POPULAR GOVERNMENT

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

SHEARON HARRIS

JOHN KERR, JR.

J. MELVILLE BROUGHTON

R. L. HARRIS

S. RAY BYERLY

Reading from left to right: Shearon Harris, Principal Clerk of the House; John Kerr, Jr., Speaker of the House; Governor J. M. Broughton; R. L. Harris, Lieutenant Governor; S. Ray Byerly, Principal Clerk of the Senate.

The Legislators' Division of the Institute of Government was organized in January, 1933, with the Lieutenant Governor as President and the Speaker of the House of Representatives as Vice-President.

Three Lieutenant Governors have served as President: A. H. Graham of Orange, 1932-36; W. P. Horton of Chatham, 1936-40; R. L. Harris of Person, 1940—. Six Speakers of the House of Representatives have served as Vice-President: R. L. Harris of Person, 1933; R. G. Johnson of Pender, 1935; R. G. Cherry of Gaston, 1937; D. L. Ward of Craven, 1939; O. M. Mull of Cleveland, 1941; John Kerr, Jr., of Warren, 1943.

Under the direction of the Lieutenant Governor and Speaker, and assisted by the Principal Clerks of the Senate and House, the Staff of the Institute of Government, since the General Assembly of 1933, has: (1) followed the legislative course of every bill as it was introduced, amended, rejected or passed; (2) placed digests of these bills on each successive morning on the desk of each legislator, and officials in every city hall, county courthouse and state department; (3) at the end of each legislative session prepared summaries of public, local and private laws for distribution to all city, county and state officials; (4) brought together city councilmen, county commissioners, state legislators and federal representatives for interpretations and discussions of these laws after the close of legislative sessions.

The Staff of the Institute of Government acknowledges with appreciation the following Joint Resolution introduced and passed in the General Assembly of 1943:

A JOINT RESOLUTION EXPRESSING APPRECIATION OF THE GENERAL ASSEMBLY FOR SERVICES RENDERED BY THE INSTITUTE OF GOVERNMENT.

WHEREAS, the services rendered by the Legislative Staff of the Institute of Government, a division of the University of North Carolina, in analysis of bills, preparation of pending calendars, daily report of calendar action and other assistance to legislators has been of great value to members of the General Assembly and to interested citizens throughout the state; NOW, THEREFORE,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. That the General Assembly of North Carolina express its sincere appreciation to the Trustees and Faculty of the University of North Carolina, to the Division of the Institute of Government, and to members of its Legislative Staff, for the valuable assistance rendered by them to members of the General Assembly in the conduct of its business.

Sec. 2. That this resolution shall be in full force and effect on and after its ratification.

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The Legislature and the War

Meeting against the background of the most terrible war in history, the General Assembly of North Carolina, sitting beneath a flag that proudly bears the date of May 20, 1775 as well as April 12, 1776, inevitably translated its consciousness of war and its responsibility toward the war effort into law. Many of the legislators were veterans of the first world war; many others had sons, brothers and nephews in this one; some were themselves preparing to join the armed forces; all were mindful of the gravity of the times and the historic roles North Carolinians have always taken in times of danger to the State and Nation.

PEYTON B. ABBOTT

CLIFFORD PACE

JOSEPH W. REID, JR.

Staff members of the Institute of Government who bore the brunt of the Institute's Legislative Service in the General Assembly of 1943. Mr. Abbott and Mr. Pace prepared the summaries of legislation presented in this issue of POPULAR GOVERNMENT. *Mr. Reid prepared the appropriations chart in the article on State Finance and assisted in digesting the Attorney General's rulings.*

It was therefore inevitable that the whole body of laws enacted by the 1943 session was permeated by a consciousness of war, its present exigencies, its future demands, its aftermath. This consciousness of war was evident not only in measures that recognized and moved to alleviate hardships arising from economic dislocations, such as providing a war bonus for State employees in view of increased costs of necessities, and making horizontal reductions in license taxes for certain businesses most seriously affected by war economy; not only in measures that will indirectly aid the war effort, such as aiding in financing the improvement of the facilities of the Atlantic and North Carolina Railroad with a view to serving more efficiently the Cherry Point Marine Base and other military installations, authorizing State and local unit investments in war bonds, lowering the driver's license age to fifteen so that younger persons may replace their soldier brothers in hauling farm produce to market, authorizing the use of prison labor on farms to relieve the farm labor shortage, repealing the requirement for metal badges for chauffeurs, metal tags on out-door signs and taking other steps to conserve vital materials; not only in measures seeking to prepare for the rough waters of the war's wake, such as providing for post-war reconstruction and improvements by creating a State Post-War Reserve Fund, authorizing counties and municipalities to set up capital reserve funds, and authorizing the issuance of up to $15,000,000 of highway bonds to provide funds for highway repair and construction at the end of the present emergency; not only in generous gestures toward the boys in the armed forces, such as exempting them from liability for poll taxes and certain franchise taxes, and making their salaries for their military services received from January 1, 1942 to the end of the war exempt from income taxes; but also in measures directly concerned with the war effort and designed to put this State as fully on a war basis as can be done through State legislation.

The Emergency War Powers Act

The most important and potentially the most far-reaching Act concerned directly with the prosecution of the war is the Emergency War Powers Act (Ch. 706). Under it, the Governor of North Carolina, heretofore known far and wide as the governor not even entrusted with a veto power, can exercise more power with respect to intra-state affairs, if the occasion should arise, than has been entrusted to the President of the United States with respect to national affairs. With the approval of the Council of State (and with the approval of the State Highway and Public Works Commission and the Commissioner of Motor Vehicles with respect to orders concerning the use of roads, streets and highways, and of the State Board of Health with respect to putting into effect suggestions of proper Federal Authorities of changes in the health laws), the Governor may, on his own initiative, or on the requestof the naval or military authorities or any other Federal authority having duties connected with the prosecution of the war or the protection of the health, welfare or safety of the civilian population, perform a wide variety of acts affecting in many instances the fundamental rights of the citizens of the State.

Just what does the Act empower the Governor to do? He may formulate *and execute* plans for the mobilization, conservation, distribution and use of all necessaries of life and health, and of land, labor, materials, industries, facilities and all other resources of the State which are "necessary or useful in the prosecution of the war." In short, he is given power to put into effect a total draft of the entire manpower and resources of the State. He may also organize and coördinate civilian defense in the State in reasonable conformity to the

Federal program. He may order and carry out blackouts, radio silences, *evacuations* and all other precautionary measures against air raids or other enemy action, and he may *suppress or otherwise control any activity which may aid or assist the enemy.*

Fire, Police and Health.—He may "mobilize, coordinate and direct the activities of the police, firefighting, health, street and highway repair, public utility, medical and welfare forces and services of the State, of the political subdivisions of the State, *and of private agencies and corporations,*" and may use such forces and services "for the mutual aid of the people of the State" in cases of air raid, sabotage, enemy action, fire, flood, famine, violence, riot, insurrection, or other catastrophe or emergency.

Regulation of traffic and congregations.—The Governor may "prohibit, restrict, or otherwise regulate and control vehicular and pedestrian traffic, and *congregations of persons in public places or buildings,* lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities."

Transfers of property or personnel.—He may accept grants of funds or grants or loans of equipment, materials, supplies or other property for war or defense purposes. On the other hand, he may authorize any department or agency of the State to lease or lend to the armed forces of the United States any real or personal property of the State on such terms and conditions as he may impose, and he may authorize the temporary transfer of personnel of the State for employment by the armed forces of the United States and may fix the terms and conditions of such transfers.

Suspend or modify certain laws.—At any time when the General Assembly is not in session the Governor may, when he finds that any law with respect to which he is given authority materially hinders or delays the war effort, suspend or modify such law, in whole or in part, generally *or in its application to certain classes of persons, firms, corporations or circumstances.* The subjects of the law with reference to which this power is given are:

(1) The use of roads, streets and highways of the State, with particular reference to speed limits, weights and sizes of motor vehicles, regulations as to light and signals, the transportation of explosives, and the parking or assembling of automobiles on highways or other public places. Exercise of the power with respect to this class of laws, rules, and regulations must be approved by the State Highway and Public Works Commission and the Commissioner of Motor Vehicles.

(2) Public Health, insofar as the United States Public Health Service or other appropriate Federal authority stipulates that suspension or modification is essential to national safety and in the prosecution of the war effort. But here the suspension or modification must be approved by the State Board of Health.

(3) Labor and industry, insofar as changes may be certified by the Commissioner of Labor as being necessary in the interest of national safety and in furtherance of the war program. But any changes which increase present statutory hours of employment must carry provisions for "adequate additional compensation," and no existing contracts between labor and management shall be affected without the approval of the contracting parties.

(4) Mobilize State Militia in addition to the existing units of the State Guard, whenever the Adjutant General of the State shall certify that emergency conditions require it, and to provide for the transportation and full utilization of the State Guard or other units of the Militia during such emergency by allocating necessary funds for such purposes from the Contingency and Emergency Fund.

(5) The manufacture, sale, transportation, possession and use of explosives or fireworks, and the sale, use and handling of firearms.

In addition to general powers which would seem to be broad enough to cover the subject matter, the Governor is given specific power to organize, direct and coördinate all phases of civilian defense activities and to co-operate with Federal agencies and agencies of other states having duties and responsibilities directly connected with the war effort. He is further empowered to aid in the administration and enforcement of any rationing, freezing, price-fixing or other similar order or regulation promulgated by any proper Federal authority, *by making temporarily available personnel and facilities of the State* to assist in the administration of such orders, or by adopting rules and regulations in conformity with the Federal orders, *prescribing penalties for the violation thereof,* and designating the State and local officers to be charged with enforcement. It is obvious that the exercise of the power, by bringing violations within the jurisdiction of State authorities and bringing into action the weight of the State and local law enforcement officers, could immeasurably strengthen the effectiveness of the efforts of such Federal Agencies as the O. P. A.

Immunity from liability for damage to property or injury to or death of any person is granted to the State, political subdivisions, their agents, and to any individual, firm, partnership or corporation or their agents who cause such damage, injury or death while attempting in good faith to comply with any rule, regulation or order promulgated pursuant to the Act. This rather drastic provision evoked considerable criticism during the debate on the bill, but was enacted without change. It does not, however, affect the right of any person to receive benefits to which he would be otherwise entitled, such as Workmen's Compensation, pension, or insurance benefits.

When may the Governor exercise these powers? He may from time to time during the existing state of war exercise any of the powers granted under the Act "whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the successful prosecution thereof." No finding of the existence of any particular type or degree of emergency is required, and

his finding that any law, with respect to which the authority of suspension or modification is given, materially hinders or interferes with the war effort may be based upon "such study, investigation or hearing as he may direct, make or conduct." The Act is to be in full force and effect during the continuance of the war and six months thereafter, or until the convening of the next general assembly.

Penalties.—Orders, rules and regulations promulgated by the Governor are given the effect of law from the time of filing an authenticated copy thereof in the office of the Secretary of State, and all laws, rules, regulations and ordinances inconsistent with such order of the Governor are suspended to the extent of the conflict. A violation of any such order, rule or regulation, unless *otherwise provided therein*, shall be deemed a misdemeanor and punishable as such. By implication, the Governor could, within the order, prescribe much more severe penalties.

Thus the Act gives the Governor power to issue and enforce orders and regulations which might vitally affect every man, woman, child, corporation and institution in the State. The Act itself imposes no criteria or stages of emergency or necessity at which point the extraordinary powers may be brought into play, except the Governor's own discretion and the approval of the Council of State. A would-be dictator in a nation less steeped in traditions of freedom and democracy would be satisfied with much less as a starter. It speaks well of the present Governor of North Carolina and of the esteem in which he is held that the General Assembly was willing to entrust such powers to his hands.

Contributions by Local Units to War Agencies

Bitterly fought, nearly amended to death, but finally passed with less amendments than it once carried through its hard and tortuous journey through the legislative process, Ch. 711 (H.B. 452) is "An Act to authorize any board of county commissioners and municipal authorities to aid in the war effort by contributions to local organizations of official State and Federal Governmental agencies." As indicated by the title, appropriations by counties and municipalities in aid of such organizations as the local defense councils and rationing boards are not mandatory, but are discretionary with the governing boards. However, it was thought wise to add a *proviso*, "that in no event shall any contribution be made in the way of compensation to members of the boards of such agencies, or any panels thereof."

Even with the *proviso*, the act presented some undesirable features to some of the legislators; so the counties of Avery, Clay, Cumberland, Currituck, Davie, Forsyth, Graham, Hyde, Macon, Swain, Buncombe, Surry and Transylvania were excepted from its provisions.

Supreme Court Justice E. B. Denny administers the oath of office to Speaker John H. Kerr, Jr., of Warren County, while Secretary of State Thad Eure looks on.

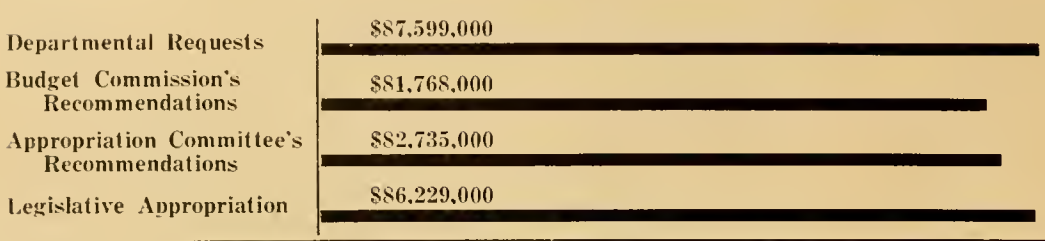
State Finance

Getting and Spending the State's Millions

When the members of the General Assembly gathered at Raleigh on Wednesday after the first Monday in January to survey and provide for the needs of the State, its departments, agencies, institutions and subdivisions, they were faced with a unique but happy circumstance: in spite of the heaviest spending program of any prior biennium, the general fund would have, by the end of the biennium, a surplus on hand variously estimated from thirty to thirty-eight million dollars. What should be done with that surplus? It is much more pleasant to think of ways of getting rid of a surplus than it is to cure a deficit, and ideas along that line were not wanting.

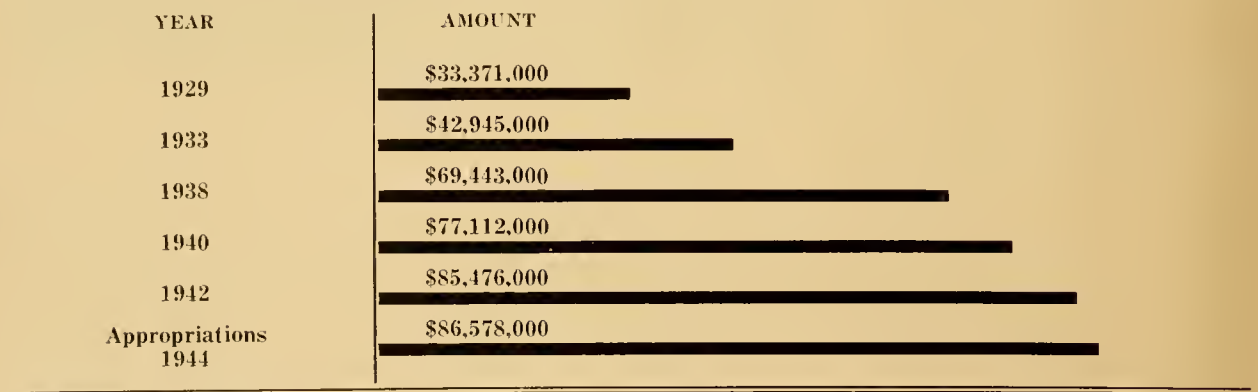
The Sales Tax.—Now is the time, many thought, to do away with that sales tax, or at least to trim it down substantially. Wasn't it originally enacted back in 1933 as an emergency measure, to keep the State going in those dark days when other sources of revenue were failing? Could it still be justified in the face of such a treasury surplus, with the trend of increased revenues continuing? And so, some effort was made to abolish the sales tax entirely; but the bill that would have accomplished that was killed by the

Chart Showing Total Average Yearly Requests, Recommendations and Appropriations for All State Functions for Biennium 1943-45



(Scale: 1 in. = $20,000,000)

Actual Total State Expenditures for 1929-1942, Compared with Total State Appropriations for Year Ending June 30, 1944



(Scale: 1 in. = $20,000,000)

Average Yearly State Appropriations for the Biennium 1943-45—By Functions Compared with Actual Expenditures for Fiscal Year Ending June 30, 1942

	Actual 1941-42	Departmental Requests	Budget Commission Recommendations	Appropriation Committee Recommendations	Legislative Appropriations
Legislative	$ 5,259	$ 100,000	$ 100,000	$ 100,000	$ 100,000
Judicial	468,814	473,887	478,226	478,226	478,226
General Administration	2,761,249	4,015,667	3,365,569	3,362,650	3,362,650
Agricultural Fund	583,015	651,027	551,826	615,795	615,795
Highways	30,011,754*	15,860,500	17,484,575	17,580,910	17,580,910
Higher Education Institutions	3,109,246	4,207,292	3,530,395	3,635,794	3,635,794
Charitable & Correctional	2,204,641	3,385,106	3,076,254	3,272,231	3,272,231
Public Welfare	4,133,119	4,763,930	4,431,651	4,743,872	4,743,872
Pensions	233,284	215,200	195,437	195,438	195,438
Contingency & Emergency	—26,849†	750,000	750,000	750,000	750,000
Public Education	28,852,584	40,124,807	34,752,224	34,948,091	34,948,091
Debt Service:					
General	4,801,810	5,214,785	5,214,786	5,214,785	5,214,785
Highway & Public Works Fund	8,337,600	7,837,240	7,837,240	7,837,240	7,823,740
Teachers and Employees Bonus					3,507,154
Total	$85,475,526	$87,599,441	$81,768,185	$82,735,032	$86,228,686

* Highway Construction funds materially reduced after 1942 for the duration of the war. Only $26,309,632 had been estimated for 1942-43.
† Reimbursements from prior years.

House Committee, as was also a bill to remove the tax from meals served in public eating places. More effort was directed toward reducing the tax to one per cent; but this effort fell far short of success. A great effort was made to reduce the tax to two per cent, and this, too, failed in the House, but not by a great margin. After all was said and done about the sales tax, the net result will probably be an increase in the total revenues from that source during the coming biennium, not only because of increased spending in the State, but partly because of changes in the Act itself. Abolished is the exemption on sales made directly to the Federal Government, or upon sales of materials to contractors to be incorporated in construction for the Federal Government. Wiping out these exemptions was strongly but unsuccessfully resisted on the grounds: that it placed an undue burden on the war effort, being largely directed toward collecting sales tax on materials incorporated in Liberty ships; that it placed the State in an unpatriotic role; and that it would tend to destroy the newly revived shipbuilding industry in the State, as the tax would add several thousand dollars to the cost of each ship, thereby placing North Carolina ship-builders in an unfavorable competitive position. Relief is granted, however, where construction or manufacture is on a cost or cost plus a fixed fee basis, by the following new section, 406(d): "Where any person, firm or corporation has entered into a contract with the Federal, State, or local governments, or any agency thereof, or with any private person, firm or corporation, or any party whatsoever, to manufacture or fabricate tangible personal property including ships, boats, aircraft, equipment, ordnance, or any other products or articles of commerce, for cost or for cost plus a fixed fee, sales to such manufacturer or fabricator of materials which shall enter into and become an ingredient or component part of the product manufactured or fabricated shall not be subject to retail sales tax or use tax."

Three per cent for collecting and remitting.—Relief was also given to merchants who have complained that their job of collecting and paying over to the State the sales tax was all burden and expense. With respect to the sales and use tax accruing after June 30, 1943, persons making returns and payments may deduct and retain for themselves 3% of the amount of the tax for their trouble. The Commissioner of Revenue may refuse to allow the deductions if returns are not made when due, or for making fraudulent returns or failing to keep adequate records. The sales tax article was further amended to exempt sales of personal property to non-profit hospitals, orphanages, charitable and religious institutions, etc., when such property is to be used in carrying on their work. Also exempt are sales of crutches, artificial limbs, eyes, hearing devices and orthopedic appliances.

Refund to Optometrists, Opticians and Oculists.—Article VIII, Sec. 10 of the Revised Sales Tax Rules and Regulations of 1937, promulgated by the Commissioner of Revenue, held as taxable sales of eyeglasses, frames, etc. by optometrists, oculists, opticians and eye physicians. This regulation was repealed on January 12, 1942, to be effective as of July 1, 1937. In the meantime, less than 40% of those affected had been reporting and paying the tax, while more than 60% had not. Reciting these facts, Ch. 221 (H.B. 405) "in order to remedy inequalities in taxation," confirmed the regulations of January 12, 1942, and authorized the Department of Revenue to refund the tax to those who had been paying it under the regulation of 1937. No finding that the tax was not passed on to customers, and collected from them, is required, nor is there any requirement that the customers who had paid the tax be reimbursed out of the refund. For those who had been reporting and paying the tax, assuming that they passed the tax on to their customers as the law directed, the Act provides a windfall.

The Ninth School Month.—The existence of that surplus gave extra impetus to the drive for the establishment of the State-wide nine-months school term. The proponents went to work early and they kept at the job until it was done. The first bill introduced in the House, and the third bill in the Senate, were nine-months school term bills. Neither was enacted, but they didn't differ greatly from S. B. 54 (see p. 15), which was ratified on February 26—fairly early for a major bill. As often as the voice of caution was raised, as often as it was pointed out that the extra month would cost the State some three and a half million dollars a year, as often as it was pointed out that these be troubled and uncertain times, so often was the word "surplus" heard in reply.

