a capital outlay item, but is being treated separately because there has been some controversy over the matter,) pp. 95-6.
3. Taxes for school sanitation, p. 109.
4. Taxes for maintenance of plant and fixed charges, pp. 107-8.
5. Taxes for vocational agriculture and home economics, pp. 107-8, 110.
6. Taxes for the cost of providing bonds for officials handling school money and of the auditing of school funds, pp. 107-8.

(Note:—It should be explained here that probably taxes for any of these purposes may also be levied by a city or a county administrative unit, but these units may levy these taxes only by authority of the voters. The county as a governmental agency needs no such authority as long as it is demonstrated that the purposes for which the taxes are levied are necessary for the support of the six months term.)

C. The problem raised by the fact that the law requires that all county-wide school funds must be distributed on a per capita basis, p. 109.

III. The status of the old school districts.

A. With respect to debt service taxes.

1. Debt service levies must be continued until debts are paid, pp. 110-1.
2. Assumption of district debts by the counties, p. 113.

B. With respect to taxes uncollected and money on hand when the School Machinery Act was passed, pp. 111-2.

C. The amount of maintenance taxes formerly levied by the old school districts, which have been largely eliminated under the new law, pp. 83, 114.

Suggested questions for discussion:

1. Should the State undertake to finance an eight months term?
2. Are you satisfied with the scale of support which the State is providing?
3. In an effort to obtain a uniform system, should the legislature place limitations on the amount which may be spent by local units for local schools?
4. Are the two positive limitations now placed on local expenditures (i.e., the legislative limitation on units in default and the administrative limitation effected by the power of the School Commission to approve or reject local budgets) wise limitations?
5. Do you think the legislature erred in discontinuing all local supplements and requiring elections to authorize new ones, in view of the financial situation in the spring of 1933?
6. Is the condition in your local community such that the levy of a property tax for school supplements would be wise, considering the present tax rates, the amount of delinquent taxes, the prospective number of tax foreclosures, the rate at which collections are coming in, the percentage of collection of any school maintenance taxes levied in your locality during 1931-3, and your own estimate of the present ability of taxpayers to pay?
7. In determining how much a county or city should spend in supplementing State funds, how much weight should be given to the fact that the county or city is unable to pay its bondholders and other creditors? To the fact that it did not pay its previous school obligations, such as teachers' salaries?
8. How much weight should be given to the fact that the State is paying promptly the amounts it promised to pay?
9. In the light of your local conditions at the time the legislature was in session, do you think the policy of the School Machinery Act was wise?

10. In the light of conditions now existing in your locality do you think the result of the Act is desirable?
11. What changes, if any, would you care to see made in the Act by the 1935 legislature?
12. Do you know of any way in which local supplements should be raised, other than property taxes?

PROGRAM 3

TOPIC:—Legislation designed to effect economies in the operation of the State government.

THE QUESTION:—How could the State's expenditures be decreased?

THE LEGISLATIVE ANSWER:

I. Laws designed to effect some saving by reorganizing parts of the State government.

A. Laws abolishing State agencies, pp. 52-5.
B. Laws transferring administrative functions from one State Department to another, pp. 55-7.
C. The merger of the Highway and Prison Departments, pp. 57-9.
D. The effect of the reorganization laws, p. 60.

II. Laws designed to reduce salaries.

(Note:—These laws really represent one phase of the reduction of appropriations, but as they are numerous, it is suggested that they be discussed separately. Also, attention is called to the fact that some of the laws discussed under State reorganization effected material salary reductions. These laws will not again be cited here.)

A. Laws reducing the compensation of specific officers and employees, pp. 60-1.
B. Blanket reductions contained in the Appropriations Act, and the powers conferred by the Act on the Budget Bureau, pp. 61-2, 66-7.

III. Reductions in general appropriations for various State functions.

(Note:—In the State's bookkeeping, there are three main funds. The General Fund is the Fund from which practically all appropriations are made except those for the Department of Agriculture and those for the Highway and Public Works Commission and highway bond debt service. Into the General Fund go almost all taxes levied by the State except gasoline taxes and motor vehicle license taxes. The Agriculture Fund is, for purposes of the immediate discussion, merely a specialized part of the General Fund. It is composed of all types of inspection and tonnage fees received by the Department of Agriculture for its services. Out of it the appropriations for the Department of Agriculture are made, but any balance remaining in the Fund at the end of the year is placed in the General Fund. The Highway Fund is composed of all gasoline and motor vehicle license taxes. Out of it are made the appropriations for the administrative expense of the Highway and Public Works Commission, the maintenance and construction of highways, and highway bond debt service. As pointed out in the monograph, this year the legislature also appropriated out of the Highway Fund, if there is a surplus in it, $1,000,000 per year for the use of the General Fund. Any further surplus in the Highway Fund remains as a part of that Fund and does not go into the General Fund.)