State Employees and Teachers War Bonus.—The surplus figured in the arguments on the appropriations bills, especially as to the part providing for a "war bonus" for State employees and teachers. The supplemental appropriations bill provided for the bonus from January 1, 1943, through June 30, 1943, while the biennial bill carries the same provision forward until December 31, 1944. The bonus schedule is based on regular salaries, and ranges from $5 per month on annual salaries of $400 and under to $24 per month on annual salaries of $4,500.

The State Post-War Reserve Fund.—The questions raised by the existence of the surplus in the general fund, the present upward trend of State revenues, and the uncertainties to be faced in the future, brought forth a logical answer—setting aside $20,000,000 from the surplus for the creation of a State Post-War Reserve Fund. Ch. 6 (S.B. 2) directs the Governor and Council of State to invest that sum in readily convertible bonds, notes or certificates of indebtedness of the United States or of any agency or instrumentality of the United States when the principal and interest is fully guaranteed by the United States, or in bonds or notes of the State. Income and profits are to be re-invested and become a part of the Fund, which is to be held intact and not used for any purpose except as directed by a future Act of the General Assembly. An itemized accounting is to be made to each regular or special session of the Legislature. The State Treasurer is custodian of the securities and investments of the Fund.

The sum of twenty million dollars and its increase is thus "frozen," removed from funds available to meet current expenses or present needs, and set aside for future use when revenues may be declining and post-war reconstruction and equipment

replacement may be crying for attention.

Investment of Surplus State Funds.—The sum set aside in the Post-War Reserve Fund did not by any means scrape the bottom of the Treasury's till, nor did the supplemental appropriations made by Ch. 531 (S.B. 12), which carried provisions for war bonus payments to State employees for the first six months of 1943, seem likely to bring expenditures up to the level of revenues. On the basis of current trends, it appeared that revenues would continue to exceed expenditures for some time to come, in spite of the record-breaking Biennial Appropriations Act and reductions in some tax schedules.* Ch. 2 (S.B. 8) provides for putting such excess funds to work. The Governor and State Treasurer, with the approval of the Council of State, are authorized to invest any cash in the general fund in excess of current requirements and demands, and investments may be made as often as any surplus appears. The same types of investments as set out in the Post-War Reserve Act are authorized, and the Treasurer is directed to make a biennial itemized statement to the General Assembly. Unlike the Post-War Reserve Fund, however, the Treasury surplus investments are not withdrawn from the general fund, and there is no prohibition against reconverting them to cash and using them to meet current obligations of the State without an additional Act of the Legislature.

The Revenue Act

In the face of the largest appropriations in the history of the State, the 1943 General Assembly left the Revenue Act of 1939, as amended by the 1941 session, without any major changes. Rather than increasing tax schedules, the tendency was toward reduction, increases in the "take" under old schedules being counted upon to off-set some losses from war-crippled sources and provide for increased appropriations. At the present stage of the war and rate of war-spending by the Federal Government, such an optimistic view for the coming biennium appears amply justified, especially when it is considered that the State was able to accumulate, during the present biennium, a surplus large enough to meet all calls on the general fund for more than four months at the current rate of expenditures.

Perhaps the most significant thing about the 1943 amendments to the Revenue Act is the changes that were not made. Before the Legislature convened, there had been considerable agitation in some quarters for the return of the levy and collection

Senators Thomas O'Berry and Pat Taylor, Chairmen of the Senate Finance and Appropriations Committee, had plenty to talk about.

of the intangible tax to the local units. When the Budget Revenue Bill was introduced, it provided for such transfer, to the dismay of many local tax officials, who hastened to put themselves on record as being satisfied with the present method of handling the intangible tax. So the tax will continue to be collected by the State, which, after deducting costs of administration, will continue to distribute 75% of the revenue from the tax to the counties and municipalities on the same basis as before. The net change in the intangible tax was the addition of one exemption: State credit unions, with respect to evidences of debt held by them when such evidences of debt represent investments of funds on deposit with them.

The Income Tax

About 29 pages of the forthcoming Session Laws of 1943 will be given over to amendments to the income tax laws, but no fundamental changes are effected. Schedules remain the same, personal exemptions are the same, and the average individual will not see any difference in his returns for the next two years except as his net taxable income may vary. Section 326, setting out the persons required to make returns, is amended to conform more nearly to the schedule of personal exemptions. For example, the law required a person "having a net income for the taxable year of two thousand dollars ($2,000.00) or over, if married and living with husband or wife," to file a return. By implication, a married woman living with her husband, but having a net income of less than $2,000 was not required to file a return, although she only had a personal exemption of $1,000. Sub-section 1 of sec. 326 is rewritten to describe in twelve sub-sections the persons who are required to make returns. Under the amendment, it is clear that a married woman, whether or not she is living with her husband, must file a return if she has a net income of over $1,000 which is taxable in this State.

Tax Forgiveness—Members of the Armed Forces

Having relieved members of the armed forces from the payment of poll taxes and certain Schedule B privilege taxes, the Legislature went further and excluded, by amendment to sec. 317(1), the salary compensation received for services in the armed forces of the United States for the duration of the war. The provision is retroactive to January 1, 1942. Other income of such persons is subject to taxation as before; but from such other income, deductions, credits and personal exemptions may be applied in arriving at net taxable income in the same manner as if compensation for military services were not received.

Other changes.—Space will not permit an extensive, detailed analysis of other changes in the income tax law, but they may be briefly summarized as follows:

Foreign corporations which believe that the method of allocating or apportioning their incomes for pur-

* It has been estimated that the General Fund surplus, including the amount set aside in the Post-War Reserve Fund, may approach $60,000,000 by June 30, 1945.

poses of taxation in North Carolina is unfair may file with the Commissioner of Revenue a petition setting forth the grounds for belief that the allocation formula is unfair as applied to them, whereupon the Commissioner may consider as an additional or as a substitute factor the ratio of the expenditure for salaries, wages and other compensation of officers and employees assignable to this State, to the total compensation to all officers and employees. The allocation formulae are presumed to be fair and accurate, and no relief will be granted in the absence of "clear, cogent and convincing proof that the petitioning taxpayer is entitled thereto." The same provision is inserted in the amendments to the Franchise Tax Article.

Domestic Insurance Companies paying a tax on their gross premiums may exclude from their gross incomes, in addition to excludible items already allowed, "the net addition to special contingency reserve funds established to cover possible losses arising from the increased mortality rates due to war," but not in excess of 10% of the reserves on life, annuity and endowment contracts allowed under sec. 317(2) (f) (a). The exclusion will not be allowed unless transferred to the special contingency reserves from the general surplus with the approval of the Commissioner of Insurance, and such reserves must remain under his supervisory control. When such special contingency reserves are released to the general surplus as reserves, they become taxable income to the company. The amendment is effective as of January 1, 1943.

Subsidiary Corporations may not deduct from gross income interest on indebtedness owed to or endorsed by or guaranteed by the parent corporation and used by the subsidiary in carrying on its business in this State; but if any part of the capital of the parent corporation is borrowed capital, the subsidiary may deduct from its gross income interest paid to the parent corporation in such proportion as the borrowed capital of the parent corporation is to the total capital of the parent corporation. (This is in lieu of the former provision in the second paragraph of section 318½ that debts due the parent corporation by the subsidiary be disregarded in determining the net taxable income of the subsidiary when its capital is inadequate to carry on its business.) The parent corporation may deduct from its gross income interest received from its subsidiary to the extent that it was not deductible by the subsidiary.

Exchange of stock and securities in a corporation that is a party to a reorganization for other stock or securities in the corporation, or for

Honorable Walter "Pete" Murphy, veteran legislator from Rowan County, former Speaker of the House, was the first Senate-House Liaison Officer. He takes advantage of the courtesy of the floor to make a brief address to the House. Seated beside him is Kerr Craige Ramsay, Representative from Rowan.

stock or securities in another corporation which is a party to the reorganization, will not result in a gain or loss for tax purposes. This amendment applies to individuals owning such stock or securities as well as to corporate parties to reorganizations, and takes the place of paragraph three of sec. 320 which required that such property be given a value for the purpose of computing gain or loss. "Reorganization" includes a statutory merger, consolidation, or recapitalization.

Non-deductible "income taxes" include taxes that are in fact based upon net income, although such taxes may be levied in another state as franchise or excise taxes.

Losses may be carried forward for two successive years and applied against income for such years, subject to certain limitations.

Contributions and gifts made by firms, partnerships and corporations to religious, charitable, literary, scientific or educational institutions, trust funds, foundations or associations, not in excess of 5% of the net income, are deductible. Individual's contributions are still limited to 10%. As originally written, the amendment removed the limitation as to gifts made by individuals. This was an oversight, however, which was corrected by a separate Act, Ch. 668 (H.B. 672).

Quarterly payments of the income tax may be made instead of semi-annual payments or a single payment, regardless of the amount of the tax. Deferred payments, whether quarterly or semi-annual, will bear interest at 4% per annum. All deferred payments will become due upon default in any installment. The provision as to quarterly payments "shall become effective as of January first, one thousand nine hundred and forty-four." When the provision for quarterly payments becomes operative, the old law with respect to semi-annual payments will be superseded thereby.

Schedule B License Taxes

The principal changes in the schedule of license taxes levied by the State concerned theaters, soft drink bottlers, professional bondsmen, and a selected list of businesses adversely affected by war conditions.

The gross receipt tax was taken off of movie theaters, vaudeville theaters and opera houses, but a new schedule, based upon the seating capacity and the population of the town in which the theater is located, increased the annual license tax. Under the old schedule, the license ran from $25 on theaters in towns of less than 1,500 to $425 on those in towns of 25,000 population or more, and the tax was regarded as an advance payment upon the gross receipts tax. The new schedule runs from $125 on theaters having a seating capacity of 600 or less in towns of less than 1,500 population, to $2,500 on theaters having a seating capacity of over

1,200 in towns of 40,000 or more population.

Only one-third of the tax is levied upon theaters more than two miles from the business center of towns of 25,000 or more population; one-third on "neighborhood" theaters; one-third of the tax on colored theaters in towns of 10,000 or over. Only one-half tax is levied upon theaters that operate less than six months each year in resort towns and at bathing beaches, and upon theaters operating not over three days a week. Cities and towns may continue to levy the same tax that was in effect on January 1, 1943.

In spite of the large increase in the base tax, dropping the gross receipts tax will probably result in a considerable reduction of State revenues from this source. The gross receipts tax and the same schedule of license taxes were retained for other forms of amusement and entertainments.

Soft drink bottlers and distributors are given a liberal reduction in taxes by new schedules applying to both low pressure and high pressure equipment. The old schedule for low pressure fillers ran from $250 to $3,000 per machine or equipment unit; the new schedule is from $175 to $1,800. The old schedule for high pressure equipment ran from $100 to $2,500 per machine or equipment unit; the new schedule is from $70 to $1,200. Under the old law, every machine or equipment unit in the taxpayer's place of business, whether or not in actual use, was taxed; the amendment provides that equipment not in use will not be a basis for taxation under the schedule.

Professional bondsmen are the subject of a new section, 109½, which levies a tax on them from $10 to $40 per year, depending upon the population of the town. The tax is imposed upon all (except agents of insurance or bonding companies which are licensed by the Commissioner of Insurance) who for a consideration execute appearance, compliance or bail bonds, or any type of bond or undertaking in connection with criminal proceedings in any of the courts of the State.

Certain war casualties were recognized and relieved by sec. 192 of Ch. 400, amending the Revenue Act. After reciting the restrictions on many businesses during war time due to rationing and priorities, the section makes a 50% reduction in the privilege licenses levied by the State upon dealers in bicycles, automatic machines, securities (under sec. 132), pianos, organs, victrolas, radios, records, and upon tourist homes and camps, soda fountains, soft drink stands and outdoor advertising. The tax on ice cream manufacturers is reduced 30%, and upon service stations, wholesale distributors of motor fuels, motorcycle dealers and dealers in automotive equipment the reduction is 75%. Local levies are not affected. Reductions will be in effect from June 1, 1943, to June 1, 1945.

For changes in Schedule B tax levies for counties and towns, see p. 22.

Transfer of Schedule B licenses issued by the State are authorized by an amendment to sec. 100(e) in the event the business for which the license has been issued is sold or transferred to a new owner. The right to transfer does not apply to licenses for attorneys, physicians and other professional people (licensed under sec. 109), detectives, real estate auctioneers, collection agencies, phrenologists, peddlers, contractors and construction companies, installers and repairers of elevators and sprinkler systems, mercantile agencies, gypsies and fortune tellers (under sec. 124), and lightning rod agents.

Other changes take bowling alleys out of section 129 and tax them under a new section, 129½, at the reduced rate of $10 per alley; set up a new schedule for pressing clubs and hat blockers running from $15 to $150 according to the population of the town in which located, only one-half the tax to be levied against establishments in towns of 5,000 or more population with not over four persons employed; abolish the process tax of 1c for each $1 or fraction charged for processing work of pressing clubs, cleaning plants and hat blockers; reduce the tax on each barber, manicurist, beautician or operator in barber and beauty shops from $5 to $2.50 per year; retain the 1% tax on services of laundries and towel supply houses but the use of stamps is discontinued and the tax is to be paid by the tenth of each month upon gross receipts for the preceding month; drop the requirement for affixing metal tags to outdoor advertisements and signs; exempt salvage committees and community scrap yards from liability for junk dealers' license, where no personal profit accrues, and also exempt persons who have no regular place of business but collect and sell scrap only to licensed dealers or manufacturers engaged in shipment in interstate commerce.

Gross Earning Taxes—Schedule I-A

A new Article, IX-A, is added to the Revenue Act by sec. 8 of Ch. 400. Entitled "Gross Earning Taxes in Lieu of Ad Valorem Taxes," it removes the businesses affected thereby from the usual procedure of assessing and collecting ad valorem taxes either by the State or by local units. Freight car line companies have the distinction of being the first and only business to be taxed under the new schedule. Their property is declared to constitute a special class, and all cars of such companies used exclusively within the State, or used partially within and partially without the State, and a proportionate part of the intangible values of the business as a going concern, are declared to have a situs in the State.

The rate is set at 3% of the gross earnings of such companies within the State, and "gross earnings" are defined to mean all earnings from operation of cars within the State for all car movements or business beginning and ending within the State and a proportion, based upon the ratio of the car mileage within the State to the total car mileage, of earnings on all interstate car movements or business passing into, through or out of the State. Railroad companies using or leasing cars of freight car line companies are required to withhold the amount of the tax from sums owing to the freight car line companies and make annual remittance and report to the Commissioner of Revenue. Upon failure to withhold, the railroad becomes liable for the tax. Annual reports are also required of the freight car line companies. Provision is made for a review by the Commissioner of Assessments within 15 days after reports have been filed by the railroads, upon request of the freight car line

companies. The method of taxation is in lieu of that prescribed by sec. 1604 of the Machinery Act, which is suspended and will be inoperative except in the event the new method of taxation should be held invalid.

Coordination of Tax Collection

Ch. 747 (H.B. 847) is a short enabling Act which is almost completely revealed in its title, but an Act from which highly important and beneficial results may conceivably flow. The title reads: "An Act to authorize the Commissioner of Revenue with the approval of the Governor and Council of State to enter into and act pursuant to agreements with the United States or with any other State or political subdivision thereof for the purpose of coordinating the administration of taxes imposed by this State, the United States, or any other State or political subdivision thereof."

"Coordination" of collection as well as of administration is contemplated by the Act, which provides that "notwithstanding any other provision of law, returns shall be filed and taxes paid in accordance with the provisions of any agreement entered into pursuant to this Act."

Many practical applications of the Act will occur to the taxpayer who has gone to the expense and trouble of filling out and filing numerous returns all based upon practically the same figures but required by different taxing units, and who has had to undergo loss of time from pressing affairs in order to lay his records before successive tax agents making routine checks for similar taxes of different taxing units. A good example of unnecessary duplication is in the State Unemployment Compensation and the Federal Insurance Contributions returns. The Act should also save a tremendous duplication of effort for the taxing units —a very important consideration in these days of personnel shortages. The savings that might be effected in normal times by eliminating a great deal of duplicating in record checking, in the reviewing of practically duplicate tax returns by different taxing units, and by an interchange of information and services by the different taxing units makes this short Act potentially one of the most important of the session.

Wine and Beer a la 1943

Senate Resolution No. 1 bore the title *"A Joint Resolution Informing His Excellency, the Governor, that the General Assembly Is Ready to Proceed with Public Business."* One of the major portions of that *public business* in the minds of North Carolina's citizens and in the intentions of the 1943 legislators was the regulation of wine and beer sales throughout the state.

By December, 1942, the uninhibited sale of wine and beer—night and day, seven days a week—had created a major community problem in most of North Carolina's 100 counties and over 300 cities, towns and villages. As pointed out in POPULAR GOVERNMENT of that date, the ramifications of this problem were reflected in the inquiries addressed to the Attorney General during the period immediately preceding the convening of the Legislature. The influx of soldiers and war workers into the State, the departure of many law enforcement officers for the armed forces, and the general tendency toward relaxing moral standards incident to the war period had combined to aggravate the entire law enforcement problem. Would a city council have the right to pass an ordinance prohibiting the sale of beer and wine within the corporate limits of the city from six o'clock Saturday evening until seven o'clock Monday morning? If a city government can regulate the Sunday sale of beer and wine within the bounds of the city, can it go beyond the corporate limits and prohibit the Sunday sale there? Can a board of county commissioners by resolution prohibit the sale of wine and beer in general throughout the county?

The attempts at regulation thus contemplated by these and other inquiries were not, in the main, allowable. The Attorney General's office ruled that a city could regulate the Sunday sale of wine and beer within the city limits, but, in the absence of special legislation, could go no further in the week nor in the county. The Attorney General was further of the opinion that county commissioners could not, since they have no legislative power of their own, prohibit the sale of wine and beer without special legislative authority.

To the announcement by the General Assembly that it was ready to proceed with public business, the Governor responded with his address

Senator J. H. Price is administered the oath of office as President pro tem of the Senate by Supreme Court Justice W. A. Devin.

to the joint session of the Senate and House of Representatives. One of the Governor's main general recommendations was: a "complete review of the situation with regard to the sale of 'light wines' and 'fortified wines' and enactment of such legislation as will insure adequate regulation of the sale of wine." Clearly, then, the people, the Governor and the Legislature were in accord that some legislative action directed at controlling the sale of wine and beer was in order.

"A bill to be entitled an act to prohibit the sale of intoxicating beverages in Hertford County between the hours of eleven o'clock P. M. on Saturdays and six o'clock A. M. on Mondays." The General Assembly was only three days old when the bill bearing that caption was introduced. On that day the ball was started rolling—the pattern was set for the almost half a hundred local bills aimed at regulating the hours of sale of beer and wine which followed.

From Graham to Currituck, from Brunswick to Watauga, thirty-eight local bills were introduced: prohibiting the weekend sale of wine and beer; prohibiting night as well as weekend sales; authorizing elections on the question of complete prohibition of wine and beer; permitting county and city governing bodies to refuse to issue both "on premises" and "off premises" licenses; regulating the sale in one way or another in certain restricted areas. From the third day until almost the last day of the session these bills were introduced. The fact that none of them was being reported out by the House Finance Committee seemed not to discourage the introducers; they knew the reality and urgency of this problem.

Of the total number introduced, only two of these bills were passed, both of which were of limited application only, prohibiting the sale of beer and wine in the vicinity of churches and schools. Instead, the General Assembly enacted H. B. 180 (Ch. 339) as a sort of composite of all the local bills regulating hours of sale. By the terms of this Act, it became unlawful from and after March 1st for "any person, firm, or corporation, licensed to sell beer and or wine in North Carolina to sell, or offer for sale, any beer and/or wine in North Carolina between the hours of eleven thirty p. m. and seven a. m. every day," or to permit the consumption of any beer and/or wine in any place under the control of, or operated by, said licensee between the hours of twelve midnight and seven a. m. every day.

In addition to these statewide provisions establishing closing hours the act goes further and authorizes the county commissioners of any county or the governing body of any municipality to prohibit the sale of beer and/or wine from eleven-thirty p. m. on each Saturday until seven a. m. on the following Monday. The power thus vested in county commissioners to regulate Sunday sales is made exclusive in all portions of their county not embraced in the corporate limits of municipalities therein, and the power vested in the governing bodies of municipalities is made exclusive within the corporate limits of their respective municipalities. So that by the particular provisions of this Act, county commissioners cannot prohibit the Sunday sale of beer and wine within the corporate limits of any town, nor can a town go beyond its limits to forbid the sale there. Hence this situation might arise: the county commissioners have not taken any steps under H. B. 180; the governing body of a town lying in the county has prohibited the sale between 11:30 Saturday night and seven o'clock Monday morning; yet there are those edge-of-town joints which continue the Sunday sale and which the town cannot reach, by the terms of this Act, apparently even though by its charter the town's ordinances were ordinarily effective one mile beyond the corporate limits.

What appears to be an omission in the new law occurs in the section setting the penalty for a violation of the Act. Violation of any provisions of the Act, or of any regulations made pursuant to the Act by any *county commissioners*, is a misdemeanor and subjects the licensee to a fine of not less than fifty dollars and/or imprisonment for not less than thirty days, and the automatic revocation of his license to sell beer and/or wine. No mention is made in the section of regulations enacted pursuant to the Act by *governing bodies of municipalities*, or of violations thereof. Apparently the violation of a regulation made by a town governing body would carry with it only the usual penalty for violation of a town ordinance and would not entail the automatic revocation of the license, as provided in the Act.

What can be sold did not fare so well as *when* you can sell it, however. A concerted effort was made in the House of Representatives, in the form of H. B. 144, "To Control the Production, Importation, Exportation, Transportation and Sale of Wine," known as "The Wine Control Act of 1943." Defining "wine," "table wine," and "dessert wine," this bill would have: set the alcoholic content allowable for all wine sold in the state and specified how the wine could be made and fortified to attain that percentage; named and regulated the places in which such wine could be sold; regulated the manufacture, labeling, bottling, etc., of all wine; and created a Wine Control Authority, headed by a $6,000-a-year Director, who would have been charged with the full execution and enforcement of the Act.

After a turbulent career in the House, opposed mainly on the grounds that it allowed too high an alcoholic content (20% by volume for "dessert wines") and created another big state job, "The Wine Control Act of 1943" went to the Senate. There it was placed upon the table and never taken off—partly for these same reasons, more, possibly, because everybody was tired of hearing about it. At any rate, the law regulating the content, manufacture and distribution of wines, fortified and otherwise, remains the same.

Article VI, Schedule F of the Revenue Act of 1939, as it applies to the amount of retail license tax chargeable by counties and municipalities for the retail sale of beer was amended in two particulars. The "off-premises" license tax chargeable by municipalities was reduced from $15.00 to $5.00; and the "off premises" license tax chargeable by counties was reduced from $25.00 to $5.00. "On premises" licenses for the sale of beer, and both types of licenses for the sale of wine, were left the same.

FAITH, WORK AND PLAY IN WARTIME

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

R. B. HOUSE

We had a neighbor near my childhood home, a truck-farmer, who drove his ponderous horse and tiny cart by our porch every evening from a trip to Roanoke Rapids.

"Howdy, Sam!" my father would call from the porch. Sam would respond with a quick nod and smile, but keep his eye on the horse, as though Old Joe might bolt and run away any minute. This would amuse us, but Sam would protest.

"I tell you, nobody knows all about a horse. Nobody knows all about anything. You got to watch; anything can happen."

Sam lived every moment in this spirit of expectancy. To our matter-of-fact eyes he was good enough, even artistic as a workman, a good provider, an excellent neighbor and citizen, but just a little bit over-touched with imagination.

But our matter-of-fact eyes have seen a world come to pass more in keeping with Sam's imagination than with our matter-of-fact, know-it-all-in-advance, closed minds. The unexpected is what has happened to us all. Sam continuously expected it. His mind, though unstocked in any large sense, was hospitable to possibility.

I don't think any other one generation has had to face two world wars. We had our grip on world affairs in 1918 but we were too trivial, to complacent, too well satisfied with what we thought we knew to keep control of the situation. We called an armistice a permanent peace and allowed our enemies to use the armistice to prepare for what is now the second attack. What we rejoice in is how well our statesmen, our soldiers, and our workmen have sprung to the task and how well they are getting the situation in hand. In fact, some of our commentators warn us against a second attack of complacency which may cause us to slacken our war effort. I think, however, that we can rest confident in the leadership political and military which we have and turn each of us to his own job and master that. I do think, however, that we need to keep alive the hospitable mind and the expectant spirit; and in a time when our problems are literally global in significance we ought to sincerely try in our leisure moments to enlarge our minds. This is why in this series of articles I am constantly reminding people of poetry and art, of history, geography, philosophy, and science. These are basic food not only for specially applied skills in war work but for enlarging our capacity to handle our problems of the peace in appropriate terms.

The only man who should be laughed out of court is the matter-of-fact person who knows all the answers. That was the person who lost the peace after the first world war. He told us that we were fighting to save our own skins. That was a lie. It betrayed the boys and girls of the last world war who were filled with a high sense of idealism and stood ready to give their lives that this present war would never happen. This person with his complacent, know-it-all-in-advance attitude is the same fellow who knew all the answers at the beginning of this war and who caused us to be so woefully unprepared and so hard put to it in the first year of fighting. I am sincerely afraid that this same sort of person is the man who will know exactly in advance all about peace terms. In fact, I see signs of attitudes that are ready to argue now about exact terms of peace at a time when we don't know who will dictate the peace. I would prefer a little more of Sam's spiritual alertness and to listen to his warning, "You never can tell what will happen." There is so little that we know. There is so much that we assert as though we did know. Instead of listening to useless arguments by those who don't know what they are talking about, suppose as we have time to think and to study we keep our resiliency of spirit and enlarge our minds by reading and studying. No man in these times can afford to stop growing in moral integrity, in intellectual stature, and in spiritual development. Now is the time to re-think and to re-work our whole conception of religion and organized religious life. How shall we see to it that all who call upon the name of God literally move together along the same spiritual highway? Now is the time to re-think and to re-organize our whole conception and method of education. We are blinded by dogmatism about educational institutions and processes. What we need is to renew the very spirit of intelligence itself. Certainly no man has any monopoly on the values of education. I have seen an ignorant man turn out an axe handle that would have won the admiration of Greek sculptors. He took a pride in his work and I believe he was concerned with the beauty and utility which are the bases of Greek thought and art. Now is a time to take pride in our work, to master it in the spirit of excellence through joy in it, through love, thought, and study and practice of what we enjoy doing. Now is the time to re-think not only the principles of liberty but the duties in that other half of liberty which is responsibility. Each man should be responsible for himself, for his own work and duty, striving for mutual adjustment with his fellows.

And as we re-think, re-organize, re-work, the very fundamentals of our lives, we ought to be alert to that future into which we are so steadily moving. We shall need the capacity to change and to appreciate after this war has been won because in the winning of it we have already begun to have some indication of the nature of things to come.

Atlantic and North Carolina Railroad

The State of North Carolina owns approximately 72% of the outstanding capital stock of the Atlantic and North Carolina Railroad, which has a line running from Goldsboro to the deep water port at Morehead City and up to Beaufort. The Company's properties are leased to the Atlantic and East Carolina Railway Company at a rental of $60,500 per year plus a sum based upon a graduated scale of gross income.

The 1941 Legislature, reciting that the development of the Port of Morehead City seemed likely to increase greatly the traffic of the railroad, that the condition of the track and roadbed was such that the anticipated additional traffic could not be handled unless improvements costing some $200,000 were made, and that because of a bonded indebtedness of $301,000 against the properties of the company (which bonds would fall due on July 1, 1942), the lessee company was unable to borrow the funds to make the necessary improvements, authorized the Governor to make a loan to the Atlantic and North Carolina Railroad Company in the amount of $200,000, to be in turn loaned to the operating company to be used for rehabilitating the track and roadbed.

The 1943 Legislature found that the $200,000 loan of 1941 was being promptly repaid, but that a loan made to the company in 1937 by the State Sinking Fund Commission, in the amount of $104,900 with interest at 5%, was unpaid; and that bonds in the principal amount of $295,500 plus interest (to April 1, 1943) amounting to $48,712.50 were in default, with the bondholders threatening foreclosure. It was further found that the Marine Base at Cherry Point and other naval and military installations had thrown a heavy burden on the railroad and that a survey of the railroad by Federal authorities had indicated that extensive improvements were necessary in order to put the railroad in condition more adequately to perform its important war duties. The Legislature further found that the lessee company was now efficiently and successfully operating the railroad and that its continued efficient operation was especially imperative at this time.

The Legislature therefore set out to do the needful. By Ch. 443 (H.B. 509) it appropriated the sum of $451,000 to be loaned to the Atlantic and North Carolina Railroad Company (to be provided by a bond issue) at such rate of interest, terms and maturities as might be determined by the Governor with the advice of the Council of State. The funds thus made available were to be used in taking up the first mortgage bonds with accrued interest at 3% (the bondholders having agreed to an interest reduction on condition that payment be made by April 1, 1943), and in refunding the note held by the State Sinking Fund in the principal amount of $104,900, together with interest at such rate as may be determined by the Governor with the approval of the Council of State.

Having taken care of the past due bonds and note of the Company, the Legislature also made provision, by Ch. 412 (H.B. 510), for the rehabilitation and improvement of the company's road-bed and facilities. For this purpose, a new loan not to exceed the amount of $200,000 was

THE 1943 HOUSE OF REPRESENTATIVES IS SWORN IN

granted, to be used in accordance with an agreement between the company, its lessee, and the Federal authorities with respect to the nature of improvements necessary and the manner of paying for them. The amounts so employed are to be paid back by the operating company or reimbursement provided for through increased rentals. The interest rate, terms and conditions of the loan are left in the discretion of the Governor and Council of State.

Further help for the railroad is contained in a short and somewhat unusually drafted Act, Ch. 453 (H.B. 576). This Act recites that the special committee appointed by the General Assembly had found that the franchise taxes assessed against the Atlantic and North Carolina Railroad Company for the years 1935, 1936, 1937 and 1938 were assessed upon excessive valuations and should be reduced to a sum based upon the valuation for franchise tax purposes for the year 1939, and that all penalties and interest on account of franchise taxes for those years should be remitted, and concludes: "the Commissioner of Revenue is hereby authorized and empowered to take the necessary action with respect to said franchise taxes recommended by the said committee."

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The North Carolina State Guard

Three acts with regard to the age limits, transportation, and equipment of the North Carolina State Guard are Ch. 166 (H.B. 223), Ch. 197 (H.B.222), and Ch. 342 (H.B. 220) respectively. The age limits for membership is set at not less than 18 nor more than 50 years of age. School buses are to be provided, when so ordered by the Governor, to transport the State Guard (or the National Guard) in the event of any emergency requiring the use of the State Guard, or for taking them to and from places of encampment. As to equipment, the Governor and Council of State are authorized, in their discretion, to expend the sum of $50,000 for the purpose from the Contingency and Emergency Fund during the coming biennium "in the event that the Federal Government does not furnish the necessary equipment."

Schools and School Laws

1943 Legislation Affecting the Schools and School Laws

The General Assembly of 1943 gave the little one-room school, with its one teacher instructing in the three R's for four months in each year, a few more final shoves into the limbo which it has been approaching for over a generation now. Most important among these was Ch. 255 (S.B. 54), the nine months school term bill. Pledged in campaign speeches, sought for by school people all over the state, the state-supported nine months school term seemed well-assured of passage before the Legislature ever convened. In fact, the first bill introduced in the House of Representatives was the nine months school term bill, later revised and redrafted and passed as S. B. 54 (Ch. 255).

Nine Months Term.—Ch. 255 actually amends section 4 of the School Machinery Act (Ch. 358 of the Public Laws of 1939) to provide that "the minimum six months' school term required by Article IX (section 3) of the Constitution is hereby extended to embrace a total of 180 days of school in order that there shall be operated in every county and district in the state, which shall request the same, a uniform term of nine months." However, the State Board of Education (formerly State School Commission) or the governing body of any administrative unit, with the approval of the Board, may suspend the operation of any school in the unit for a period not exceeding sixty days (formerly forty) when the low average of daily attendance justifies such suspension or when they find that the needs of agriculture, or any other condition, may make such suspension necessary. And the Governor, as Director of the Budget, may reduce the 1943-44 and 1944-45 terms to 170 days if, in his opinion, revenues decrease sufficiently to justify such action.

This war-time note—the manpower shortage, necessitating the employment of school children in farm work—is further reflected in other amendments to Section 4: a school month shall consist of 20 teaching days (no reference to calendar period); schools are not to be taught on Saturdays unless the needs of agriculture, or other conditions, make it desirable that schools be taught on such days; in order that the 180-day term may be completed in a shorter time than nine calendar months, when the needs of agriculture require it, the governing body of the administrative unit may require that schools be taught on legal holidays, except Sundays; the State Board of Education, during any period of emergency, may order general, and, if necessary, extended recess or adjournment of the public schools in any section of the state where the planting or harvesting of crops or other emergency conditions make such action necessary.

For the support of the ninth month of the public school term there is appropriated $3,454,845 for the fiscal year 1943-44 and $3,559,463 for the fiscal year 1944-45—approximately one dollar for every man, woman and child in North Carolina for each extra month. Newspaper reports indicate that 100 percent of the state's administrative units will, in the language of the Act, "request the same," and have the nine months term next year.

Stream-lined Control—The only question of statewide interest in the otherwise lack-luster election of last November was the passage of the

Mrs. E. L. McKee of Sylva, right, Senator from the Thirty-second District, and Mrs. George W. Cover, Representative from Cherokee County, were the only women in the General Assembly of 1943.

Constitutional amendment creating a new State Board of Education. When education leaders all over the state began to divide and dispute over the advisability of such a measure, the proponents offered a compromise in the form of a promise to secure the passage of a bill by the 1943 Legislature submitting another amendment to the people. On the strength of that promise, the amendment was passed. And at the same time that the Legislature was enacting S. B. 281, putting the 1942 amendment into effect, it was enacting S. B. 29, submitting the new Board of Education amendment to the voters at the 1944 election.

Designed to meet the objections voiced by the opponents in 1942—that representation on the Board would be unfair, both because the appointive members were to come one from each Congressional district and because the majority were required to be from the ranks of business and finance, non-educators — Ch. 468 (S.B. 29) would reduce the membership on the Board and change the manner of members' appointment. The amendment, if adopted, will provide that the general supervision and administration of the free public school system, including the funds appropriated therefor, shall be vested in the State Board of Education from and after April 1st, 1945. The Board is to consist of the Lieutenant Governor, State Treasurer, Superintendent of Public Instruction, and *ten* members appointed by the Governor, subject to confirmation by a joint session of the General Assembly. The General Assembly is to divide the state into eight educational districts, subject to change from time to time; and from each of these districts one member of the Board is to be appointed. The remaining two appointive members are to be members at large, and staggered terms are provided for all appointive members.

Under the proposed amendment, the Superintendent of Public Instruction continues as administrative head of the public school system and secretary of the Board. But the job of comptroller provided for in the 1942 amendment, to be appointed by the Board and to have charge of its fiscal affairs, is eliminated in the new proposal.

For at least the next two years, however, North Carolina's public school system will be under the control and direction of the State Board of Education as constituted by the 1942 amendment. By Ch. 721 (S.B. 281) the State School Commission, the State Textbook Commission, the State Board for Vocational Education, and the State Board of Commercial Education are abolished, and the State Board of Education, one centralized unit, succeeds to all their rights, powers and duties. It has the power: to divide the State into a convenient number of districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the textbooks to be used in the public schools; to apportion and equalize the public school funds over the state; and "generally to supervise and administer the free public school system of the state and make all needful rules and regulations in relation thereto." Section 8 of the Act amends the School Machinery Act to provide that the Board may designate from its membership an executive committee, to perform such duties as may be prescribed by the Board.

Miscellaneous Acts Relating to Schools.—Ch. 720 (S.B. 239) provides that for the duration of the war and for the first school term thereafter the State Board of Education shall provide any *union school* (one having both elementary and high school grades) having four high school teachers or less not less than the same number of teachers allotted for 1942-43, where it is determined by the Board that reduction in enrollment is only temporary. The *rejection* of any teacher under the provisions of section 12 of the School Machinery Act is made subject to the approval or disapproval of the governing authorities of the administrative unit in which such teacher is employed by Ch. 720. And the State Board of Education is directed to study the question of consolidation of administrative units with a view to reducing administrative costs, to report their findings to the General Assembly.

Ch. 440 (H.B. 488) provides that *school bus drivers* may secure the required certificates of proficiency from "any representative duly designated by the Commissioner of Motor Vehicles" as well as from the Highway Patrol. Ch. 767 (H.B. 758) increases the scope of, and clarifies, the statute relating to *passing a school bus* engaged in receiving or discharging passengers. The new statute requires the operator of a motor vehicle, "upon approaching from any direction on the same highway any school bus transporting school children to or from school, while such bus is stopped and engaged in receiving or discharging passengers therefrom upon the roads or highways of the state *or upon any of the streets of any of the incorporated towns and cities of the state*," to bring such motor vehicle to a full stop before passing or attempting to pass such bus. The motor vehicle is required to remain stopped until the passengers are received or discharged at that place, and until the "stop signal" of the bus has been withdrawn or the bus has moved on. However, the provisions of this school bus law are applicable only if the bus bears upon the front and rear thereof a plainly visible sign containing the words "school bus" in letters not less than five inches in height.

Ch. 511 (H.B. 524) was the omnibus Boards of Education bill, appointing the Boards of Education of the respective counties of the state and fixing their terms.

Mrs. Anne Cooper became acting principal clerk of the House at the end of the session when Shearon Harris was called into the armed forces.

State Departments, Officials and Institutions

From authorizing one of its administrative agencies to secure injunctive relief against the illegal practice of a profession to authorizing the establishment of a new state bureau —the General Assembly this year, as it does each session, had a major job in attending to the needs of the state's agencies, departments and institutions alone. The business of running the state has long since ceased to be a casual enterprise. Over thirty bills dealing with the executive branch of the government attest to that.

Unification of Mental and Correctional Institutions.—Continuing the trend toward unified control, the Legislature set up unified boards of directors for all the state's correctional institutions and institutions for the treatment of mental diseases. Ch. 776 (S.B. 225) provides that the Stonewall Jackson Manual Training and Industrial School, The Eastern Carolina Industrial Training School for Boys, the Industrial Farm Colony for Women, the State Home and Industrial School for Girls, the Morrison Training School, and the State Training School for Negro Girls, established by H. B. 217, shall be under the management of one board of trustees composed of nineteen members, eighteen of whom shall be appointed by the Governor. Representation on the board is apportioned according to the sections of the state—western, central and eastern. Given responsibility for the management of these institutions and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, the board is authorized to appoint a "Commissioner of Correction" to direct the work of all institutions, and a general business manager to direct their fiscal affairs and the management of their physical plants. A unified board of directors is created by Ch. 136 (S.B. 129) for the State Hospital at Morganton, the State Hospital at Raleigh, the State Hospital at Goldsboro, and the Caswell Training School at Kinston. To consist of sixteen members, fifteen of whom are to be appointed by the Governor, this board is similar in set-up and in the powers vested in it to the correctional institutions' board. It is authorized to appoint a general superintendent of mental hygiene and prescribe his duties, as well as a general business manager for all these institutions.

Executive Departments and Officers—Changes in Titles and Salaries. —The officers of the executive department, as well as their departments, came in for their share of legislation. Ch. 497 (S.B. 301) submits a constitutional amendment to the voters in the 1944 election to provide that the Lieutenant Governor shall receive such compensation as shall be fixed by the General Assembly. Heretofore paying seven hundred dollars for services as presiding officer of the Senate, plus a per diem at the same rate and mileage for all meetings necessarily attended, the office of Lieutenant Governor has always been more honor than profit. Ch. 57 (H.B. 45) submits another amendment to the Constitution which would make the Commissioners of Labor, Agriculture and Insurance constitutional officers and members of the Council of State. The title of the Insurance Commissioner was changed to "Commissioner of Insurance" by Ch. 170 (H.B. 248); and at least indirectly the title of the Secretary of the Historical Commission was changed, for the name of the Commission was changed by Ch. 237 (H.B. 369) to "State Department of Archives and History." Salaries of four major executive officers were raised: the Commissioner of Agriculture, from $6,000 to $6,600; the Commissioner of Labor from $6,000 to $6,600; the Adjutant General, from $5,000 to $6,000; and the Director of Probation from "a salary of not less than $3,600 nor more than $4,500" to a "salary to be fixed by the Governor and the Council of State."

Bureau of Mines.—Pointing out the considerable development of mineral resources and the increase of mining operations in the state within the past few years, more especially since the outbreak of the war, Ch. 612 (S.B. 294) authorizes the Governor and Council of State, in their discretion and at such time as this development and expansion justify it, to establish as a part of the Department of Conservation and Development a Bureau of Mines. If established, the Bureau of Mines will be located in Western North Carolina, "accessible to the principal mining and mineral developments, with staff and facilities capable of giving assistance, advice and experimental aid to such developments." The funds for the establishment of this bureau will come from the Contingency and Emergency Fund, and it will be operated under such rules and regulations as may be adopted by the Board of Conservation and Development.

Barber and Cosmetic Art Boards. —The funds and administrative affairs of two similar state agencies were regulated by the General Assembly. By Ch. 53 (H.B. 88) and Ch. 354 (H.B. 414), respectively, all funds collected by the State Board of Barber Examiners and the State Board of Cosmetic Art Examiners are brought under the supervision of the State Director of the Budget. Such funds are to be turned over to the State Treasurer and held and expended under the supervision of the Director. The necessary bonding requirements for persons handling such funds are included, and Board members are placed on straight annual salaries, with subsistence and mileage allowances.

Miscellany. — Bills were passed: clarifying sundry sections of the law relating to the Highway and Public Works Commission and the Prison Department of that Commission, authorizing the use of convicts in the State Prison on test farms or experimental stations of the state, and extending the emergency power granted the Highway Commission for another two years; extending the powers of the State Commission for the Blind and regulating appointments to the State Board of Charities and Public Welfare; authorizing the Governor and Council of State to allocate to the State Planning Board, from the Contingency and Emergency Fund, such funds as they find actually necessary for the fulfillment of the functions of the Board; providing a per diem for members of the

(Continued on page 28)

North Carolina's Laws

The Publication of the Law of the Land

All dressed up in a new name—the "General Statutes" — North Carolina's first official Code in twenty-four years was adopted by the 1943 General Assembly. The last official Code was the Consolidated Statutes enacted in 1919, with a supplementary volume in 1924. Since that time thousands of public laws have been enacted repealing, superseding, amending, and adding to the body of public law. The Division of Legislative Drafting and Codification of Statutes of the State Department of Justice was authorized by Legislative acts of 1939 and 1941 to recodify the laws of the state and submit a new Code to the General Assembly of 1943. A Legislative Commission on Recodification was appointed by the General Assembly of 1941 to cooperate with the Attorney General and the Division of Legislative Drafting in preparing the new Code.