A. Appropriations from the General Fund and its subsidiary, the Agriculture Fund, compared with appropriations made in the years 1929-33.

1. General administrative and executive appropriations, including those for the Department of Agriculture, but not including those for the Highway and Public Works Commission, p. 63.
2. Appropriations for institutions of higher education, pp. 120-2.
3. Appropriations for charitable and correctional institutions (other than the State prison system), pp. 139-142.
4. The General Fund budget, pp. 75-6.

(Note:—It should be kept in mind that the estimates of revenues to be derived from various types of taxes, contained in the monograph, necessarily will be subject to a large percentage of error. They are given largely to illustrate the various sources from which the General Fund derives its revenues and, to some extent, to illustrate the problem involved when a legislature undertakes to balance the budget. Any estimate of revenues is of uncertain validity, though, of course, an experienced tax expert will come much closer in his estimates than the man on the street. Even the expert may blunder when dealing with a new tax or with a tax in which major changes have been made, particularly when the economic outlook is very uncertain, as it was in the spring of 1933. The particular figures given in the monograph are estimates which were before legislative committees at a time when the Revenue Act was very nearly in its final form. They are, however, merely one set of a number of estimates which were made, and the writer has been unable to secure any guarantee that they are in any sense "official.")

B. Appropriations from the Highway Fund, compared with the appropriations during the years 1931-3, p. 132.

(Note:—It is suggested that here you also take up the material in the monograph on pages 133-7, inclusive, dealing with the restrictions placed on highway expenditures and with the method of financing the State's prison system.)

IV. Changes made in revenue laws.

(It is probably not necessary to discuss this phase of the legislative work in order to complete this program, and any detailed discussion of revenue laws must necessarily be rather technical. Any one desiring to discuss the matter to some extent will find some material dealing with the changes in General Fund taxes on pages 67-75 and some dealing with Highway Fund taxes on pages 125-32. For ordinary purposes it should be sufficient to state that the legislature, with respect to General Fund taxes, raised the rates on income, inheritance and franchise taxes, made numerous changes in license tax schedules, found new taxes in the sales tax and the beer taxes,

and abandoned the former 15c property tax. With respect to Highway Fund taxes, it made no major changes in gasoline tax rates or in private passenger motor vehicle license taxes. It did change the laws respecting gasoline tax refunds so as to increase the number of refunds but to decrease from 6c to 5c the amount refunded per gallon; it tightened the laws governing the collection of gasoline taxes; and it made rather numerous changes in the laws governing license taxes on commercial motor vehicles.)

PROGRAM 4

TOPIC:—Laws affecting the amount of local property taxes.

THE QUESTION:—How could local property taxes be reduced?

THE LEGISLATIVE ANSWER:

I. Taxes abolished.

A. Abolition of the State's 15c tax for schools and substitution of the sales tax, pp. 8, 85.

B. Practical abolition of local property taxes for school maintenance, subject to the levy of new taxes on approval of the voters, pp. 8, 88-91, 83-4.

II. Reductions in the valuation of taxable property.

A. Option allowed County Commissioners by the 1933 Machinery Act either to have a complete revaluation of real estate or to make a uniform, horizontal decrease in valuations, pp. 3-5.
(It is suggested in this connection that you familiarize yourself with what was done in your own county.)

B. The effect of reducing property valuations on the amount of taxes levied for general county or city purposes (i.e., purposes other than debt service and schools), pp. 6-8.
(It is suggested that you ascertain from your local authorities what special taxes your county and city are permitted to levy, either under special legislation or by virtue of special charter powers. It is suggested also that you

ascertain whether the maximum rates are being levied for general purposes, and for authorized special purposes. Finally it is suggested that you consult the chart at the end of the chapter on Local Economy and Finance, to ascertain whether any special levy was authorized in your county by the 1933 legislature.)

III. Efforts to make self-supporting services of governmental agencies now financed by property taxes.

A. Permission given to cities to support sewer systems by making service charges against users of sewer or water facilities instead of supporting the sewer system by levying property taxes, pp. 8-9.
(It is suggested that you ascertain how your local community supports its sewer system.)

B. Discussion:—Which method of supporting sewer systems is the wiser plan, in view of the fact that supporting the system by service charges does not remove the burden of support from all property owners, but only places the entire burden on the owners of improved realty?

IV. Efforts to reduce the cost of local government and thus to reduce the amount of taxes necessary to be levied in order to pay the cost of operating local government.

A. Permission to consolidate local governments and local governmental agencies, pp. 9-11.

B. Statutes designed to reduce the costs of operating courts (the effects of which are comparatively unimportant), p. 12.

C. Statutes reducing the salaries of local officers, p. 11.
(If there was any change effected in local officers' salaries in your county by the 1933 legislature you can find it in the summary of local legislation prepared for your county by the Institute.)

V. Local governmental debt and debt service taxes.

The most serious obstacle in the way of reduction of local property taxes is, of course, the tremendous debt burden which the local governments are now carrying. For this reason it is suggested that this question be discussed as a separate in-

stallment to follow the discussion of the foregoing material. Those who wish to discuss the whole problem at one session may, of course, merely combine the two installments in any fashion they see proper.

PROGRAM 5

TOPIC:—Laws affecting the problem of local governmental debts.

THE QUESTION:—What could be done with respect to local governmental debts which would permit reduction in taxes levied to pay the principal and interest of these debts?

THE CONSIDERATIONS INVOLVED:

I. Considerations working in favor of creditors of local units.

A. These debts are fixed obligations. The interest rate is fixed, the principal amount is fixed, and the date of maturity of the various obligations is fixed. None of these things may be changed purely by legislative action.

B. The Federal Constitution prohibits any state from passing a law which impairs contract rights, and the creditors have a contract right to receive their money, p. 13.

C. The future credit, not only of the particular local government, but of every other local unit in the State, and to some extent the credit of the State itself, is at stake.

D. Repayment of debts has heretofore been regarded as a moral obligation.

E. To the extent that the notes and bonds of our local governments are held by local banks, trustees and citizens, failure to repay in full will work serious local consequences.

II. Considerations working in favor of the taxpayers of local units.

A. The legislative desire, natural in the light of the times, to reduce taxes, regardless of debts.

B. The unprecedented amount of unpaid taxes, and the unprecedented number of pending or imminent tax foreclosures.

C. The fact that in many cases, due to shrinking tax revenues and the decreasing value of property, units in default, if they levied a tax rate sufficient to pay up obligations due, would be forced to levy a tax so high that no one would or could pay.

D. The fact that much of the money was borrowed at a time when the purchasing power of the dollar was much less than it was in the spring of 1933.

(It is suggested that, in connection with the program, the following information about your city and county will be useful, as demonstrating how important the question of governmental debts is to you:

1. What part of your tax rate is levied to provide revenues to pay debts?
2. Does this tax rate produce enough revenue to pay all maturing debts and all interest?
3. Was any part of the reduction in 1933 taxes effected by removing State and local school taxes wiped out by the necessity of increasing the tax rate for debt service taxes, taking into consideration the amount by which property values were reduced?
4. If your unit is in default, has any method of refinancing been decided upon?
5. What is the total indebtedness of your unit?
6. What is the total valuation of taxable property in your unit?)

THE LEGISLATIVE ANSWER TO THE PROBLEM.

I. Laws the effect of which is to assist creditors.

A. The School Machinery Act (Removal of the State's 15c property tax, and practical elimination of many local school maintenance taxes), pp. 14, 85, 88-91, 83-4.

B. Permission to secure the appointment of Administrators of Finance, pp. 19-20.

II. Laws the effect of which is to assist taxpayers and enable tax rates to be reduced.

A. Laws the effect of which is partially to remove the necessity of levying taxes sufficient to pay all interest and all maturing debts. (The laws under this subdivision are rather technical, and may be omitted by those who do not desire so complete a discussion. They are, however, very important.)

1. Liberalization of the method of estimating uncollectible taxes, when making up the unit's annual budget, so as greatly to increase the discretion of local authorities, p. 15.
2. Liberalization of the method of estimating the amount which will be realized from delinquent taxes, deposits in closed banks and other sources, also so as greatly to increase the discretion of local authorities, pp. 15-16.
3. Removal of the civil and criminal liabilities to which local tax levying authorities were formerly subject for failure to levy sufficient taxes, pp. 16-17.
4. Obstacles placed in the path of creditors seeking to enforce the levy of higher taxes, pp. 17-19.