Working closely with the Legislative Commission, the Division made certain formal changes in the course of the recodification which in no way affected the meaning of the statutes, such as: correcting section histories, improving section catch-lines so that they would more accurately indicate the contents of the sections, correcting spelling and faulty punctuation, etc. Changes other than these of a formal nature, fully explained in reports to the General Assembly, consist of those made: to modernize references; to correct improper wording resulting from clerical errors or inadvertence; to delete statutes expressly repealed; to delete superseded statutes; to delete statutes having only a temporary usefulness, and being without prospective significance; to delete statutes unconstitutional under the decisions of the North Carolina Supreme Court and the United States Supreme Court; to incorporate in the Code hitherto uncodified statutes which should be codified; to restore to the Code in proper form statutes erroneously deleted; to redraft sections to eliminate obsolete or superseded provisions in the sections; to redraft sections where imperfect expression and ungrammatical construction rendered sections or portions of sections awkward although there was no ambiguity and the meaning intended could be perceived; and to redraft and consolidate related sections or parts of sections dealing with the same aspects of the same subjects.

Presented to the Legislature in the form of a "Legislative Edition," the new Code was enacted as Senate Bill 14 and was, by Ch. 15 (S.B. 67), exempted from the statutory requirement that all laws be proof-read and printed under the supervision of the Secretary of State. By that Act also the name of the Code was fixed as the "General Statutes" and the Division of Legislative Drafting and Codification was authorized to include therein all of the 1943 General Assembly's public legislation. A full table of contents at the beginning will list all the chapters of the Code. A comparative table in the back will translate the Consolidated Statutes and Michie Code section numbers into the new section numbers, which follow a new scheme. The General Statutes will be printed in four volumes, with full annotations and indexing, and should be available for distribution late in 1943. It becomes effective as the official code on January 1, 1944.

Continuous Statute Research.—To prevent the official code of the State from again becoming largely obsolete, the General Assembly enacted Ch. 382 (H.B. 244) to establish a system of continuous statute research and correction. This Act amends Ch. 315 of the Public Laws of 1939, which created the Division of Legislative Drafting and Codification of the Department of Justice, to require that the Division shall: (1) Make a systematic study of the general statutes of the state, as set out in the General Statutes and as hereafter enacted by the General Assembly for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected; (2) Consider such suggestions as may be submitted to the Division with respect to the existence of such defects and the proper correction thereof; (3) Prepare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses.

As provision was being made for the publication of the new official state code, provision was being made for disposal of surplus copies of the last official codification of the law, the Consolidated Statutes of 1919. The Secretary of State was directed by Ch. 716 (H.B. 803) to offer these volumes first to state officials, agencies and lawyers free of charge; then to advertise them for scrap paper or junk; then, if no bids were received, to burn them.

Session Laws.—For the first time in many years the session laws of the General Assembly will this year appear in one volume. Ch. 48 (S.B. 130) provides that the Secretary of State shall have published at the end of each session in one volume all the laws and joint resolutions of the session, whether public, private, general or special within the meaning of the Constitution and without regard to classification, except that the laws and resolutions shall be kept separate and indexed separately.

Constitution. — To complete the picture of the publication of the law of the land, Ch. 107 (H.B. 206) authorizes the Secretary of State to enroll in a book, as a part of the permanent records of his office, the Constitution of North Carolina of 1868 and all amendments thereto.

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Taxicab Regulation

The Municipal Corporations Act of 1917 (C. S. 2787) is amended by Ch. 639 (H. B. 292), which adds a new subsection, 36(a), conferring upon all cities and towns the power to regulate taxicabs. Under the Act, municipalities may require drivers and operators of taxicabs to apply for a driver's or operator's permit and may refuse to issue such permit for specified causes. Permits may be revoked for the same causes. The Act permits municipalities to levy a tax of $15 per year on each taxicab in addition to the $1.00 levy authorized under C. S. 2621(247).

County and Municipal Finance and Taxation

County and Municipal Finance

Municipal and County Capital Reserve Acts.—Something of a departure in the theory and practice of municipal and county finance is embodied in the Municipal Capital Reserve Act and the County Capital Reserve Act, being Ch. 467 (S.B. 26) and Ch. 593 (S.B. 132), respectively. Except for slight variations in phraseology and provisions suitable to the particular unit with which they are concerned, the two Acts are identical in their authorization, limitation and scope.

The purposes of the Acts are to permit counties and municipalities to accumulate capital reserves for post-war reconstruction and equipment replacement, and also to build up a cushion against a possible drastic decline in local revenues. Much of the apparent surplus that has been and is still piling up in public coffers is not a surplus at all, but merely funds which normally would have been spent in normal plant maintenance, equipment replacement and necessary services were it not for shortages in materials. As such, the "surplus" is actually a part of the unit's capital investment. If, instead of accumulating a capital reserve equivalent to plant and equipment depreciation and obsolescence, the local unit reduces tax levies in line with actual expenditures, it is only for the by saving the taxpayer money but September. [illegible] its capital counts for the capital reserve acts, therefore, are not so great an innovation. Their chief purpose is to afford a means whereby local governmental units can preserve their capital investment in the face of war-time labor and material shortages, and place themselves in a position to undertake reconstruction and neglected improvements when materials again become available. The operation of the capital reserve funds should fit in well with the nation's economy. Now, by helping to drain off some of the surplus purchasing power, and later, by enabling the local units to take up some of the slack during the post-war period of transition following demobilization.

The Acts appear to contain ample safeguards against abuse. The reserve funds may be established by an appropriate resolution or ordinance of the governing body, upon approval of the Local Government Commission. The various sources of the fund must be itemized and the amounts from such sources available for deposit in the reserve fund must be separately stated. Separate accounts must be kept as to the amount deposited in the fund from each source. The order or ordinance must designate the depository for the fund, and security must be given by the depository for the protection of the deposits. The order or ordinance establishing the reserve fund may be amended to provide for additional deposits in the fund from other authorized sources, or to change the depository, but such amendments must likewise be approved by the Local Government Commission before they become effective. The purposes for which a reserve fund may be used are stated in detail in the Acts, and withdrawals are closely guarded by the Acts and by requirements that the Local Government Commission pass upon the withdrawals in the same manner as it passes upon applications for approval of bond issues under the Local Government Act. Provision is made for the publication of the order of withdrawal, after approval by the Local Government Commission, and the check withdrawing the funds must bear the certificate of the Secretary of the Local Government Commission. If the purpose of the withdrawal is for some purpose other than the payment of necessary expenses, and the source of the funds to be withdrawn is in whole or in part ad valorem taxes, the withdrawal must be authorized by a majority of the qualified voters. The governing body may, if it deems it advisable, submit to popular vote the question of other withdrawals, as for the payment of necessary expenses or where the withdrawal is from funds derived from other than ad valorem taxes; but in such cases, only a majority of those casting votes in the election is necessary for approval. If no election is held, the order of withdrawal does not become effective until 30 days after the first publication of the order, during which time interested citizens may challenge the validity of the withdrawal.

Unlike the State Post-War Reserve Act (see p. 7) there is no limitation placed upon the amount of any capital reserve fund, but the Acts provide that no deposits may be made in the funds after July 10, 1945.

Investment of Unused Proceeds from Bond Sales.—After having sold and collected the proceeds of bonds issued pursuant to proper authorization, some counties and municipalities found that they were unable, because of shortages and other reasons, to apply such proceeds to the purposes for which the bonds were authorized. They therefore found themselves in the position of having on hand cash which couldn't legally be used or put to work, but which was costing money by way of interest on the bonds. To afford relief in such situations, Ch. 14 (S.B. 50) authorizes counties and municipalities to invest such unused proceeds. Such investments may be made in bonds, notes or certificates of indebtedness of the United States, in bonds or notes of any agency or instrumentality of the United States guaranteed both as to principal and interest by the United States, bonds or notes of the State of North Carolina, or bonds of any county or municipality of North Carolina approved by the Local Government Commission for purposes of investment. Earnings from such investments may be applied toward the payment of principal or interest on the bonds from which the proceeds were derived, or may be applied as increments to such proceeds.

Extension of Time for Issuance of County and Municipal Bonds.—In some instances counties and municipalities, having gone through the procedure prescribed by the County or Municipal Finance Acts and having received authorization for the issuance of bonds, find that the object for which the bonds were authorized cannot now be realized. This may be due to priorities, personnel problems, the fact that war-

time costs made the bond authorization inadequate, or other causes. Whatever the cause, Ch. 325 (S.B. 147) provides that where such bond issues have been heretofore authorized, and the bonds were not issued prior to the date of the ratification of the Act (March 1, 1943) such bonds may be issued at any time prior to July 1, 1945 if the original time limit for issuance would expire before that date. The effect of the Act is to save authorizations heretofore granted, for future use, so that they may be acted upon at any time up to July 1, 1945, notwithstanding the time for issuance would have expired prior to that date.

Bonds to Fund or Refund Interest.—Ch. 13 (S.B. 25) amends C. S. 2937, subsection 2 to permit municipalities to fund or refund interest which accrued before the end of 1942, changing the Act of 1939 which had limited the funding and refunding of interest to that which had accrued before the end of 1940.

Special Assessments — Extension of Time for Payment.—The great splurge in street and sidewalk paving and other local improvements of the twenties, with its attendant mass of special assessments, and the sudden beginning of the depression in 1929, were followed in 1931 by the first of a series of Acts to authorize the extension of time for the payment of those assessments. The Legislature of that year authorized any municipality at any time prior to July 1, 1933, to grant an extension of time for the payment of any installment of an assessment then due and unpaid, the first of the extended installments to become due not later than two years after the due date of the last installment of the original assessment, and the other extended installments to become payable annually thereafter. No extension was to be granted unless all accrued interest was paid up. No authority was conferred with respect to assessments which had not become due by July 1, 1933. Ch. 410, P. L. 1933 amended the 1931 law. This Act required the authority to be exercised by July 1, 1935, permitted the deferment of accrued interest as well as principal but restricted the authority to installments and interest thereon due prior to July 1, 1932.

Ch. 126, P. L. 1935 repealed the 1931 and 1933 acts and enacted C. S. 2717(B) in its present form except for the date of the expiration of the authority to grant the extension. The original act authorized the exercise of the power at any time prior to July 1, 1936. Each successive regular session of the Legislature has moved this date forward two years, this session's enactment being Ch. 4 (H.B. 37), which carried the date forward the usual two years plus one, to July 1, 1945. The present law permits extensions into ten new annual installments not only of all installments, but also of all interest and costs incurred by reason of foreclosure proceedings.

County and Municipal Taxation

Amendments to the Machinery Act.—The value of having a revenue or taxing law in continuing or permanent form is well illustrated by the few amendments to the Machinery Act of 1939 found to be necessary even in these days of stress and strain. After four years of operation during which two legislatures have met and have had the opportunity to correct "bugs" discovered through the workings of the Act and judicial decisions, few changes of importance have been made.

Ch. 634 (H.B. 18) amends only three sections of the Act. Sec. 1, with reference to the quadrennial assessment, adds a proviso to sec. 300 of the Machinery Act that any neglect to provide for a general revaluation of real property in a revaluation year will not have the effect of invalidating existing valuations or tax levies.

Sec. 2 deals with exemptions under sec. 600 of the Act. It repeals the exemption from taxation of real estate "indirectly" owned by the United States or the State, "however held," and provides that such formerly exempt property shall be placed on the tax books and taxed for the year 1943. Unchanged is the exemption of real property "owned by the United States or this State, and real property owned by the State for the benefit of any general or special fund of the State, and real property lawfully owned and held by counties, cities, townships, or school districts, used wholly and exclusively for public or school purposes."

Section 2 also strikes out subsection 7 of sec. 600 of the Act, thereby removing from the exempted list those properties "beneficially belonging to or held for the benefit of churches, religious societies" and

Speaker John H. Kerr, Jr. presides over a session of the House. Seated by the column at the left of the picture is Secretary of State Thad Eure. Seated at the Clerk's desk are Mrs. Anne Cooper, Journal Clerk, Shearon Harris, Principal Clerk, and Ralph Monger, Reading Clerk.

other benevolent institutions "where the rent, interest or income from such investment shall be used exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of said institutions or orders." The amendment further takes out of subsection 8 the use of the income from real property of foreign religious and other benevolent organizations as a ground of exemption. The effect of the amendment is to make the actual *use* of such property, rather than the disposition of the *income* therefrom, the sole criterion of exemption.

Sec. 3 deals with the taxation of freight car line companies. It provides that sec. 1604 of the Machinery Act shall be suspended during the operation of section 852 of the Revenue Act—a new section inserted by Ch. 400, Sess. Laws 1943 (see page 11). Apparently not certain of the validity of the new method of taxing such companies by taxing their gross earnings "in lieu of ad valorem taxes," the legislature provided that if for any reason sec. 852 of the Revenue Act should be held invalid, sec. 1604 of the Machinery Act would come back into play and freight car line companies would again be taxed in the same manner as sleeping car companies.

Penalties and Discounts on Taxes.—Ch. 667 (H.B. 665) further amends the Machinery Act by providing for a deduction of 1% for prepayments made during the month of September. The schedule of discounts for prepayments now is: if paid on or before July 1, 2%; if paid during July, 1½%; if paid during August or September, 1%. Payments made on the first of the month earn the same discount as if paid during the preceding month. Other penalties and discounts were left unchanged. H. B. 329, which would have started penalties accruing one month earlier, was reported unfavorably by the House Finance Committee.

Poll Taxes—Members of Armed Forces.—Ch. 3 (H.B. 36) amends the Machinery Act, sec. 1402, to exempt all members of the armed forces and merchant marine from liability for any poll taxes for the duration of the war and the next listing period thereafter. The Act goes further and cancels any poll taxes for which such persons were required to list prior to induction into the amed forces or joining the merchant marine, which are unpaid.

License Taxes and Fees—Members of Armed Forces.—Akin to Ch. 3 above in its objectives is Ch. 438 (H. B. 476), which exempts members of the armed forces and merchant marine from liability for certain license taxes and fees. The exemption extends to all privilege taxes levied by the State or any county or municipality, and also to any license fees required by the State or any licensing board or commission as a condition to the continuance of the practice of any profession or trade. Members of the armed forces and merchant marine may resume the practice of their trades and professions after their discharge by paying such fees as may thereafter become due. Privilege taxes are not waived, however, if the trade or profession is continued through agents or employees, or in the name of the person entering the service.

Tax Remittance—Lands Acquired by the Military.—Taking cognizance of the rapid expansion of military posts in the State—so rapid that in many instances the land was occupied before the formalities of acquiring title were completed, Ch. 127 (S.B. 112) authorizes boards of county commissioners to remit taxes for 1943 on real estate which the United States took possession of for military purposes prior to January 1, 1943, pursuant to contracts executed prior to that date. There is a proviso, however, that the real estate must be actually conveyed to the United States or some agency thereof for military purposes before July 1, 1943. This measure affords relief to the vendor who, having surrendered possession to the government, would neverthless be liable for the tax under the Machinery Act as the owner of the legal title on the listing date.

Tax Remittance—Taxes Illegally or Erroneously Collected.—Not mandatory, but upon its face an enabling Act is Ch. 709 (S.B. 329) which authorizes counties, cities and towns to refund and remit taxes collected under an illegal levy or assessment or through a clerical error. The wording of the Act raises some questions. "The board of county commissioners of any county or the governing body of any city or town, upon the passage and recording in the minutes of a proper resolution finding as a fact that any funds received by such municipality were required to be paid through clerical error or by a tax illegally levied and assessed is authorized and empowered to remit and refund the same upon the taxpayer making demand in writing to the proper board for such remission and refund within two years from the date the same was due to be paid." All conflicting laws are declared repealed.

To the extent of permitting the refund of taxes illegally levied and assessed, or collected through clerical error, the Act affects C. S. 7976 which forbids any remission for any reason and makes the members of the board personally liable for any such action. The Act also affects C. S. 7979 to the extent of permitting refunds in such cases although the payment was not made under protest. The Act probably would not, however, sustain a suit instituted by a taxpayer to recover such payments not paid under protest as provided in C. S. 7979. Therefore, unless the taxpayer is willing to leave his case with the conscience of the board of the taxing unit, he should continue to pay questionable assessments under protest and proceed in accordance with C. S. 7979.

It will be noted that the Act requires the taxpayer to make written demand within two years from the date the tax was *due*, not from the date it was *paid*. It follows that the governing body would have no power to grant relief in the case of a taxpayer who waited until the tax was two years past due and then made payment not under protest, although he immediately thereafter discovered the illegality of the tax and promptly made demand for a refund. Questions might arise in cases of overpayment of taxes more than two years past due by reason of the faulty arithmetic of the tax collector. It might be argued that the amount overpaid had never become due, and therefore the limitation did not apply. The same argument might be made with respect to taxes illegally

levied and assessed, but with lesser force. To avoid such questions, it seems that it would be better to start the limitations running from the date of the payment.

Dog Tax—Criminal Penalty for Failure to Pay.—Ch. 119 (S.B. 33) repeals that portion of C. S. 1676 which made the failure to *pay* the dog tax under C. S. 1673 a misdemeanor, punishable by a fine of not more than $50 or imprisonment for not more than 30 days. A similar criminal penalty for failure to *list* dogs for taxation, under C. S. 1675, is left in force.

Tax Foreclosure—Defense After Judgment.—C. S. 492 permits defendants against whom judgments have been rendered upon substituted service, "except in an action for divorce," to reopen the case and interpose defense, upon showing good cause, within a year after notice of the judgment and within 5 years of its rendition. Ch. 228 (H.B. 200) makes the statute inapplicable to actions "for the foreclosure of county or municipal taxes." Although the statute provided that titles to property sold under such judgments to a purchaser in good faith are not affected, the amendment should tend to further stabilize tax titles. The Act does "not apply to members of the armed forces of the United States of America during the present war and six months thereafter."

Ad Valorem Taxes — Frozen New Autos.—Applicable to the year 1943 and continuing for the duration of the war, Ch. 81 (S.B. 87) authorizes the classification of new autos in hands of dealers on January 1 and which are subject to priorities, as war restricted motor vehicles which may, in the discretion of the governing bodies of the taxing units, be assessed for taxation at reduced values.

Schedule B Changes—Counties and Towns

Chapter 400 (H.B. 19), the Revenue Act, will be discussed here only as it affects changes in the Schedule B license taxes levied by counties, cities and towns. Section references are to the Revenue Act of 1939, as amended, unless otherwise indicated.

Sec. 105. *Amusements — Moving Pictures or Vaudeville Shows.*—Changes made in this section apply only to the State tax (see page 9). Counties are still forbidden to levy a tax on the businesses described in the section. Cities and towns may levy a tax at the rate in effect on January 1, 1943.

Sec. 109½. *Professional Bondsmen.*—A new section imposes upon professional bondsmen—those persons, firms and corporations, except licensed agents of insurance or bonding companies, who for a consideration execute appearance, compliance or bail bonds, or any bond in connection with criminal proceedings, a license tax at the following rate:

In cities and towns of less than 2,000 population	$10.00
In cities and towns of 2,000 but less than 5,000	15.00
In cities and towns of 5,000 but less than 10,000	20.00
In cities and towns of 10,000 population or over	40.00

Counties, cities and towns may levy a tax not in excess of the above schedule.

Sec. 121. *Peddlers.*—The rate of tax is unchanged, but subsection (b) is rewritten to read as follows (the changes are indicated by italics): "Any person, firm or corporation employing the service of another as peddler, whether on a salary or commission basis, *or furnishing merchandise to be sold by a peddler under any kind of a contractual agreement,* shall be liable for the payment of *the* taxes levied *above* in this section, *instead of the peddler.*"

Sec. 126. *Hotels.*—The only change effected in this section was the correction of technical defects in describing the rooms for which maximum charges are made. Before the amendment, the second highest tax rate for hotels operating on the American plan was for rooms in which rates per person per day are "Seven dollars and fifty cents and less than fifteen dollars." The maximum tax was placed on rooms in which rates are "Over fifteen dollars." Technically, there was no tax for rooms with a rate of exactly fifteen dollars per day. The amendment changed the words "Over fifteen dollars" to "fifteen dollars and over." A similar defect was corrected with respect to the maximum tax per room for hotels operating on the European plan. "Over ten dollars" was changed to "ten dollars and over," in subsection (b). Cities and towns may still levy up to one-half of the state tax; counties may not.

Bowling Alleys.—All references to bowling alleys are stricken from section 129, and they are taxed under a new section, 129½. The provisions of the new section are to the same effect as the former law, except that the tax per alley is reduced from $12.50 to $10. The right of counties, cities and towns to levy a tax on bowling alleys, not in excess of the tax levied by the State, is unchanged.

Sec. 134. *Manufacturers, Producers, Bottlers and Distributors of Soft Drinks.*—The tax rates under this section were drastically altered (see page 10), but the section was otherwise unchanged except that a second bottling machine or unit in a plant must be in actual use to become the basis for computing taxes. As before, counties may not levy a privilege tax upon businesses taxed under the section, and cities and towns are limited to one-eighth of the State tax.

Sec. 139. *Pressing Clubs, Dry Cleaning Plants,* and *Hat Blockers.*—Instead of levying a tax not in excess of that levied by the state upon businesses taxed under this section, cities and towns of under 10,000 population may levy a tax up to $25, and those having a population of 10,000 or over may levy a tax up to $50. For the new schedule of State taxes, see p. 10.

Sec. 140. *Barber Shops.*—The tax for each barber, manicurist, cosmetologist, beautician or operator in beauty parlors and barber shops is reduced from $5 to $2.50.*

Sec. 168. *Junk and Scrap Dealers.*—There is no change in the rate of levy, but a proviso is added to exempt salvage committees operating under the State or Federal sponsorship, community scrap yards not operated for personal profit, and persons who are engaged in the collection of scrap but maintain no regular place of business and sell only to licensed dealers or manufacturers who engage in shipping in interstate commerce.