B. Laws designed to permit postponement of the payment of debts, and thus to allow reduction of tax rates, at least for the present.

(Here it should be explained that bonds and notes of local governments are constantly falling due and the ability of the local governments to pay them is now at its lowest ebb. The State has long had laws which allow new bonds to be issued to take the place of these maturing debts, the effect of issuing these new bonds being simply to renew the loan and postpone payment of part or all of the principal.

The two chief types of bonds issued by local governments are term bonds and serial bonds. Bonds are term bonds when the entire issue matures at one time. Bonds are serial bonds when some part of the issue matures during each year over a period of years. Up until the last few years, most bonds issued by local units in the State were term bonds, and these term bonds, many of which are now maturing, are the ones causing the greatest present difficulties.

In more normal times, when new bonds were issued to replace old debts, the new bonds could be sold to new purchasers and the old creditors paid in cash from the proceeds. Now, however, there is no market for these new bonds, and the only way in which new bonds may be issued, and the debt renewed, is to induce the present creditors to take the new bonds in exchange for the old. It is therefore necessary that the new bonds be allowed to contain provisions which will make them more attractive to the present creditors, in order that the latter may be persuaded to accept them. The primary purpose of the laws mentioned under this subdivision are to allow more flexibility in the new bonds, so that the individual situations of local units may be met, and to allow provisions more attractive to present creditors to be written into the bonds. The new bonds are called funding or refunding bonds).

1. Changes in the laws governing issue of funding or refunding bonds issued by counties and cities, pp. 24-6.
2. Changes in the laws governing issue of funding and refunding bonds by local units other than counties and cities (such as school districts, sanitary districts, drainage districts, etc.), p. 26.

C. Creation of machinery for the compromise of debts owed by local governments, pp. 20-23.

(Since the Governor has not appointed the County Readjustment Commission which was created by Chapter 205, and since there is a technical legal question involved regarding the constitutionality of the Chapter, those desiring a simpler method of discussion may direct the discussion along the following lines:

The laws concerning funding and refunding bonds, mentioned above, are largely designed to allow only postponement of payment of debts and, if the creditors are willing, to allow reduction of the interest rate. They would also allow reduction of the principal amount of the debts if the creditors will agree. But, as there is no way of compelling creditors to agree to any proposal to reduce the principal, it is practically impossible to secure any such reduction under those laws. Many creditors who would be willing

to accept reduction if all creditors accept the same reduction, will not accept it as long as they know that a few dissenting creditors will receive payment in full.

Chapter 205 is the only law passed by the 1933 legislature which attempts to set up any machinery, the practical result of the use of which would be to force dissenting creditors to take any reduction accepted by two-thirds of the creditors. The Chapter is probably unconstitutional, as it impairs the contract rights of the creditors to receive payment in full. At any rate, there seems little likelihood that its provisions will be tested.

It is almost certain that the Federal Congress will have before it, at the 1934 session, legislation which will permit reduction of the debts of local governments upon consent of some precentage of the creditors, and which will provide machinery which, in effect, will force dissenting creditors to take the same settlement. The Congress almost undoubtedly can pass valid legislation of this type, as the Federal Constitution gives to Congress the power to regulate bankruptcies—a power not possessed by state legislatures. In taking action under the bankruptcy power, Congress is not handicapped by the possibility of interfering with contract rights. Since Congress has the power, the question of whether such legislation should be passed becomes one of policy. The question is:—Should local governments, like local citizens, be permitted to go through some form of bankruptcy when their debts have become too large?)

PROGRAM 6

TOPIC:—Laws affecting the collection of property taxes.

(Note:—The 1933 laws on this subject vary so much in different localities that it will be necessary for you to ascertain what your local laws are before you can attempt to apply this program to your immediate locality. A key to the local laws affecting your county may be found in the chart which

appears at the end of the chapter on Local Economy and Finance in the monograph. A summary of their provisions and of the provisions of any laws affecting particular cities in your county may be found in the summary of local laws for your county.)

THE QUESTION:—How far should the legislature go in liberalizing laws governing the collection of taxes?

SOME IMPORTANT CONSIDERATIONS INVOLVED. (Most of the considerations are argumentative and open to debate.)

I. Considerations against liberalization.

A. Failure to enforce timely payment of taxes may result in such a complete breakdown in tax collections that local governments will be unable to meet any payments of interest or principal on their debts, and will be unable to obtain enough cash to meet even operating revenues.

B. Any measure which allows a taxpayer to pay delinquent taxes at a discount or on a compromise basis apparently, to some extent, discriminates against taxpayers who paid their taxes on time, and may encourage these latter taxpayers to cease paying on time.

C. Any measure which reduces the penalties for failure to pay taxes promptly, or which postpones the date of the sale of property for failure to pay, removes the necessity of prompt payment as a business proposition, and leaves the time of payment more nearly a matter of personal option with the taxpayer.

D. It is difficult, even though laws are liberalized solely to meet an emergency situation, to insure that they will not be taken by taxpayers as a precedent and as an indication of what they may continue to expect.

II. Considerations in favor of liberalization.

A. So far as taxes already delinquent are concerned, allowing payment at a discount may produce immediate cash revenues which are much needed by local governments, thus allowing current tax rates to be reduced.

B. The local governments, by foreclosing on property which, in most instances, they must purchase themselves, do not

gain anything, as they receive no cash from the foreclosure, as they must advance the actual costs of the foreclosure, and as such property is not subject to further accrual of taxes.

C. The unprecedented amount of delinquent taxes and imminent foreclosures, and the depressed character of the times, create an emergency situation which calls for emergency action. The emergency is so great that not only must taxpayers be given an opportunity to pay up delinquent taxes at a discount, but also penalties on current taxes must not be allowed to accrue rapidly while delinquent taxes are being paid off. It is worth noting that in many places sales were delayed by local authorities before the legislature took action.

D. In so far as delinquent taxes for 1930 and prior years are concerned, taxpayers who paid them promptly did so in dollars worth much less in purchasing power than dollars were worth when the legislature was in session.

THE LEGISLATIVE ANSWER:

(Note:—In interpreting the laws passed, and in understanding their technical provisions, it may be very helpful to read carefully the summary of tax collection procedure appearing on pages 27-9 of the monograph. The portion of this summary which deals with sales and foreclosures for failure to pay taxes refers chiefly to taxes on real estate. When the taxpayer owes taxes on real estate only or on both real estate and personal property, his real estate is sold for the total amount of taxes owed by him. Where he owes only taxes on personal property, the tax collecting authorities may levy on his property and sell it at public auction in order to satisfy the tax bill, but there is no such foreclosure procedure as there is where real estate is involved.

It is also suggested that you talk to your local tax collectors and to your county commissioners and city authorities regarding the wisdom of the laws affecting the situation in your locality, and regarding the effect of those laws on tax collections in your locality.)

I. The treatment accorded delinquent taxes for 1931 and prior years.

A. Taxes on real estate.

1. Cancellation of taxes for 1926 and prior years where no foreclosure had been begun by the county or city, p. 30.
2. Compromise of taxes for 1931 and prior years—installment payments and discounts, pp. 30-1, 32-3, 35-6.
3. Redemption of property purchased at foreclosure sale by a city or county—installment payments and discounts, pp. 31, 34-5.
4. Treatment of cases where the tax sale certificate is not held by a county or city, pp. 31-2.

B. Taxes on personal property—payment of all delinquent 1931 and prior taxes on personal property at a discount, p. 34.

(Note:—In connection with all matters pointed out respecting 1931 and prior taxes, both real and personal, you should be careful to ascertain whether Chapters 181 and 548, Public Laws, which are discussed in the monograph, are applicable in your county and city. You can ascertain whether your county is exempt, whether the application of these laws is optional with your local authorities, and whether there are special exceptions for your county by reading the material in the monograph on pages 35-6, 37. You can ascertain what action has been taken by your local taxing authorities and how they are handling the problems pointed out in the monograph by talking to these local authorities and to your county and city attorney.)

II. The treatment accorded taxes for 1932, (which were current taxes when the legislature was in session).

A. Penalties to be charged.

1. Chapter 559, Public Laws, fixing the penalty in fifty-seven counties, pp. 39-40.
2. Penalties in counties to which Chapter 559 did not apply, pp. 40-1, 28.