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* The Attorney General has ruled that the tax may not be levied upon the chairs in a barber shop and also upon the barbers.

Clerk of Court and Register of Deeds Changes at the Courthouse

Affecting the Clerk's Office

The clerks of court came forward with perhaps the most ambitious legislative program of any county office. Actually passed, including local bills, were approximately one bill for each day the legislature was in session. Some fifteen state-wide bills relating to the clerks, their duties and offices, fell by the wayside.

Judgments — Day of Signing. — A source of considerable confusion and error is removed by Ch. 301 (H.B. 100) which, by amending C. S. 593 and 597(b), and repealing 597(c) empowers the clerk to sign judgments and orders on any day of the week except Sunday. Likewise, any judgment or order, either final or interlocutory, in special proceedings, and orders confirming sales may be signed on any day except Sunday. The act validates judgments and orders which were signed on days other than Monday as formerly required, and also validates conveyances made by commissioners pursuant to appointment, orders of sale and resale, and confirmations of sales entered on days other than Monday. Section 4½, which became effective April 1, 1943, amends C. S. 613 by requiring the hour and minute as well as the date of docketing to be shown on the judgment docket, when the judgment affects the title to real property or requires the payment of money, for the purpose of determining priority between such judgments and other recorded instruments or liens. As between clerk's judgments, all judgments rendered the same day and docketed within 10 days thereafter have equal priority. Pending litigation is not affected.

Dower.—Ch. 637 (H.B. 153) amends C. S. 74 with respect to the method of allotting dower in special proceedings to sell real estate to make assets to pay debts of decedents. The widow, if she has a dower right in the real estate to be sold, must be made a party to the proceeding, and she may still elect to have her dower set off by metes and bounds, to receive the income from one third of the net proceeds of sale, or to receive the present cash value of her dower out of the proceeds of sale. However, if the widow fails to make an election within the time allowed for answering the petition, she is presumed to have elected to receive the present cash value.

Investments by Fiduciaries in insurance—Ch. 473 (S.B. 155) authorizes executors, administrators c. t. a., trustees and guardians to invest the corpus of estates in their hands in single premium life, endowment or annuity contracts. Income may be invested in annual premium life, endowment or annuity contracts of legal reserve life insurance companies qualified to do business in the State if the corpus of the estate is not encroached upon. However, the corpus may be encroached upon to prevent the lapsing or forfeiture of an annual premium contract that had previously been entered into after due authorization. Any of such investments must be authorized by order of the clerk of Superior Court, upon petition, and approved by the resident judge, or by a judge assigned to hold the court at term time. The contracts may be issued upon the life of the beneficiary of the estate or upon the life of any person in whom the beneficiary has an insurable interest, but must be drawn for the benefit of the person whose funds are invested. Such investments may not be made if the trust instrument provides otherwise.

Adoption.—Where a husband or wife has instituted and carried through adoption proceedings, and the name of the spouse has been inadvertently omitted, Ch. 735 (H.B. 731), amending C. S. 191(1), permits the correction of the error by the insertion of the omitted spouse's name as one of the adopting parties, upon petition of the original petitioner and his or her spouse showing that the omission was through inadvertence and that it was the intention of all parties that both the husband and wife be the adopting parties. This correction may be made even after the adopted child has become of age unless the child makes objection.

Investments—Proceeds of sale of contingent remainders.—Ch. 198 (H.B. 279) brings up to date the permissible type of temporary investment of the proceeds of sales of contingent remainders. C. S. 1744 is amended to allow such investments to be made in "any direct obligation of the United States of America or in any indirect obligation guaranteed both as to principal and interest," instead of in Liberty Bonds of the first World War. Investment may be made in North Carolina bonds as before. During the session, Ch. 198 was amended by Ch. 729 (H.B. 668) to clarify the expressed intent of the Act.

Investments — Guardians. — Ch. 728 (H.B. 633) amends C. S. 2308 to authorize guardians to make loans at interest rates of not less than 4% and not more than the legal maximum. The amended statute did not specify the rate of interest, but required loans to be made upon interest to be collected or compounded annually. The Act does not limit or affect other investments which a guardian may legally make.

Investments—Trust Funds for the care of cemeteries.—C. S. 5027, relating to the investment of trust funds placed in the hands of the clerk for the care of graves, plots and cemeteries, is rewritten by Ch. 97 (H.B. 163). Under the old law, the funds were to be invested in State, County or municipal bonds or in local investments, with the advice and consent of the sheriff and the register of deeds who were constituted an advisory committee. The new law permits investments by the clerk in the same manner as other trust funds in his hands. The advisory committee is dropped. The Act also amends C. S. 5028 which formerly required a separate bond to cover such funds, the bond premium to be paid from the income from the funds. The amendment

makes the clerk's official bond liable for the funds.

Investments — Guardians — Registered Securities.—Under C. S. 2162, a guardian is required to give a bond in an amount double the value of the personal estate of his ward where personal sureties sign the bond, but only 1¼ times the value if the bond is given by a surety company, or only the value plus 10% of the estate if in excess of $100,000 if a surety company goes on a bond. Under C. S. 4018(c), where a guardian invested in and placed in the hands of the clerk registered bonds designated under C. S. 4018 and 4018(a), he was entitled to have his bond reduced in an amount equal to twice the amount of the funds actually invested in such securities. Thus, under a literal construction of the statutes, a guardian receiving a personal estate valued at $20,000 would be required to give a bond of a surety company in the amount of $25,000. If he should invest $12,500 in registered securities and deposit them with the clerk, he would be entitled to have his bond reduced twice $12,500, which would cancel the bond entirely and leave $7,500 worth of assets unprotected. This siuation is remedied by Ch. 96 (H.B. 160), which amends C. S. 4018(c) by making the bond reduction proportionate to the amount expended for the investment.

Wills—Members of Armed Forces —Probate.—Ch. 218 (H.B. 162) reenacts Ch. 216, P. L. 1919, which expired by limitation on April 6, 1922. It is designed to facilitate the probate of wills executed by members of the armed forces, recognizing the fact that the attesting witnesses to such wills may be residents in peace-time of any state in the union, or even of foreign countries, and perhaps neither available when the will may be offered for probate nor persons whose signatures could be identified by other witnesses in the testator's community. In addition to methods of probating wills set out in other statutes, the Act provides that a will executed by a member of the armed forces or the merchant marine, while in actual service "shall be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the state at the time said will is offered to probate) upon the oath of at least three creditable witnesses that the signature to said will is in the handwriting of the person whose will it purports to be." The language of the Act leaves something to be desired in the way of clarity. "Whether there were subscribing witnesses thereto or not" suggests a possible interpretation that a paper writing, not in the handwriting of the testator and having no attesting witnesses, but expressing a testamentary intent and signed, might be probated "upon the oath of three credible witnesses that the signature to said will is in the handwriting of the person whose will it purports to be." However, the better reasoning would appear to be that the Act deals only with the manner of probating wills which are in proper form and not with the formal requirements of executing the will. The will would still probably have to meet the requirements of an attested or holographic will, as the Act does not expressly dispense with the necessity of showing that it was deposited for safe-keeping or found among the valuable papers of the testator. Unless the Act waives such a showing, it will have a real effect only as to the probate of attested wills, although holographic wills were apparently intended to be included within its scope by the use of the language "whether there were subscribing witnesses thereto or not."

Judgments—Deputy's Transcripts Validated.—Ch. 11 (S.B. 17) validates transcripts of judgments heretofore certified under the official seal of the court, but signed by a deputy clerk in his own name as deputy clerk, such transcripts to be valid as of the date of docketing "with the same effect as if said transcript of judgment had been certified in the name of the Clerk of the Superior Court of said original county, and under his hand and official seal." The Act does not apply to actions pending February 1, 1943.

Register of Deeds

Birth and Death Certificates.—Ch. 673 (H.B. 690) changes the method and time of transmitting certificates of deaths and births by the local registrar of vital statistics to the register of deeds. Instead of depositing with the register of deeds a record book containing copies of death and birth certificates for the preceding year, by February 15, the local registrar is required to make two

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copies of each certificate and forward one copy to the register of deeds by the fifth of each month, retaining one copy for his own files. The original certificates will be forwarded to the State Registrar on the fifth of each month as in the past.

Official Army and Navy Discharges — Registration Fee.—Ch. 599 (S.B. 213) strikes out the 25c fee formerly allowed for recording official discharges from the army, navy and marine corps by amending C. S. 3366(e) to that extent.

Mortgages and Deeds of Trust—Foreclosures — Limitations. — In *Spain v. Hines*, 214 N. C. 432 (1938) it was held that a deed executed by a trustee after the expiration of the time limited by C. S. 2589 was ineffectual to pass title, although the foreclosure sale held under the power given in the deed of trust had been duly held prior to the expiration of the time. The decision was based upon the ground that the execution of the deed to the successful bidder at the sale was an essential step in exercising the power of sale, and that all steps must be completed within the period limited. The court termed the deed executed by the trustee void. Such a deed was held voidable only, in *Edwards v. Hair*, 215 N. C. 662 (1939). No reference was made in the latter case to *Spain v. Hines*, but under the rule laid down in either case a foreclosure initiated in ample time and carried through with no delay on the part of the trustee or mortgagee might be defeated by the successive filing of increased bids which might delay the final "essential step" of executing the deed until after the expiration of the period of limitations.

With this background of judicial construction, the legislature, in Ch. 16 (H.B. 13), amended C. S. 2589 to provide that if the sale is made in time, the section will not operate to prevent the execution and delivery of a deed in consummation of the sale, whether or not resales were held after the filing of increased bids. The Act further purports to validate deeds heretofore made after the expiration of the statute of limitations in consummation of foreclosure sales made within the time limited by the statute. There may be a question as to whether the Act will give life to such deeds if *Spain v. Hines*, holding such deeds void, is followed. Pending litigation and adjudicated cases are not affected by the act.

Deeds — Validation — Notarial Seals.—C. S. 3366(j4a), enacted in 1941, validates deeds executed prior to January 1, 1932 which have been probated and registered, but which failed to bear the seals of the notaries before whom the acknowledgments were made. No provision was made, however, for the further registration of such deeds. Ch. 472 (S.B. 144) provides relief in this direction by amending C. S. 3366(j4) so as to authorize the registration of deeds executed prior to January 1, 1935 (instead of January 1, 1910) which have been acknowledged before notaries public of North Carolina and the probates recite "witness my hand and seal," even though the seals have been omitted.

Same—Trustee Seals.—Ch. 171 (H.B. 255), to become effective on May 15, 1943, except as to actions pending prior to that date, validates deeds executed by any trustee prior to January 1, 1940 pursuant to powers contained in deeds of trust, mortgages, deeds, wills or other instruments where the trustee has failed to affix a seal after his signature.

Easements — Registration.—Ch. 750 (S.B. 31), amending C. S. 3316, relative to registration of deeds or agreements for rights of way or easements, represents a compromise. The original bill would have amended the statute by including local electric and power companies, operating exclusively within the State, and electric membership corporations organized under Ch. 291, P. L. 1935, to those not required to register deeds conveying easements and rights of way within 90 days after the beginning of the use. More important, the bill would have made the mere presence of overhead telephone, electric or power lines belonging to such companies, over any lands pursuant to any deed or agreement, equal in effect to the registration of such deeds or agreements. After the House Committee had rewritten the bill, it finally emerged to strike from the statute the criminal liability for failing to record deeds for easements and rights of way, as to all holders. It also specifically provides that the failure of electric or power companies operating exclusively within the State, and electric membership corporations organized under Ch. 291, P. L. 1935, to record deeds for rights of way acquired subsequent to 1935 shall not constitute a violation of any criminal law of the state. It further specifically provides that such deeds and agreements shall not be valid as against creditors and purchasers for value except from the registration thereof in the county where the land affected lies, thus bringing the statute in line with the general registration statutes.

Deeds — Attestation of Deeds of Banks.—Ch. 219 (H.B. 318) amends C. S. 1138 to authorize the attestation of deeds of banks by the cashier or an assistant cashier. The section originally limited the authority to the secretary or assistant secretary.

Depositions — Members of Armed Forces.—In order to facilitate the taking of depositions of members of the armed forces, C. S. 1809 was amended by Ch. 160 (H.B. 41) to authorize army and marine corps officers of the rank of captain and higher, and naval, coast guard, and merchant marine officers of the rank of lieutenant, senior grade, or higher, to take depositions without a commission of court. Such officers are not required to affix a seal, but must sign their names, designate their rank, name of their ship or military division, and date. The Act also authorizes commissioners of oaths and commissioners of deeds of any foreign country to take depositions without a commission from the court.

Acknowledgments — Members of Armed Forces.—Ch. 159 (H.B. 40), amending C. S. 3294, was a companion bill to Ch. 160 above. Its purpose is to make it more convenient for members of the armed forces to prove or acknowledge instruments which are to be recorded. Instruments may be acknowledged before officers of the same ranks as are authorized to take depositions under Ch. 160. Acknowledgments and probates heretofore taken before such officers are validated. The Act also adds commissioners of oaths to the list of those authorized to take acknowledgments. The form of ac-

(Continued on page 28)

Pensions and Retirements

Pensions—Aged Former Teachers.—A great deal of lip-service was given to economy by the freest spending General Assembly of all time. Much of that lip-service was devoted to a bill involving no great financial outlay in itself—a bill to provide a pension for aged former teachers who are not covered by the State Retirement system. The opposition was not based upon a lack of sympathy with the object of the bill, or upon the ground that the expense would be great, but almost wholly upon the expressed fear that it would serve as an invitation and an opening wedge for a flood of similar bills in behalf of other groups of similarly situated former state employees. It was pointed out by the proponents, however, that as all State employees are now eligible to become members of the State retirement system, the class of former employees who would be entitled to participate in such pensions would be constantly diminishing instead of increasing. The justice of making provision for such former employees was strengthened by the fact that those who were State employees when the retirement system became effective received credit for prior service and because of such prior service will receive a larger retirement allowance than would be be afforded by their own contributions plus the normal contributions of the State since the effective date of the Act, whereas no credit for prior service was provided for those employees who may have retired a short time before the effective date of the Act, because of old age or ill-health.

The original bill, H. B. 548, bore a title that was completely descriptive except for administrative provisions: "An Act to provide a pension of thirty dollars per month for all teachers who have attained the age of sixty-five years, who are not eligible for membership in the Teachers and State Employees Retirement System, who have taught in the public schools of the State for at least twenty years, and who are not engaged in some gainful occupation." After having been reported unfavorably by the House Committee, rereferred to committee and a substitute bill written, the bill was finally again reported unfavorably on the same day a compromise bill was introduced, with but three working days remaining before *sine die* adjournment.

The compromise bill, H. B. 844, was speedily enacted and ratified as written except for a minor amendment, becoming Ch. 785. The title of the Act is identical with the title of H. B. 548, quoted above. The body of the Act, however, varies from the title in several respects. (1) Benefits are limited to former classroom teachers. (2) Benefits are extended to former teachers who have not attained the age of 65 but who are now unable to teach by reason of physical disability. (3) If benefits are claimed upon the basis of age, the age of 65 must have been reached on or before the effective date of the Act, March 10, 1943, thus closing the class as of that date. (4) Not only must applicants be not engaged in some gainful occupation, but they must also be without adequate means of support by reason of lack of income from property or inadequate support by spouses. This tends to place relief on the basis of charity rather than as a reward for past services. (5) Cessation of employment must not have been due to any dishonorable cause. (6) Successful applicants are "entitled to receive benefits under said Retirement Act for such services in the same manner and to the same extent as such twenty years of prior service would have entitled such teacher had he or she been teaching in the public schools at the time said Retirement Act became effective, and had chosen to become a member of the retirement system." Using this yardstick, eligible former teachers will receive a pension equal to an annuity that would have been provided at the age of sixty by twice the contributions he would have made during his years of service if the system had been in operation. The pension, therefore, may be more or less than $30 per month, and in most cases it will probably be less.

Old Age Assistance and Aid to Dependent Children

Two Acts deal with this subject. Ch. 753 (S.B. 217) amends C. S. 5018(6), subsection (f) to change the residence requirement for old age assistance from two years out of the five years preceding the application and at least one year preceding the application, to residence in the State for one year immediately preceding the application. The Act also repeals Ch. 120, P. L. 1931 (C.S. 1342, clause 6), which provided that no person coming into North Carolina from another State would be deemed to acquire a settlement in the State until he had resided within the State continuously for three years unless at the time he entered the State he was able to maintain himself to the extent that he would not be deemed a pauper under Article 8, Chapter 24 of the Consolidated Statutes, relating to the poor, and Sec. 5 of Ch. 226, P. L. 1931 (C.S. 5067(m)), relating to juvenile delinquents and dependents, which provided that such person could not acquire a settlement in the State so as to become a charge of the State unless such juvenile delinquent or dependent has been continuously within the State for three years.

Ch. 505 (H.B. 324) amends twelve different sections of Ch. 288, P. L. 1937, providing for old age assistance and aid to dependent children in conjunction with the Federal Social Security Act. The amendments all relate to administrative provisions and the corrections of defects, such as erroneous references to other sections. No changes were made in the amounts or methods of making allowances. A bill (H.B. 708) that would have made the minimum old age assistance award $15 per month, or $180 per year, with a maximum of $30 per month or $360 per year, was defeated, as was another bill that would have imposed a State-wide ad valorem tax on all tangible property of 6c on the $100 valuation for the benefit of old age and dependent children funds.

Teachers and State Employees' Retirement.—After nearly two years of operation, the Teachers' and State Employees' Retirement System has apparently worked so well that few amendments of a substantial nature were thought necessary. Of the six Acts directly affecting the system,

half were due to war or war conditions. No amendments wrought any basic change.

Ch. 783 (S.B. 356) has in view the protection of those employees who left the service of the State and became members of the armed forces, between September 16, 1940 and February 17, 1941 (the effective date of the Retirement Act). It provides that such former employees who return to State employment within two years after an honorable discharge from the armed services will be entitled to full credit for all prior service with the State. This merely puts them on a parity with those who were still employed by the State on the date the Retirement Act went into effect, provided they return to the service of the State within the time stated.

Contributions of Employees on Leave of Absence.—At least partly in consideration of war conditions is Sec. 3 of Ch. 207 (H.B. 351), which provides that members of the Retirement System on leave of absence due to military service, or for purposes tending to increase their efficiency as employees, may make monthly contributions to the System on the basis of salaries or wages being received at the time the leaves were granted. This right is made subject to the approval of the board of trustees.

As retirement benefits are equal to twice the amount of an annuity which the accumulated contributions with interest would provide at age 60 (plus an additional amount based on the members contributions if he remains in service after the age of 60, and the amount of a pension based on a prior service certificate, if any), it would be very advantageous for eligible employees on leave to take advantage of the amendment.

Time of Remittanee of Local Units.—Sections 1 and 2 of Ch. 207 require county and city boards of education to remit monthly to the State Retirement System the deductions from salaries paid from sources other than State appropriations, and also to remit monthly the contributions required of those units. Before the amendment, the time of the remittances was not fixed.

Reemployment of Retired Teachers and State Employees.—Ch. 195 (H.B. 82) permits any "employer" within the meaning of the Retirement Act to reemploy, for the duration of the war and six months thereafter, or at the termination of the school term in which a teacher may be engaged, any former employee who has retired under the Act by reason of age. Retirement benefits will be suspended during the term of such reemployment, but no deductions will be made from the salaries of such person, nor will employers be required to make contributions to the Retirement fund by reason of such reemployment. Retirement benefits will be resumed upon termination of the period of reemployment. This measure will undoubtedly be welcomed by many an oldster who has felt rather irked at enforced personal idleness in the midst of a national manpower shortage.

Rules and Regulations—Power of Trustees.—Ch. 719 (S.B. 84) gives to the Board of Trustees of the Retirement System what on its face appears to be rather broad discretionary powers. It provides: "The board of trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this Act." The trustees were already vested with power, under Sec. 5, Subsec. (6) of the Act, of which Ch. 719 is amendatory, to "establish rules and regulations for the administration of the funds created by this Act and for the transaction of its business." This power is expressly "subject to the limitations of this Act." The additional power is by implication subject to the limitations of the Act, as broad, discretionary powers could hardly over-ride express provisions of the Act. As the substantive rights of members are governed by the express provisions of the Act, and as the trustees already had power to adopt administrative rules and regulations, it is difficult to see just what has been added by the amendment.

State Highway and Public Works Commission Employees — "Prior Service."—Ch. 431 amends subsection (10) of Sec. 1 of the Act, defining "prior service," as it relates to former employment of persons in road maintenance by various counties between 1921 and 1931. The original Act provided that employees of the State Highway and Public Works Commission who had been so employed would receive credit for such service "where such employment has been continuous." The amendment strikes out the quoted phrase and provides that those persons who have already retired as well as those who may hereafter be retired shall be entitled to the benefit of the amendment if affected thereby.

Filing of Statement of Prior Service.—Ch. 200 (H.B. 286) requires all members who were State Employees at any time during the five years immediately preceding the establishment of the Retirement System (instead of one year, as provided in the Act, section 4, subsection (1)) who became members during the first year of its operation, to file detailed statements of all prior service for which credit is claimed.