B. Postponement of the time of sale of 1932 taxes on real property, pp. 40, 42-4.

(Note:—As it was impossible for the writer of the monograph to check the actual situation in each county, the material on this point cited in the monograph is probably inaccurate with respect to some counties. However, the date at which these sales were held in your county may easily be ascertained from your local authorities. Likewise the penalties charged on 1932 taxes in your locality may be so ascertained.)

III. Treatment accorded 1933 taxes.

A. Penalties to be charged.

1. Option allowed to local authorities in all counties by the Machinery Act, p. 41.
2. Limitations placed on the maximum penalties chargeable in fifty-seven counties by Chapter 559, p. 41.

(Note:—It is suggested that you consult your local authorities to ascertain the penalty actually being charged in your county and city.)

B. Time of sale of 1933 taxes on real estate, p. 41.

(Note:—It is suggested that you consult your local authorities to ascertain the date at which these sales will be held in your county and city.)

C. The reduction of interest rates on tax sales certificates and the limitations placed on the cost of foreclosure, p. 44.

Suggested questions for final discussion:

1. Do you think the laws in this field applicable to your own county and city are well adapted to the local situation?
2. Do you think it is wise to allow local authorities an option re-regarding the amount of penalties to be charged and regarding the manner in which delinquent taxes must be paid?
3. Do you think it is wise to allow the laws governing penalties and foreclosures to vary as much in different counties as they now do? (The extent of the variation is indicated by the chart in the monograph.)

PROGRAM 7

Topic:—Changes in the laws affecting the family and the child.

I. New laws affecting marriage requirements.

A. Repeal of the statute which required minors to give five days notice of intention to marry, p. 170.

B. Repeal of the laws requiring health certificates to be filed by applicants for marriage licenses, pp. 170-1.

C. Filing certificate of marriage performed in another state, pp. 171-2.

Note:—These marriage laws raise a number of questions regarding the social policy of the State. Among others which lend themselves readily to discussion, the following may be mentioned:

1. How far should the policy of the State regarding marriage requirements be influenced by the competitive factor (i.e., the fact that the laws of other states are more lax)? (There are at least three separate elements to be considered in this connection: namely, the desirable level for State social standards, the monetary phase of the matter, and the extent to which lax laws in neighboring states defeat the purpose of more stringent laws in our own State. It may also be pointed out that this is not the only case in which there is competition between state laws. There is competition in divorce laws, in almost all types of state tax laws, though particularly with respect to corporation franchise and income tax laws, and in many other fields of law.)
2. How much discrimination should there be between the sexes in the matter of health requirements for marriage?
3. Is there any conflict of policy between our laws regarding marriage health requirements and our laws permitting sterilization of mental defectives? (There is a discussion of the 1933 sterilization law on pages 142-4.)

II. New laws affecting divorce.

A. Reduction from five to two years of the period of separation required in order to secure a divorce on the grounds of separation, pp. 172-3.

Note:—Since separation is the ground of divorce relied upon in the majority of cases these laws are of considerable importance. However, the laws do not begin to liberalize the State's divorce laws to the point where the State is competing with such divorce mills as Nevada. Consequently they are not particularly suitable as a basis of discussion of competition between states on this phase of legislation. Probably the chief questions which they raise are: first, how long a period of separation should be required? and, second, should the party responsible for the separation be accorded substantially the same right to sue for divorce as the aggrieved party?)

III. Laws affecting the adoption of children.

A. The new adoption law and the changes it effects, pp. 173-5.

(Note:—As will be apparent, the monograph sets forth eight changes effected by the new adoption law. Of these, the sixth and eighth are not of any particular importance in discussing the law. It is suggested that the other changes be taken up and their wisdom discussed. It seems to the writer that the chief question of policy to be raised is the question as to whether the law should be inapplicable to non-resident parents.)

IV. Laws affecting illegitimate children.

A. Complete revision of the laws with regard to the support of illegitimate children, and the changes effected, pp. 147-150.

(Note:—As will be apparent, the monograph sets forth twelve points of difference between the old laws and the new, and also sets forth a few points of similarity. It is suggested that these points be taken up separately and the wisdom of each discussed.)

PROGRAM 8

Topic:—Changes in the criminal laws and laws affecting the treatment of prisoners.

I. New crimes which are important either by virtue of popular interest or serious penalties.

A. The kidnapping law, p. 153.
B. The machine gun law, pp. 153-4.
C. The possession of lottery tickets, p. 154.
D. The legislative lobby law, p. 154.
E. The undesirable oysters, p. 154.
F. The sale of misbranded or adulterated gasoline, pp. 197-8.
G. Crimes created to protect public health or safety, pp. 199-201.