Highway Patrol Retirement. — Shall members of the State Highway Patrol be members of the Law Enforcement Officer's Benefit and Retirement Fund, or the Teachers and State Employees Retirement System? Ch. 120 (S.B. 45) gives all present members of the Patrol until July 1, 1943 to transfer from one system to the other. Those who are now members of the Law Enforcement Officers fund may transfer their membership before that date to the State Retirement System by depositing the amount into the State Retirement System that would have been deducted from their wages as contributions if they had become members on July 1, 1941, and their adherence to the State Retirement System will relate back to that date. Those who are now members of the State Retirement System may change over to the Law Enforcement Officers fund upon giving notice to the State Retirement System before July 1, 1943. In cases of such transfer of membership all accumulated contributions of such transferring members will be paid over to the Law Enforcement Officer's fund, which is authorized to receive such funds plus any additional lump sums from the transferring patrolmen that will entitle them to receive maximum benefits.

The Act further provides that any person who becomes a member of the State Highway Patrol after February 17, 1943 (the effective date of the Act), will automatically become a member of the State Retirement System unless within 15 days after his employment he furnishes

evidence to the Executive Secretary of the Board of Trustees of the State Retirement System that he has become a member of the Law Enforcement Officers Benefit and Retirement Fund.

Law Enforcement Officers Benefit and Retirement Fund.—Ch. 349, P. L. 1937, creating the Law Enforcement Officer's Benefit Fund, provided that additional costs of $1 should be assessed in every criminal case finally disposed of in the Courts of the State, "excepting courts of justices of the peace," "wherein the defendant is found guilty and assessed with the payment of the costs." One-half of the additional costs so collected was appropriated to the "Bureau of Identification and Investigation Fund," the other half being earmarked for the "Law Enforcement Officers Benefit Fund." Ch. 157, P. L. 1941 amended the 1937 Act to provide that the additional costs of $1 be assessed in all criminal cases in all courts of the State where the costs are assessed against the defendant upon being convicted or pleading guilty or nolo contendere, or where the costs are assessed against the prosecuting witness. Of the additional costs so assessed and collected, $100,000 annually, or as much up to that amount as might prove necessary to pay benefits under the Law Enforcement Officers Retirement Act and to match the contributions of members, was allocated to the "Law Enforcement Officers Benefit and Retirement Fund." The balance of such additional costs were to be paid into the general fund of the State.

The 1943 Legislature again amended the Act in favor of the law enforcement officers. Ch. 145 (S.B. 44) raises the amount of additional costs to $2, to be assessed in all cases specified in the 1941 Act, except for the proviso that such additional costs shall not be assessed in cases involving the violation of municipal ordinances unless a warrant is actually issued and served, and that no part of such costs shall be paid by a county or municipality. All of such additional costs are now appropriated to the Law Enforcement Officers Benefit and Retirement Fund.

Local Governmental Employees' Retirement System.—Ch. 390, P. L. 1939 made provision for a Local Governmental Employees' Retirement System. The Act was to become operative on July 1, 1939, if sufficient local units had placed themselves under the system by that time. None had done so by the time of the convening of the session of 1941, which, by Ch. 357, amended the Act to place the management of the system under the Board of Trustees of the Teachers and State Employees Retirement System, and to move the operative date of the system and other pertinent dates forward two years. When the 1943 General Assembly convened, no local units had come into the system, though several local units had exempted themselves from section 9A of the Act which provided for popular vote before coming into the system. Ch. 535 (S.B. 176) holds the door open to counties, cities and towns that might want to come in under the system by again moving pertinent dates forward two years.

For a discussion of the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Retirement Fund, and the Teacher's and State Employees' Retirement System, see POPULAR GOVERNMENT, v. 7, No. 3 (May, 1941) at page 21.

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CLERK OF COURT AND REGISTER OF DEEDS

(Continued from page 25)

knowledgments before military and naval officers is set out. Neither Ch. 159 nor Ch. 160 restricts the class of persons who may make depositions and acknowledgments before officers to members of the armed forces and the merchant marine.

Ch. 471 (S.B. 126), apparently overlooking the fact that C. S. 3294 had already been amended by Ch. 159 to accomplish the same purpose, added commissioners of oaths to the list of officials before whom instruments may be proved or acknowledged. The only new thing added is the validation of such acknowledgments to instruments heretofore ordered registered.

Acknowledgments—Corporations.—"To provide for a simpler form of corporate acknowledgment," Ch. 172 (H.B. 257) sets out a form of acknowledgment that may be used where the instrument is signed by the president or vice-president and bears the common, or corporate seal. Ch. 598 (S.B. 205) purports to validate instruments of corporations which have been executed by the proper officers and were admitted to registration prior to March 8, 1943, although the officer who acknowledged the instruments was no longer an officer of the corporation at the time of the acknowledgment, or the corporation had ceased to exist.

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STATE DEPARTMENTS

(Continued from page 17)

Board of Directors of the State School for the Blind and Deaf at Raleigh; and increasing the subsistence allowance for necessary travel in connection with the work of departments, institutions or agencies of the state.

A touch of humor was added to the bill (Ch. 632) providing that whenever the Great Seal of the State, the seal of any department of the state, or the seal of any court of record in the state shall be lost or so worn or defaced as to be unfit for use, new seals shall be provided to replace the old ones and the old ones shall be destroyed—if they can be found.

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Funds for the Civil Air Patrol

The Civil Air Patrol of the Office of Civilian Defense in North Carolina, by Ch. 63 (H.B. 103), received direct aid from the State in the form of an appropriation of $30,000 to be used for the establishment, equipment and maintenance of Civil Air Patrol bases at Manteo and at Beaufort, "and at such other places in this State as may be found expedient or necessary by the Civil Air Patrol." Expenditures from the fund appropriated are to be made from time to time as approved by the Governor and Council of State.

The Civil Air Patrol, composed of volunteer pilots flying private aircraft, has been performing a valuable and courageous service for the protection of the coastal areas and off-shore shipping since the early days of the war. To the extent that those volunteers have been patroling the coast-line, regular units of the air forces have been released for duty elsewhere.

Courts and Related Matters

Domestic Relations Courts.—Ch. 470 (S.B. 123) made several changes in the law relative to domestic relations courts. The jurisdiction of the court is extended to include cases wherein any adult is charged with abandonment, non-support or desertion of any "minor child," rather than of any "juvenile." Provision is made for a substitute judge, to be appointed in the same manner, have the same powers, and serve during the illness or absence of the regular judge, at a per diem to be determined by the appointing body. Sec. 3 of the Act makes domestic relations courts courts of record, with official seals and the duty of keeping dockets and records of proceedings. The judges and clerks of such courts are given power to administer oaths and to issue warrants and other process. Section 4, relating to appeals to the Superior Court, adds cases involving the custody of juveniles to bastardy cases and criminal matters for which provision is made for hearing *de novo* upon appeal to the Superior Court.

Juvenile Courts—Ch. 594 (S.B. 149) amends C. S. 5062 to make further provision for combined city-county juvenile courts. Before the amendment, a juvenile court was established for each county, under C. S. 5040, as a part of the Superior Court. The various Clerks of the Superior Court were made judges of the juvenile courts in their counties, with the proviso that where the county seat was a city of 25,000 or more inhabitants, such city and county might by agreement combine their juvenile courts and by joint action elect a judge for a term of one year, his salary to be apportioned. C. S. 5062 made it mandatory for every city having a population of 10,000 or more according to the census of 1920 to establish and maintain a juvenile court, regardless of whether such city is a county seat. Provision was made whereby such cities could, by arrangement with the county commissioners, permit the county juvenile court to handle their juvenile cases, but if the city were not a county seat of over 25,000 population, there was no provision for a judge other than the clerk of the Superior Court. The 1943 amendment to C. S. 5062 permits the selection of a judge of a combined city-county juvenile court other than the clerk of the Superior Court, and also an assistant judge, for terms of one year. Such judge and assistant judge are given all the powers of the Clerk of the Superior Court as juvenile judge, and also all the powers of the judge of the city juvenile court under C. S. 5062. Salaries are to be determined by the county commissioners, but prorated according to agreement between the governing bodies of the city and county.

Superior Courts — Terms and Judges.—In recognition of the great decrease in the volume of litigation in the State and the trend toward further decrease, the Legislature provided in Ch. 348 (H.B. 354) for the cancellation of any term of Superior Court by the Governor upon a finding by him of a lack of sufficient business to justify the holding of the term. The cancellation must be made at least ten days prior to the date set for the convening of court, and effects only the particular term canceled. The judge who had been assigned to hold the canceled term is made available to hold court in any other county in the State.

Notwithstanding the present slackness in judicial business, however, the Legislature took no chance of a sudden revival of litigation before the convening of the next General Assembly. Ch. 58 (H.B. 87) renews the power of the Governor to appoint two special judges of the Superior Court for each judicial division, for terms of two years each, beginning on July 1, 1943; and if in his judgment the necessity exists therefor, to appoint two additional judges for each judicial division. These judges may be appointed at any time, but their terms would expire on June 30, 1945.

Solicitorial Districts.—Prior to the amendment adopted at the general elections in November, 1942 the North Carolina Constitution, Art. IV, sec. 23, required the election of a solicitor for each judicial district. The fact of this requirement, and the fact that more judges were needed than solicitors was given as the reason for the appointment of special or emergency judges, as the effect of the provision was to require the election of a solicitor for each regular judge. The amendment permitted the General Assembly to create solicitorial districts distinct from judicial districts, and left it discretionary as to the number of such districts. Under Art. IV, sec. 10 of the Constitution, the General Assembly has the right to increase or decrease the number of judicial districts. Thus, the way is now clear for the creation of sufficient judicial districts with the consequent election of sufficient regular judges to take care of the judicial business of the State without the necessity of having to elect and pay an excessive and needless number of solicitors.

Ch. 134 (S.B. 43), however, enacted pursuant to the Constitutional amendment, made no changes in the number of solicitors or of judicial districts. It merely created twenty-one solicitorial districts, to be co-extensive with the present twenty-one judicial districts, and provided that the solicitors elected for each judicial district last November would be the solicitors of their respective solicitorial districts. And Ch. 58 (see above) made the usual provision for the appointment of eight special judges, the number having been upped from six by an Act of the 1941 session. In view of the many uncertainties confronting the State at this time and for sometime to come, the Legislature was probably wise in not attempting a redistricting of judicial districts at this time—a job that would doubtless have to be done over again after the war when conditions of "normalcy" can again be evaluated.

Superior Courts in Cities of 35,000.—A statewide Act of present interest only to Guilford County is Ch. 121

(S.B. 53) which provides for the holding of terms of the Superior Court in cities having a population of 35,000 or more, according to the last federal census but which are not county seats. The Act, and the duties of the Board of County Commissioners in making provision for the sittings of the court and expenses incident thereto, are mandatory, to take effect on July 1, 1943. The Superior Court for the county having a city qualified under the act will be divided into "Divisions," and all process and suit papers will bear a designation of the division in which the case is pending. Separate dockets, both civil and criminal, will be prepared for all divisions in the county. A territorial division will consist of the township in which any qualifying city lies, together with all other townships having one or more common boundary lines with the township in which such city is located. All other townships will constitute the division which embraces the county seat. Thus, in Guilford County, there will be a High Point Division, composed of the township wherein the city of High Point is located and all contiguous townships, and a Greensboro Division, composed of all other townships in the county. Rules of venue will apply, both as between separate divisions within a county and as between a division within a county and other counties. Inasmuch as all court records will be kept at the county seat except for temporary removal to another division, there may be some question as to the proper venue in an action against an administrator or other fiduciary who qualifies at Greensboro but lives in High Point.

Both grand and petty jurors will be drawn from the whole county. A criminal term of at least one week to be held at the county seat must precede a criminal term of one week or more in another division. A judgment rendered in any division does not become a lien until docketed at the county seat, but the equalities of judgments rendered at the same term as provided by C. S. 613 will not be affected.

Jury Duty—Exemptions.—To the list of those persons who are exempt from jury duty under C. S. 2329, Ch. 343 (H.B. 260) adds "radio broadcast technicians, announcers, and optometrists." These are the first additions to the exempted occupations since 1931. The new additions are somewhat comparable to classifications previously exempt.

Service on unincorporated associations.—Ch. 256, P. L. 1941, provided for service of summons upon nonresident individuals who engage in business in this State through an agent, employee, trustee, etc., or who is a member of a partnership, firm or unincorporated organization, etc. Service may be made upon the agent who has authority to collect money in any action growing out of the transaction of business in the State. Within 5 days after service, the statute requires the plaintiff to mail to the defendant at his last known address a copy of the summons and the petition or complaint. This Act dealt with service upon the individual, and not upon unincorporated organizations.

Ch. 478 (S.B. 188) further amends C. S. 483 by requiring any unincorporated association or organization, whether resident or nonresident, to certify to the clerk of the Superior Court of every county in which any of the activities of the association or organization are to be conducted, the name of a process agent in this State upon whom process and precepts may be served. In the event of the failure of any association or organization to appoint a process agent, the act authorizes service upon the Secretary of State, who is required to forward a copy of the summons or other paper to the last known address of the defendant. Personal judgments may be rendered after service in accordance with the act. Any associations already engaged in activities within the State were required to appoint process agents by April 5.

Relief of certain officials for Failure to Collect Costs.—Ch. 349, P. L. 1937 is entitled "An Act to Aid the Administration of the Criminal Law by the Establishment of a State Bureau of Identification and Investigation." Sec. 9 of the Act required $1 additional to be assessed as part of the costs in every criminal matter finally disposed of wherein the defendant was found guilty and taxed with the costs, except in cases in courts of Justices of the Peace. The Act became effective upon ratification on March 22, 1937. Reciting the fact that the title of the Act was not calculated to give notice of the requirement to collect the extra dollar, and that notice was not actually given to the officials charged with collecting the costs until May 15, 1937, nearly two months after the effective date, Ch. 41 (H.B. 146) relieves from liability those officials who failed to collect the extra costs prior to the time notice was given to them of the new requirement. Although everyone is presumed to know the law, the Legislature took the realistic view that the officials ought not to be held accountable for failure to observe a new enactment until they had received notice thereof, or at least had a reasonable opportunity to acquaint themselves with the new laws.

Justice of the Peace.—Like the weather, Justices of the Peace are talked about a great deal, but very little is ever done about them. The only bill that got through the 1943 session affecting J.P.'s was Ch. 779 (H.B. 794) the omnibus bill making appointments throughout the State. S. B. 18, which would have submitted an amendment to the constitution giving the General Assembly power to modify, change or abrogate the present constitutional provisions respecting justices of the peace, and S. B. 19, "to provide a uniform system for the selection and compensation of justices of the peace," both died in committee. The latter bill would have provided for the appointment of justices by committees in each county composed of the resident judge and the Clerk of Superior Court, a member of the local bar, the chairman of the board of county commissioners, and the mayors of all cities and towns in the county. Terms would have been for two years, and the justices would have been placed upon a salary basis, ranging from $300 to $4,800 per year, as determined by the county commissioners. All fees and costs would have been turned over to the county treasurer.

They Had Some Fun Too

The 1943 Legislature was one of the most serious-minded and hard working of many a moon. But throughout the session, and especially at the "love feasts" held near the day of adjournment, that saving grace of all Americans, an inclination toward humor, made itself evident. Herewith are recorded a few samples picked at random.

The State Worm

Perhaps with a view to gently chiding the sponsors of the Act making the Cardinal the official State Bird, one of the members very seriously sent up to the Reading Clerk and asked to have read in its entirety the following bill:

"A BILL TO BE ENTITLED AN ACT TO DESIGNATE THE CATERPILLAR AS THE STATE WORM.

"WHEREAS, the General Assembly has provided for a State Song, a State Flag, a State Flower, and a State Bird, and about the only thing left to be designated is a State Worm; and

"WHEREAS, recognition should be given to worms of the State since they have their feet on the ground and their ears to the ground and, therefore, are valuable politically; and

"WHEREAS, no worm so nearly combines grace, beauty, sweetness, light, *savoir faire*, *naivete*, pulchritude, glamour, glitter, statesmanship, intuition, fortitude, foresight, tenderness, courage, modesty and arrogance as the caterpillar, which is truly the bellwether and beau ideal of tar heel worms; being found in all except the Republican counties: Now, therefore,

"The General Assembly of North Carolina do enact:

"Section 1. That the beetle-backed-bottle-bellied caterpillar (anemone anemoroso) be, and the same hereby is, designated as the official State Worm.

"Sec. 2. Said State Worm shall be treated as such and may ride in all public conveyances in the State without compensation: Provided, this Section shall not apply to Hyde county.

"Sec. 3. That all laws and clauses of laws in conflict with this Act are hereby repealed.

"Sec. 4. That this Act shall be in full force and effect from and after the date of its ratification."

Representatives W. H. McDonald of Polk and Billy Arthur of Onslow. North Carolina—the Balanced State.

The Clerk had scarcely finished reading the document in a loud and clear voice when up rose a representative to offer an amendment from the floor. He may have had in mind the revenue and appropriations bills. His amendment:

"Amend, by striking from the bill the word 'caterpillar' wherever it occurs, and inserting in lieu thereof the word 'taxpayer.'"

The bill, together with the amendment, was tabled.

"From Cherokee to Currituck"

Mrs. G. W. Cover, representative from Cherokee County (and the only woman member of the House), joined with Representative G. C. Boswood of Currituck County in a little piece of lightsome legislation that at worst did no harm and at best put in a little plug for their respective bailiwicks. Jointly, they sent forward the following resolution:

"A JOINT RESOLUTION TO ENCOURAGE THE USE OF THE PHRASE "FROM CHEROKEE TO CURRITUCK."

"WHEREAS, in the days of yore, it was customary to refer to the broad sweep of this great State from beyond the mountains to the sea as "from Cherokee to Currituck"; and

"WHEREAS, such euphonious alliteration served so gracefully to describe those gracious counties of the extreme Eastern and Western limits of our fair State; and

"WHEREAS, the people of this State have slowly abandoned the custom of their forefathers; and

"WHEREAS, there has been a growing tendency to use the upstart phrase "from Manteo to Murphy"; and

"WHEREAS, such usurpation should no longer be permitted to go unchallenged: Now, therefore,

"Be it resolved by the House of Representatives, the Senate concurring:

"Section 1. It is the opinion of the General Assembly of North Carolina that wherever any person in the future shall have occasion to refer to the Eastern and Western limits of this sovereign State, he should use the phrase "from Cherokee to Currituck."

"Sec. 2. This Resolution shall be in full force and effect from and after its ratification."

Governor Broughton took cognizance of the resolution a few days later in the course of an address to a joint session. He described the sweep of the State by the phrase "From Cherokee to Currituck," but apologized for using "a somewhat hackneyed expression."

Boswood County

Of more than 1200 bills introduced during the session, approximately 65% were local bills. Conceded by all to be the champion local bill introducer was Mr. Boswood of Currituck County. He sent up so many bills that applied only to Currituck County during the session that some of his colleagues introduced a bill to change the name of his County to Boswood County, reciting that his multitude of local bills had so altered the laws and structure of his county that it no longer bore any resemblance to old Currituck, and that as Mr. Boswood had become the father of most of its laws it was only fit and proper that the county should bear his name. In a spirit of fun, the House passed the bill through three readings, then reconsidered and tabled the measure.

Mr. Boswood took the matter in great good spirit. He did more: he moved to protect his long lead in the number of local bills introduced by offering the following bill:

"A BILL TO BE ENTITLED AN ACT TO LIMIT THE NUMBER OF BILLS THAT MAY BE INTRODUCED IN A SINGLE DAY BY THE MEMBERS OF THE HOUSE OF REPRESENTATIVES."

"WHEREAS, during the one thousand nine hundred and forty-three Session of the General Assembly of North Carolina entirely too many bills of an insignificant and local nature have been perpetrated; and

"WHEREAS, the time has come when such latitude (not to mention longitude) should be restricted; and

"WHEREAS, it is the will and desire of this august and deliberative body (The General Assembly of North Carolina) that such practice in the future should be discouraged, discontinued and prohibited: Now, therefore,

"The General Assembly of North Carolina do enact:

"Section 1. That no member of the House of Representatives from and after the ratification of this Act shall introduce more than one bill in a single day.

Representative G. C. Boswood of Currituck County was the undisputed local bill champion of the session.

"Sec. 2. That this Act shall not apply to the Representative from Currituck County.

"Sec. 3. That if any punctuation, paragraph, sentence, clause or word herein is held by any court of competent jurisdiction to be invalid or in conflict with the Constitution of North Carolina, the same shall be void and this Act shall remain in full force and effect as if such holdings had never been held.

"Sec. 4. All laws and clauses of laws in conflict with this Act, Public, Public-Local and Private, are hereby declared not to be in conflict with this Act: Provided, that this Act shall affect all pending litigation.

"Sec. 5. This Act shall be in full force and effect from and after its ratification."

Relating to the Sale of Beer and Wine

More than two score local bills designed to regulate or prohibit the sale of beer and wine were reported unfavorably. A trifle barbed was the wit that prompted the following bill:

"A BILL TO BE ENTITLED AN ACT RELATING TO THE SALE OF BEER AND WINE."

"The General Assembly of North Carolina do enact:

Section 1. It shall be unlawful for any persons to conduct any church services within one mile of any place or establishment wherein beer or wine is sold or offered for sale.

"Sec. 2. This Act shall not apply to Currituck County.

"Sec. 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

"Sec. 4. This Act shall be in full force and effect from and after its ratification."

Old Taylor

During the debate on one bill, conspicuous among the opposition were Representatives O. L. Richardson of Union County and W. F. Taylor of Wayne County. One of the bill's sponsors, in the course of an earnest and eloquent plea for passage, stated that he had favored most bills introduced, had been against some bills, and had opposed some bills that his present opposition had sponsored. But he felt no ill-will toward anyone. In fact, he went further and stated: "I love every member of this House. I love Richardson sitting over there. I love Old Taylor—" At this point Mr. Taylor got to his feet. "For what purpose does the gentleman from Wayne arise?" asked the Speaker. "I want to ask the gentleman," replied Mr. Taylor, "whether he was referring to me when he said that he loves 'Old Taylor.'"

Health and Sanitation

Carrying forward North Carolina's public health program, the 1943 General Assembly passed several measures to bolster and give strength to the existing set-up and added certain new developments.

Criminal Penalties to Enforce Health Regulations.—With the war making the prevention and control of venereal diseases more and more difficult, some more stringent penalty for the violation of the statutes requiring the examination, detention and treatment of persons having, or suspected of having, any of the venereal diseases was necessitated. Ch. 734 (H.B. 729) amends C. S. 7198 to provide that any person violating any provision of the article regulating venereal diseases shall be guilty of a misdemeanor and *shall be fined or imprisoned in the discretion of the court.* The punishment was formerly fixed at a fine of not less than twenty-five nor more than fifty dollars, or imprisonment for not more than thirty days. Under threat of a prison term up to perhaps two years or a fine of perhaps several hundred dollars, the orders of state or local health officers isolating infected persons, requiring them to take treatment until cured, etc., seem much more likely to be obeyed.

Less stringent than the venereal disease control statute, but still indicative of the great effort being made to stamp out the major communicable diseases, is Ch. 357 (H.B. 429). Being an act to prevent the spread of tuberculosis, it provides that any person having tuberculosis in the communicable form who, after being instructed by an agent of the county board of health as to the precautions necessary to prevent infection of the members of such person's household or of the community, shall wilfully refuse to follow such instructions shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned in the Prison Department of the North Carolina Sanatorium for a period of sixty days for the first offense and for a period of six months for any subsequent offense.

Drainage.—Starting out as a statewide bill but amended to apply only to those counties having in excess of 100,000 population (Guilford, Mecklenburg, Forsyth, Wake and Buncombe), Ch. 553 (H.B. 370) provides authority for the cleaning out and draining of non-navigable streams by counties under the supervision of health departments, drainage commissions, etc. When the board of commissioners of such county finds, by resolution duly adopted, that the cleaning out and draining of any portion of any non-navigable stream, creek or swamp area in the county is necessary and/or desirable to protect and promote the health of its citizens, and that the agricultural benefits accruing to landowners along such stream or area from such work would be so negligible as not to justify the levy of a special assessment against them, the board may order and provide for the draining and cleaning out of such stream or area by, and under the supervision and jurisdiction of, the health department, or any sanitary committee or drainage commission, or other governmental agency or department of the county.

After such findings, to carry out the drainage and cleaning authorized, the commissioners may annually levy and collect a county-wide tax not exceeding two cents on each one hundred dollars in value of the taxable property in the county.

Sanitary Districts.—Ch. 620 (S.B. 318) provides the machinery for the dissolution of certain sanitary districts organized and established pursuant to Ch. 100 of the Public Laws of 1927 (C.S. 7077(a)-7077(y)). By petition of 51% of the resident freeholders to the county commissioners and thence to the State Board of Health, any such district which has been in existence for three years and which has no outstanding indebtedness may be dissolved, after the proper hearings, by the commissioners and the State Board of Health.

Post-mortems and Dead Bodies.—Reciting the need for systematic post-mortem studies to promote medical knowledge as to causes, conditions and treatment of disease, Ch. 87 (H.B. 110) empowers superintendents of all state, county, or municipally-operated institutions for the sick, feeble-minded or insane to authorize a post-mortem examination of deceased inmates. The written consent of such deceased person's spouse, next of kin, nearest known relative or other person charged with burial is a prerequisite to the superintendent's authorizing a post-mortem; but there are no other limitations on this authority. The examinations are authorized to be made in "incorporate" medical schools, under terms agreed upon by the superintendent and the school.

Ch. 100 (H.B. 174) creates "The North Carolina Board of Anatomy," charged with the distribution of dead human bodies for the purpose of promoting the study of anatomy, and rewrites the statutes regulating such distribution. The Board is to consist of three members, one each from the University of North Carolina, Duke University and Wake Forest College Schools of Medicine.

Hospitals.—Ch. 780 (S.B. 254) is an extensive enabling act authorizing cities of 75,000 or over (amended to apply also to Craven County and the City of New Bern) to create "hospital authorities" for the purpose of engaging "in hospital construction, maintenance and operation and for projects to provide hospital accommodations."

Unemployment Compensation Law; Workmen's Compensation Act; Labor

Unemployment Compensation Amendments

If an employer subject to the Unemployment Compensation Law fails to make reports required under the Act after ten days' notice to do so has been sent him by registered mail, or if an execution upon a judgment for unpaid contributions is returned unsatisfied and the judgment remains unpaid after ten days' notice to the employer, the Commission may apply to the courts for an order to restrain the further operation of the business of the employer until the report is filed or the contributions are paid. This is one of the innovations written into the Law by Ch. 377 (S.B. 38), a lengthy act which will take up some twenty pages in the Session Laws of 1943. Most of the Act, however, is concerned with the correction of minor errors, the deletion of obsolete matters, and changes in administrative details.

Aside from such amendments, the more important provisions of the Act: (1) require the Commission to give the employer reasonable notice and an opportunity for a hearing before certifying past due contributions to the clerks of the Superior Court to be docketed as judgments; (2) provide that no benefits shall be payable during the three months' period preceding the expected birth of a child, nor during the three months' period immediately following the birth, as during such periods a person is not considered able and available for work; nor shall a person be eligible for benefits during a customary vacation period not to exceed two weeks if employment is available to him at the end of such period; (3) strike out former provisions that reduced benefit payments by the amount of primary insurance payments made to the claimant under the Old Age and Survivor's Insurance provision of the Federal Social Security Act; (4) make reports and contributions due on or before the last day of the month following the close of the calendar quarter, rather than on or before the 25th of such month; (5) empower agents, to be designated by the Commission, to serve executions upon judgments in favor of the Commission in the same manner as sheriffs; (6) reduce the statute of limitations for actions to recover taxes paid under protest from three years to one year after the expiration of 90 days from the demand for the return of the taxes, or the refusal of the Commission to make refund; (7) reduce the penalty for wilfully making false statements in connection with benefit claims so as to come within the jurisdiction of justices of the peace; and (8) provide that one who is not an "employer" under the definition of the North Carolina Act shall nevertheless be deemed to be such an employer as to services performed entirely within this state if he is liable for Federal Unemployment Compensation taxes. This latter provision is to take care of situations in which employers do not come within the purview of the North Carolina Act, but still are under the Federal law and were having to pay the full amount of the tax to the Federal government. Under the amendment they will pay no additional amount, but will merely pay 90% of the amount of the Federal tax to the Unemployment Compensation Commission, for which they will receive credit against the Federal tax, and will entitle their North Carolina employees to the benefits of the Act. Chapter 552 (H.B. 346) further clarifies such situations. Chapter 319 (S.B. 120) strikes from the Act a failure or refusal to make contributions a basis of liability for a criminal penalty.

Workmen's Compensation Act Amendments

Increase of Benefits — Disfigurement.—Ch. 502 (H.B. 272) increases the maximum weekly rate of compensation payable under the Act from eighteen to twenty-one dollars and rewrites provisions with respect to disfigurement. It further amends C. S. 8081(mm) (Sec. 31 of the Workmen's Compensation Act) by increasing in every instance except one the number of weeks compensation is payable for losses of various members of the body specified in that section, the sole exception being for the loss of a toe other than a great toe.

The first part of the section is amended by language that leaves something to be desired in the way of clarity. The Act changed the following language: "In cases included by the following schedule, the disability in each case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be specified therein . . ." to read: "In cases included in the following schedule the compensation in each case shall be paid for disability during the healing period and in addition the disability shall be deemed to continue for the periods specified, and shall be in lieu of all other compensation, including disfigurement. . . ."

Under the original language, it is clear that the specific injuries were "deemed to continue for the period specified" in the schedule. The effect of the change in the language employed in the amendment is not as clear as it might be. Payments shall be made "for disability during the healing period." Standing alone, this would mean that payments would continue until the injury were healed, however long it might require. This appears to be qualified, however, by the language, "the disability shall be deemed to continue for the periods specified." If so, "during the healing period" has no meaning. The intention probably was to provide for payments during the actual healing period, but in no event for less than the length of time specified in the schedule.

Benefits—Dependents and Next of Kin.—Ch. 163 (H.B. 164) removes from the Act a source from which in certain cases manifest injustice might flow. In the event of the compensable death of an employee who leaves dependents only partly dependent upon his earnings for support, C. S. 8081(tt) (Sec. 38 of the Act) provides that the payments to partial dependents will equal the same proportion of payments provided for those wholly dependent as

(Continued on page 40)

Bulletin Service

Recent opinions and rulings of the Attorney General of special interest to local officials

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Prepared by the STAFF of the INSTITUTE OF GOVERNMENT

HARRY McMULLAN

Attorney General of North Carolina

I. AD VALOREM TAXES.

A. Matters Relating to Tax Listing and Assessing

20. Valuation of real estate.

To A. B. Beasley. Inquiry: Is it mandatory that the Board of Equalization and Review of a county adjourn on the third Monday following its first meeting?

(A.G.) From an inspection of Section 1105 of the Machinery Act, it appears that the provisions relating to the date for the first meeting and final adjournment of the Board of Equalization and Review are mandatory. But I am of the opinion that if the Board of Equalization and Review held its first meeting on the eleventh Monday following the day on which tax listing begins, and was absolutely unable to complete its duties by the third Monday following its first meeting, it could find as a fact that it had been unable to complete its work within the time prescribed by statute and enter such finding in the minutes of its meeting, and when this was done, it could adjourn from time to time until it had finally completed its duties.

To R. L. McMillan. Inquiry: Would the provisions of the Emergency War Powers Act be broad enough to cover wilful and deliberate violations of practice blackout regulations?

(A.G.) It is my opinion that the provisions of this Act would be broad enough to cover the wilful and deliberate violation of a practice blackout order or regulation if adopted in the manner provided for in the Act.

B. Matters Affecting Tax Collection.

To Joe W. Ervin. Inquiry: Is it permissible for a county to arrange all receipts and stubs for all taxes charged upon the tax books for the entire county alphabetically instead of having a separate book for each township?

(A.G.) No regulations have been adopted by the State Board of Assessment which would in any way interfere with the right of a county to arrange the receipts and stubs in the county as seen fit. No provision of the statutes would determine the method of arrangement of these tax receipts and stubs. But if the tax receipts and stubs were arranged alphabetically for the county as a whole, they would have to contain the information and substance required by C. S. 7971(157).

23. Sale of real property.

To Garland S. Garriss. Inquiry: Is a town authorized to sell at private sale lands purchased by it at tax foreclosure sales where the town has instituted foreclosure proceedings covering taxes due the town?

(A.G.) Unless the property acquired at tax foreclosure sales by municipalities is to be resold to the class of persons authorized under the provisions of Section 1719 (v) and Section 1720(g) of the Machinery Act (former owners or persons formerly having an interest therein), it is my opinion that the property must be sold in accordance with the provisions of Section 2688 of Michie's North Carolina Code of 1939 Annotated. It is my opinion that the provisions of Subsection 2 of Section 2787 of the Code would not modify the provisions of Section 2688 so as to eliminate the requirement that municipal property be disposed of at public sale.

65. Tax collection—garnishment.

To Dr. James E. Shepherd. Inquiry: Would the wages of the employees of an educational institution operated by the State be subject to garnishment for ad valorem taxes due a county or municipality?

(A.G.) Subsection (d) of Section 1713 of the Machinery Act of 1939, as amended, provides that a tax collector may attach not more than ten per cent of the wages or other compensation for personal services for failure to pay taxes. Subsection (e), same section, provides: "Tax collectors may proceed against the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities and officials and employees of political subdivisions of this State and their agencies and instrumentalities in the manner provided by subsection (d) of this section. . . ." These provisions, in my opinion, would give authority, upon proper notice being served, to withhold from the employees' wages an amount sufficient to pay the employees' taxes, but in no event to exceed ten per cent of the wages or other compensation due such employees.

To W. Frank Taylor. Inquiry: Would a man in the armed forces of the United States who is stationed in a military camp in North Carolina be considered a resident of the State to such an extent as to entitle him to institute a divorce action in the courts of this State?

(A.G.) In the light of the cases, it is my opinion that where a person from another state enters the armed forces of the United States and is sent to a military reservation in North Carolina, and after arriving in this State, such person resides on the military reservation and has no intention of making North Carolina his home, he would not become a resident of the State within the meaning of the divorce statute, which requires six months residence in the State before the institution of a divorce action. On the other hand, if a person in the military service comes to North Carolina with the intention of making North Carolina his home, and resides outside the military reservation to which he is attached, it is my opinion that he would be a resident of the State within the meaning of the divorce statutes.

II. POLL TAXES AND DOG TAXES.

A. Levy.

1. Exemptions

To James W. Bowen. Inquiry: Did the 1943 General Assembly enact any legislation exempting members of the armed forces of the United States from the payment of poll taxes and cancelling poll taxes which have heretofore been listed and not paid, and would such legislation have an effect on personal property taxes?

(A.G.) H. B. 36 provides that, while the existing state of war between the United States and any foreign nation continues and for the next tax listing period thereafter, members of the armed forces of the United States and members of the United States Merchant Marine shall be exempt from all poll taxes and that the poll taxes which such persons were required to list prior to induction into the armed forces or joining the Merchant Marine, which have not been paid, shall be canceled. This bill does not affect listing and payment of personal property taxes.

To Ransom S. Averitt. Inquiry: Does H. B. 36 relieve members of the armed forces of the payment of all poll tax due, or only of the payment of the poll tax for the year in which they are inducted into the service?

(A.G.) I have given considerable thought to the provisions of this bill, and I had occasion to discuss the same with its sponsors during the recent session of the Legislature, and I am satisfied that the intention of the Legislature was to exempt members of the armed forces from the payment of all poll tax due by such persons prior to their induction. I am, therefore, of the opinion that members of the armed forces should not be required to pay any poll tax due by them at the time of their induction into the military service.

C. Poll and Dog Taxes.

2. Collection.

To E. H. Smith.

(A.G.) C. S. 1675 makes it a misdemeanor for a person to fail or refuse to list a dog for taxation. This section was not amended by S. B. 33, passed by the recent Legislature; it is still in full force and effect. The Machinery Act also makes it a misdemeanor to fail to list dogs for taxation. C. S. 1676 formerly made it a misdemeanor for a person to fail to pay the taxes due upon a dog or dogs, even though the same had been properly listed. S. B. 33 strikes out the criminal provision of C. S. 1676. Therefore, under 1675, the owner is guilty of a misdemeanor who fails or refuses to *list* a dog for taxation. But having properly listed the dog, he would not be guilty of a misdemeanor for failure to *pay* the tax upon such dog,

as the criminal provision of 1676 has been climinated by S. B. 33.

To B. G. Tharrington.

(A.G.) Under the provisions of Section 7 of Chapter 259 of the Public Laws of 1941, which strikes out all of Section 9 of Chapter 122 of the Public Laws of 1935, the owner of a dog is entitled to credit for whatever he pays for the vaccination of his dog against rabies, not exceeding 75c, when he presents the certificate of vaccination to the sheriff or tax collector of the county.

To R. G. Deyton.

(A.G.) It is my opinion that the War Bonus should be paid any teacher who was employed during the last half of the school year 1942-43, and, if not employed for the full period, for a proportionate part of the period for which such teacher was employed. As to other State employees it is my opinion that the bonus should be paid to all employees who were in the State service after January 1, 1943, for the period of time of their service after that date, whether or not they were in the State employ at the time the Act was passed by the General Assembly. Under the provisions of the law quoted, such employee would be entitled to receive a proportionate part of the bonus as the period of service is of the total period for which the bonus is prescribed.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES.

A. Levy of Such Taxes.

To W. N. Rose. Inquiry: Is it necessary for a municipality to adopt a levying ordinance before it can collect Schedule B taxes?

(A.G.) It is my opinion that municipalities must pass necessary ordinances before levying and collecting Schedule B taxes. I am further of the opinion that one ordinance can be broad enough to cover all of the Schedule B taxes which a municipality is permitted to levy under the State Revenue Act.

11. For hire cars and trucks.

To Roy W. Davis. Inquiry: Did the 1943 General Assembly authorize municipalities to levy a privilege tax on taxicabs operated within the corporate limits of municipalities?

(A.G.) The General Assembly enacted H. B. 292, which provides that cities and towns may levy, in addition to the one dollar heretofore levied, a sum not to exceed $15.00 per year upon each vehicle operated in such city or town as a taxicab.

14. Privilege license—wine and beer.

To Messrs. Harding & Lee. Inquiry: May license to sell beer and wine be lawfully issued to a nerson who is not a citizen of the United States?

(A.G.) C. S. 3411(103) provides that every person making application for license to sell at retail wine and beer shall make an application which shall contain, among other things, a statement that the applicant is a citizen and resident of the State of North Carolina. This office has previously ruled, therefore, that a foreigner who has not been naturalized would be ineligible to receive a license to sell wine and beer.

To John S. Butler.

(A.G.) C. S. 3411(105) makes it mandatory that the governing body of a municipality or county issue license to any person applying for the same when such person shall have complied with requirements of the statutes. This section was amended by Ch. 405, Public Laws 1939, so as to authorize the governing bodies of certain counties, or any municipalities therein, in their discretion, to decline to issue the "on premises" license provided for in subsection 1 of Section 509½ of the Revenue Act. That subsection relates only to on premises licenses for the sale of wines, the on premises licenses for the sale of beer being governed by Section 509. It therefore appears that the governing bodies of municipalities in those counties to which Ch. 405, Public Laws 1939, applies would be authorized to decline to issue the on premises licenses for the sale of wine, but would not be authorized to decline to issue the on premises licenses for the sale of beer, if the person applying for such license has complied with the requirements of the Article authorizing the issuance of such license.

To C. W. Kale. Inquiry: Would the fact that an applicant for a beer license has been convicted of driving a motor vehicle while intoxicated be a ground for refusing to issue a license to such applicant?

(A.G.) It is my opinion that a conviction on a charge of operating a motor vehicle while intoxicated would not be a violation of the prohibition laws of the State of North Carolina within the purview of the statutes governing the issuance and revocation of license to sell beer and wine.

43. License tax on moving picture shows or theaters.

To George C. Franklin.

(A.G.) The 1943 Session Laws, c. 400, s. 2, subsec. (c), amended s. 105 of the Revenue Act by rewriting the portion of said section levying a privilege tax upon those persons engaged in the business of operating a moving picture show or theater. The 1943 amendment provides that counties shall levy no tax under this section, but cities and towns may levy a tax not in excess of the tax levied by such city or town as of and in effect January 1, 1943. The provision of the Revenue Act regarding the power of municipalities to tax moving picture shows or theaters on January 1, 1943, left municipalities with the option to levy such a tax not in excess of ½ of the base tax levied in the Revenue Act. Therefore, it is possible that some municipalities had levied no privilege tax on moving picture shows or theaters which were in effect January 1, 1943.

I am of the opinion that if the municipality had no privilege tax on moving picture shows or theaters in effect on January 1, 1943, it would not be empowered to levy a privilege tax under the 1943 amendment. If no tax were in effect on that date, there is no standard by which to fix the maximum which may be levied and therefore it would be impossible to say whether any tax levied by such a municipality under the 1943 amendment is less or more than the maximum contemplated hy the law.

If there were no moving picture show or theater in existence in a municipality nt the time taxes effective on January 1, 1943, were levied, but a moving picture show or theater has since engaged in business in said municipality, here again it is my opinion that the statute is of no application unless a privilege tax was in effect on January 1, 1943.

I think that clearly the 1943 amendment precludes a municipality from levying thereunder a privilege tax any higher than that actually levied and in effect on January 1, 1943.

50. License tax on barber shops, beauty parlors.

To Emmet H. Bellamy.

(A.G.) It is the opinion of this office that Section 140 of the Revenue Act of 1939, as amended, does not authorize municipalities to levy a tax of $5.00 on each barber or operator in a barber shop in addition to a tax of $2.50 for each chair.

Inquiry: Does a court have authority to order compensation paid to an attorney appointed by the court to represent a soldier or sailor under the Soldiers and Sailors Civil Relief Act of 1940?

(A.G.) No provision of the law provides for the payment of such compensation, and there is no fund from which compensation could be paid if allowed by the court. The service to be rendered by an attorney under the circumstances is one of those services which the loyal and patriotic attorneys of the country will have to render to the men who are fighting to preserve our way of life, without compensation.

IV. PUBLIC SCHOOLS.

F. School Officials.

47. Teachers—sick leave.

To W. L. Rhyne. Inquiry: What is the amount of salary to which a substitute teacher is entitled in case of the absence of the regular teacher due to sickness, accident, or other causes?

(A.G.) The General Assembly of 1943 amended the portion of the school law applicable to this question so that it now provides: "The State School Commission is hereby authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not exceeding five days, and to promulgate rules and regulations providing for necessary substitutes on account of such sick leave. The pay for a substitute shall not *be less than* three dollars per day." (Sec. 22, School Machinery Act of 1939 and S. B. 239.) Of course, the matter is now handled by the State Board of Education rather than the State School Commission.

48. Teachers—health.

To Dr. J. C. Knox. Inquiry: Can n county board of education require that each teacher teaching in the public schools in the county be required to have an X-ray examination in order to determine the presence or absence of tuberculous infection?

(A.G.) It is my opinion that a requirement by a county board of education that an X-ray or fluoroscopic examination of the chest of each teacher or school employee be made as a basis for the certificate required under C. S. 5556, would be upheld as a valid requirement, provided the X-ray or fluoroscopic examination would be furnished free of charge or at a nominal cost.