(Note:—This is not, of course, a complete list of new crimes. Many others were created by the revenue laws, the beer laws, the game laws, the election laws and many miscellaneous general laws. The above list is, however, a representative list of new crimes attracting popular interest or punishable by serious penalties.)

II. The treatment of prisoners.

A. Matters not primarily influenced by the question of expense.
1. Indefinite sentences and other rewards for good behavior, p. 160.
2. Separation of races and sexes, pp. 160-1.
3. Force permissible in maintaining discipline, p. 161.
4. Recapture of escaped prisoners, pp. 161-2.

B. Matters either primarily or largely influenced by the cost of maintaining the prison system.
1. The distribution of the burden as between the State and counties, p. 58.
2. The effort of the State to make prison labor pay for the cost of the prison system, and the way in which the effort conflicts with the interests of private business, pp. 57-9, 133-4, 201-2, 209-10.
3. The pardon and parole of prisoners, pp. 162-4.

(Note:—It is no doubt unfair to say that the power of pardon and parole, in the light of the way it is being exercised by the present Governor, is purely an economic power, designed to get rid of prisoners whose custody is a financial burden to the State. There is no doubt, however, that the legislature had the monetary phase of the matter primarily in mind when the 1933 law was passed, and hence the law is placed here with other monetary matters.)

PROGRAM 9

OPIC:—Changes in laws affecting the conservation of wild game and natural resources.

I. Laws affecting game.

A. The fight made to reduce the cost of hunting licenses and its results, pp. 176-7.

B. Changes made in hunting seasons, pp. 177-9.

C. Changes made in game fishing licenses, p. 177.

(Note:—The three types of laws above, and particularly the two types of laws relating to hunting, suggest at least two questions for discussion:

1. What should be the policy of the State with respect to protection of wild game?
2. Should the State finance its game conservation policy by means of the sale of hunting and fishing licenses?)

D. Changes made in laws relating to commercial hunting and fishing, pp. 179-180.

E. Local laws.

(Note:—It is suggested that you consult the summary of local laws for your county for laws affecting game seasons or licenses.)

II. Laws relating to State and National Parks.

A. More adequate supervision of State lakes, pp. 181-2.

B. Authority to make Fort Macon and Mount Mitchell more accessible, p. 182.

C. The unsuccessful attempt to create the Daniel Boone National Forest Park, p. 182.

(Note:—The predicament of Swain and Haywood counties, referred to in the monograph material just cited, raises some questions which are not always taken into consideration by citizens of the State when advocating the establishment of parks. When a park is established it removes large amounts of property from the tax books, leaving the balance of the property in the counties involved saddled with the debts of the entire county. There are at least five ways in which the situation may be handled:

1. The balance of the county may be left to shift for itself.

2. The State may assume a proportionate part of the debt.
3. The Federal Government may assume a proportionate part of the debt.
4. A specified percentage of any receipts accruing from park lands and concessions may be turned over to the county as partial retribution, as is done in the case of National Forests but is not done in the case of National Parks.
5. All receipts may be turned over to the county until a proportionate part of the debt has been paid.

In the case of Swain and Haywood the 1933 legislature refused to obligate the State to give any aid, but petitioned the Federal Government to do so. The matter is now before Congress, and there is some chance that a percentage of the receipts will be made available for use by the counties. If you are interested in these questions, they offer considerable opportunity for discussion).

D. The attempt to change the purposes for which National Forest moneys now paid to some western counties may be used, pp. 182-3.

III. Conservation legislation not directly concerned with parks.

A. Authority to organize limited dividend corporations to promote forestry projects, p. 180-1.

B. Legislative endorsement of President Roosevelt's Tennessee valley project, p. 181.

PROGRAM 10

TOPIC:—Local legislation.

It is suggested that you obtain a copy of the summary of local legislation for your county and use it as the basis for one program. These summaries were distributed for publication to all newspapers in the State, but if you cannot obtain a copy from your newspaper the Institute will be glad to furnish you with a copy for your county.

The local legislation may be compared with the material in the monograph covering any general laws which may have been passed on the same subject. If you have any difficulty in comparing the local laws with the general laws, the Institute will be glad to co-operate with you in outlining a special program.

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A Comparative Study

DILLARD S. GARDNER
Associate Director, The Institute of Government