CITY ADMINISTRATIVE UNITS
Tax Levies under Previous Election Authority

Now that the State has taken over the support of the ninth school month and relieved them of this burden, many city administrative units which have been paying for the ninth month by local supplements have posed this question: "Can we continue to levy taxes under the authority granted in the election held on the question of taxing to support the ninth month, the funds thus obtained to be used for general school improvements, such as: better teachers, addition of vocational courses, etc.?"

The Attorney General has replied that the answer necessarily depends upon the particular facts of each case. If the petition of the Board of Trustees of the particular administrative unit to the Board of County Commissioners requesting an election on the question of levying additional taxes for the support of the ninth month, the resolution of the County Commissioners authorizing such election, and the notice of election, contained no qualifications restricting the use of the money thus obtained to the support of the ninth month only, then taxes can continue to be levied under the previous authority, and no new election would be required. That is, if the petition, resolution and notice recited that the additional levy was "for the purpose of maintaining the schools on a higher level, including the support of the ninth month" (or other similar recitals), the continued levy under that authority would be proper. But if they recited only that the additional levy was "for the purpose of supporting the ninth month," no levy could now be made under that authority, and a new election would be required.

If the continued levy in a particular unit is permissible, it will be necessary for the Board of Trustees to continue, under Section 15 of the School Machinery Act, to make up its budget, setting forth the purpose for which the money is to be used; this budget must be approved by the County Commissioners and the State Board of Education before taxes can be levied.

62. Teachers and State Employees Retirement System.

To Mrs. Lucile Goode. Inquiry: Where a teacher has been a member of the Teachers and State Employees Retirement System, has withdrawn his or her accumulated contributions from the System, and then is re-employed as a teacher, must he or she be a member of the Retirement System, and if so, would credit for prior service be lost?

(A.G.) Subsection 3 of Section 3 of the Retirement Act provides that should any member of the System withdraw his accumulated contributions, he shall thereupon cease to be a member. Therefore, when such teacher withdrew accumulated contributions, membership in the System was lost. When the teacher again entered the service as a teacher, he or she automatically became a new member under the provisions of the Act. Subsection 4 of Section 4 provides that when membership in the system ceases, a prior service certificate becomes void, and when such teacher or State employee again becomes a member, he or she enters as a member not entitled to prior service credit.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES.

B. County Agencies.

10. ABC Boards and stores.

To R. A. Nunn. Inquiry: Where a county board of commissioners has rejected the Workmen's Compensation Act under authority of the provisions of that law, is the county ABC board exempt under the rejection of the Act by the commissioners, and, if so, could the ABC board without authority of the commissioners waive the exemption and accept the provisions of the Act?

(A.G.) I do not think the rejection of the Act by the commissioners would be applicable to the employees of the county ABC board operating under the provisions of Ch. 49, Public Laws of 1937. The ABC board is made an independent agency of the county with duties prescribed and fixed by statute. I think that the county ABC board could, in the matter of Workmen's Compensation coverage, act independently of the board of county commissioners in that it would be the ABC board's duty to provide for compensation insurance unless they rejected the Act or qualified as self-insurers.

To James P. Bunn. Inquiry: May a county ABC board expend a portion of the law enforcement sum provided by C. S. 3411(74)(o) by turning certain sums over to the law enforcement departments of the various towns of the county on condition that the city law enforcement officers render such assistance as the board may deem necessary for law enforcement and subject to call at all times by the board?

(A.G.) C. S. 3411(74)(o) authorizes an ABC board "To expend for law enforcement a sum not less than five per cent nor more than ten per cent of the total profits . . . and in the expenditure of said funds shall employ one or more persons to be appointed by and directly responsible to the respective county boards." After one or more persons have been appointed as therein required, I am of the opinion that said section is subject to such construction as will permit a county ABC board to turn over a portion of the net profits to the various incorporated towns of the county for the purpose of law enforcement, and in particular the enforcement of the provisions of the ABC Act; said funds should be turned over without any restrictions as to their use except that the same be used for law enforcement, and, in particular, law enforcement as it relates to the ABC Act in the boundaries of the respective cities to which said sums are allocated.

To J. F. Harrington. Inquiry: What is the connection of the State of North Carolina with the North Carolina Local Governmental Employees Retirement System?

(A.G.) The General Assembly of 1939 enacted Ch. 390 of the Public Laws of 1939 providing a retirement system for employees of counties, cities and towns on an optional basis and at their own expense. Ch. 357 of the Public Laws of 1941 amended this Act to provide that the general administration of the retirement system and for making effective the provisions of the Act should be vested in the Board of Trustees of the Teachers and State Employees Retirement System of North Carolina. Outside the fact that the Board of Trustees of the State System handles the funds of the Local Government System, the State of North Carolina has no connection therewith and assumes no responsibility therefor.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES.

K. Grants by Cities and Towns.

To Edward B. Hope. Inquiry: May a municipality sponsor certain activities formerly carried on by the WPA, such as the maintenance of a day nursery, the maintenance of a salaried employee at the Working Girls' Home, and the extension of library facilities including the operation of a bookmobile and the employment of an assistant librarian, if the expenses are paid from funds made available by the Lanham Act?

(A.G.) In my opinion, the projects mentioned are public in nature and there is no legal objection to their being sponsored and operated by a municipality. As they are to be financed by a grant from the Federal Government and no debt is to be incurred and no taxes levied, the legality of the program does not depend upon whether the projects constitute necessary expenses.

N. Police Powers.

20. Regulation of trades and professions.

To Messrs. Harding and Lee. Inquiry: Does H. B. 292, giving cities and towns the power to regulate and control drivers and operators of taxicabs, authorize a city to prescribe a schedule of fares or rates to be charged by the operators of taxicabs?

(A.G.) In my opinion the recently enacted statute does not create any authority on the part of municipalities to regulate the rates charged by taxicabs. With respect to the regulation of rates, the authority granted in H. B. 292 was no broader than that already existing under C. S. 2787(36) and C. S. 2623(6). However, under H. B. 292 as well as prior statutes, there is considerable doubt in my mind whether municipalities have authority to fix rates. See State v. Sasseen, 206 N. C. 256.

T. City Health Matters.

To George E. Welch. Inquiry: Does a town have authority to build and operate a public abattoir?

(A.G.) A town does have authority to build and operate a public abattoir as a necessary expense. See Moore v. Greensboro, 191 N. C. 592.

X. Ordinances.

1. Validity of ordinance.

To Ernest R. Warren. Inquiry: Would H. B. 180, enacted by the General Assembly of 1943, authorizing municipal governing bodies to prohibit the sale of wine and beer from 11:30 P.M. on each Saturday until 7 A.M. on the following Monday, validate an ordinance previously adopted by a city governing board prohibiting the sale of wine and beer from 6 P.M. on each Saturday until 7 A.M. on the following Monday, in event the governing

body did not have authority to enact the ordinance at the time it was passed?

(A.G.) In view of the opinion previously expressed that the governing body was without authority to pass the ordinance, it occurs to me that it is best for them to pass a new ordinance prohibiting the sale of wine and beer as provided for in H. B. 180.

To Harley B. Gaston. Inquiry: Where a town has not elected officers for several years, can those elected at the last election organize and carry on the municipal business until an election can be held?

(A.G.) It is well settled that a municipal corporation does not ipso facto become dissolved or disincorporated or lose its existence by misuser or non-user of its corporate powers, functions, and franchises as by failure to elect officers or by failure of its officers to perform official duties or corporate functions. If a majority of the aldermen elected at the last election still reside within the limits of the town, it is my opinion that they would have a right to meet, organize, fill vacancies and continue to carry on the business of the town until their successors are elected and qualified.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS.

A. County Commissioners.

34. Jury lists.

To Ransom S. Averitt. Inquiry: In preparing the jury lists in June, 1943, should county commissioners use the tax list for the year 1942 or the tax list for 1941?

(A.G.) The Supreme Court, in the case of State v. Davis, 190 N. C. 780, construed the term "the preceding year" to mean the preceding fiscal year. Under this construction the tax list that should be used in preparing the jury lists for 1943 would be the tax list for 1941. June, 1943, is in the fiscal year commencing July, 1942, and ending with June, 1943. The preceding fiscal year would be the year commencing July, 1941, and ending June, 1942. Thus, the taxes for the preceding fiscal year would be those which were listed and became due during the calendar year 1941.

To Carroll L. Wilson. Inquiry: What is the proper time and method for placing the names of prospective jurors on a county jury list?

(A.G.) C. S. 2312 reads as follows: "The board of county commissioners for the several counties at their regular meeting on the first Monday in June, in the year 1905, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the clerk of the board of commissioners and shall constitute the jury list, and shall be preserved as such." This procedure should be followed in all counties except those which have special acts regulating the preparation of jury lists.

B. Clerks of the Superior Court.

9. Wills and caveats.

To W. E. Church. Inquiry: Is it necessary for a Clerk of Court to include in the examination of the witnesses to the execution of a will as to whether the deceased was of sound mind and disposing memory and as to whether said deceased was under any restraint, undue influence, or duress at the time of the execution of the will?

(A.G.) C. S. 4143 and C. S. 4131 are the statutory provisions touching on this matter. From an inspection of the forms used generally in connection with the probate of wills, I find that these items are used in the examination of the subscribing witnesses. As this seems to be the general practice, I would hesitate to recommend the elimination of any of these elements even though to my mind there are some matters included which the witnesses to the will might not be in a position to answer. I refer particularly to the question as to undue influence or duress at the time of the execution of the will.

24. Duties with reference to insane persons.

To W. E. Church. Inquiry: What is the proper construction of S. B. 308, enacted by the 1943 General Assembly?

(A.G.) S. B. 308 specifically amends C. S. 6194. Before this amendment, that section provided, under certain circumstances, for an examination at the residence or habitation of the alleged insane person. The amendment adds to this section the following: "but the clerk shall give at least one day's notice to the alleged insane person of such examination." Since this amendment specifically amends only C. S. 6194, I am of the opinion that the one day's notice provided for by the bill must be given only in case of an examination at the residence or habitation of the alleged insane person under C. S. 6194.

73. Process for enforcement of judgments.

To J. P. Shore. Inquiry: Is a Clerk of the Superior Court authorized to issue executions upon certificates of tax liability provided for in Section 913 of the Revenue Act of 1939, as amended, and if so, to whom are such executions returnable?

(A.G.) In making provision for the collection of State taxes the General Assembly prescribed a special procedure which provides for the docketing of a judgment without the necessity of securing that judgment in a regular action, as is ordinarily provided. Section 913(3) of the Revenue Act provides that the Commissioner of Revenue may make a certificate showing the essential particulars relating to the tax liability and transmit the same to the Clerk of the Superior Court of any county in which the delinquent taxpayer resides or has property, "whereupon it shall be the duty of the Clerk to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the Superior Court." Hence, the procedure for the issuance of execution upon a certificate of tax liability is identical with the procedure for the issuance of execution on any other judgment secured in the Superior Court of the county, and I am of the opinion that a Clerk is under a duty to issue execution as provided in Section 913(3). The return of an execution issued on a certificate of tax liability should be made to the court of the county in which the certificate of tax liability is docketed on the judgment docket.

Inquiry: Would the exemption of locomotive engineers from jury duty, under the provisions of C. S. 2329, be broad enough to include bus drivers, both inter-city and street bus operators?

(A.G.) It is my opinion that the language used in this section is not broad enough to include such operators. The General Assembly, in my opinion, has not yet expressed an intention to exempt from jury duty operators of busses. Of course, the judges of the Superior Court would be authorized, in their discretion, to excuse bus drivers if they see fit to do so.

E. County Auditor and Accountant.

3. Mechanics of handling county funds.

To Joe W. Ervin. Inquiry: Should a county's portion of the intangible personal property taxes collected in 1942 be apportioned to the various county funds in proportion to the ad valorem tax levies made by the county in 1941 or 1942?

(A.G.) Section 715 of the Revenue Act provides that: "The amounts so allocated to each county and municipality shall be distributed and used by said county or municipality in proportion to other property tax levies made for the various funds and activities of the taxing unit receiving said allotment." Although the statute does not specifically state which year's tax levy shall be used as a basis for the apportionment among the various county funds, I am of the opinion that it is intended that the tax levy for the fiscal year following the year in which the intangible taxes become due and are collected should be used; in other words, the fiscal year in which the funds are normally received by the county.

I would construe Section 715 to require that funds received in August, 1942, be allocated according to the tax levy made in the summer of 1942 for the fiscal year 1942-43.

To R. T. Stimson. Inquiry: Does the Bureau of Vital Statistics have the right to make changes in birth certificates recorded in that office?

(A.G.) C. S. 7105 provides that no certificate of birth or death, after its acceptance for registration by the local registrar, shall be altered or changed in any respect otherwise than by amendments properly dated, signed and witnessed. There would be authority to correct errors and make other proper changes when an amendment in satisfactory form is submitted. This provision does not authorize indiscriminate altering or changing of certificates, but was intended only to allow the correction of errors so as to make the certificate speak the truth.

L. Local Law Enforcement Officers.

6. Prohibition law—beer and wine sale.

To David Sinclair. Inquiry: Is it mandatory that the license of a person operating an establishment selling beer and wine

shall be revoked where such person is convicted of selling beer or wine after 11:30 p.m.?

(A.G.) It is my opinion that the license of a person convicted of selling beer or wine between the hours of 11:30 p.m. and 7 a.m. must be revoked. There is no provision in H. B. 180 giving any discretion in the matter of the revocation of a license where defendant has been convicted of selling beer or wine between the hours of 11:30 p.m. and 7 a.m.

To John R. Cooper. Inquiry: Is it unlawful to sell beer and wine to persons who have been convicted for public drunkenness within the last twelve months?

(A.G.) I am unable to find any statute which prohibits the sale of wine and beer to such persons.

To Arthur B. Shepherd. Inquiry: Where a person licensed to sell wine and beer at retail has been convicted in a county recorder's court of a violation of the closing hours provided by H. B. 180, may he be permitted to operate after he has been convicted and has appealed to the Superior Court?

(A.G.) In my opinion, the revocation provided in Section 4 of H. B. 180 becomes effective only after there has been a final conviction. When a person is convicted of a criminal offense in a recorder's court and perfects an appeal to the Superior Court, the judgment of the court is not placed in effect pending such appeal. The defendant is given a trial de novo in the Superior Court and the issue of his guilt or innocence may be determined again and a new judgment pronounced in the Superior Court. Therefore, pending an appeal to the Superior Court, such person should be permitted to operate.

To Rev. Earle L. Bradley. Inquiry: How far from a church must a wine or beer store be located?

(A.G.) The pertinent provisions of the statutes on this point are as follows:

Section 3411(104): "If the application is for license to sell outside of a municipality within the county, the application shall also show the distance to the nearest church or public or private school from the place at which the applicant purposes to sell at retail. No license shall be granted to sell within three hundred feet of any public or private school buildings or church building outside of incorporated cities and towns: Provided, the restriction set forth in this sentence shall not apply to unincorporated towns and villages having police protection."

Section 3411(105): "It shall be mandatory that the governing body of a municipality or county issue license to any person applying for the same when such person shall have complied with requirements of this article: Provided, no person shall dispense beverages herein authorized to be sold, within fifty feet of a church building in an incorporated city or town, or in a city or town having police protection whether incorporated or not, while religious services are being held in such church, or within three hundred feet of a church building outside the incorporate limits of a city or town while church services are in progress; and further provided that this section shall not apply in any territory where the sale of wine and/or beer is prohibited by legislative act."

13. Prohibition law—illegal possession.

To Thomas C. Hoyle. Inquiry: Is there a legal right to use intoxicating liquors in a training camp operated by the U. S. Government?

(A.G.) C. S. 8059 grants the consent of the State to the acquisition by the United States of lands for public purposes. It further provides that exclusive jurisdiction over lands so acquired is ceded to the United States except that the State reserves jurisdiction for the service of civil or criminal process of the courts of this State. This latter provision does not give the State jurisdiction over any offense committed on the reservation; therefore, neither the State, county or city law enforcement officers have authority to make arrests on a reservation for a criminal offense committed on such government reservation.

39. Motor Vehicle Laws.

To T. Boddie Ward. Inquiry: Does S. B. 361, which was enacted by the 1943 General Assembly, authorize the court to sentence to jail any person over 15 years of age but under 16 years of age who has been convicted of violating the motor vehicle laws?

(A.G.) S. B. 361 takes the jurisdiction of any offense involving violation of any of the motor vehicle laws, or of any of the laws relating to the operation of motor vehicles on the highways of the State, by a person over 15 years of age away from juvenile or domestic relations courts, and places the jurisdiction in the court in which it would have been if the offender had been over 16 years of age. It is my opinion that the intent of this section is to place persons under 16 and over 15 years of age, who have been convicted of a violation of any of the motor vehicle laws, upon the same basis, in all respects, including sentence or punishment, as persons over the age of 16 years; and consequently, that the court would have the authority to sentence such persons to jail if such a punishment is prescribed for the offense for which the person was convicted.

To Clarence L. Pemberton. Inquiry: May a person whose driver's license has been revoked for drunken driving legally operate a farm tractor with trailer attached on the highways of the State?

(A.G.) C. S. 2626(152) provides in part as follows: "The following are exempt from license hereunder: (b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry, temporarily operated or moved on the highways; . . ." I am of the opinion that by virtue of this statute no operator's license is required to drive a farm tractor with trailer attached, provided said tractor with trailer attached is temporarily operated upon the highways in connection with farming operations.

60. Powers of an officer.

To S. H. Martin. Inquiry: Can the chief of police of a town take into custody persons in the town who do not work regularly and do not intend to do so, and compel them to work during this emergency.

(A.G.) There is no provision in our law authorizing municipal police officers or municipal courts to compel persons to work, otherwise than sentencing them to the roads for violations of the criminal laws. Of course, if these persons are vagrants or tramps within the meaning of those terms as used in Sections 4459 and 4464 of the Consolidated Statutes, they could be prosecuted under those sections.

To R. L. McMillan. Inquiry: Would an officer on duty during a practice blackout have authority to enter a home or a business establishment to extinguish lights if the owner cannot be located?

(A.G.) There is no doubt that a regulation authorizing an officer to enter premises to extinguish lights during an actual air raid would be considered reasonable. But I have very grave doubts as to whether the courts would uphold the action of an officer on duty during a practice blackout in entering a home or business establishment to extinguish lights if the owner cannot be located.

To Joe M. Cox. Inquiry: May a person who has not reached his twenty-first birthday serve as a policeman in a municipality?

(A.G.) I am of the opinion that a policeman is an officer within the meaning of Article XIV, Section 7 of the Constitution, and as such must be a qualified elector. I am therefore of the opinion that a person under 21 years of age cannot serve as a policeman.

73. Transportation of prisoners.

To Ralph H. Ramsey, Jr. Inquiry: Is a county liable for the costs of conveying prisoners to the State Penitentiary, and what expenses are allowable to the sheriff of the county for such conveyance?

(A.G.) On the basis of Sections 7748(g), 7748(h) and 7719 of Michie's North Carolina Code of 1939 Annotated, it is my opinion that the expense of conveying prisoners to the State Penitentiary is a county obligation. Section 3908 provides that for conveying prisoners to the penitentiary, sheriffs shall be allowed two dollars per day and actual necessary expenses; also one dollar per day and actual necessary expenses for each guard, not to exceed one guard for every three prisoners. . . . In the absence of a special statute applicable to your county, it is my opinion that the provisions of this section would control.

To W. C. Beery. Inquiry: Is a county liable for the cost of returning prisoners from the State Prison to the county to stand trial for an offense committed in the county?

(A.G.) The practice is that the prisoners are returned from the State's Prison for trial, based upon an order of the presiding judge, and that the prisoners are transported from and returned to the State's Prison by the county authorities, at the expense of the county.

M. Health and Welfare Officers.

31. Health laws and regulations.

To Dr. J. C. Knox. Inquiry: May physicians of venereal disease clinics of the State Board of Health require minors who are infected with venereal diseases to submit to treatment without the consent of their parents or guardians?

(A.G.) C. S. 7193 and 9195 provide a procedure for requiring all persons who are infected with venereal disease to submit to treatment, with or without their consent. No exception is made in case of a minor and there is no requirement for the consent of his parent or guardian to be given. The danger that the infection will be spread is as great where the person infected is a minor as where he is an adult. The consent of the parent or guardian of a minor is unnecessary and a phy-

sician who administers treatment to such a person without the consent of the parent or guardian would not be subjected to any civil liability on account of such treatment when he acts pursuant to the instructions of an officer or agent of the State Board of Health.

To J. Frank Wooten. Inquiry: What are the rights of a person who is infected with a venereal disease with respect to giving bond and thereby procuring his release from custody or quarantine?

(A.G.) C. S. 7193 authorizes health officers to examine persons reasonably suspected of being infected with venereal disease and to detain such persons until the results of such examination are ascertained. These officers are further authorized to require such persons to report for treatment, and, when necessary to protect the public health, to isolate or quarantine them. This detention or quarantine does not constitute a holding of the person because of a violation of the criminal law; it is purely a matter of health. Therefore, the provisions of our law allowing bail or bond to be given in criminal cases are not applicable to persons being detained by reason of the above statute. There is no provision made for giving bond in such case, unless C. S. 7194 may be construed as such. It is my opinion that the right to be released on bond applies only to prisoners and not to any citizen or individual who has been found to be infected with a venereal disease but who has violated no provision of the criminal law, and therefore, has not been imprisoned. I am of the opinion that since a violation of the criminal law is not a prerequisite to the examination of individuals under C. S. 7193, no warrant for their examination is necessary.

S. Mayors and Aldermen.
I. Qualifications and residence.

To Proctor and Dameron. Inquiry: Does a town alderman who was a resident and qualified voter of the town at the time of his election, vacate his office when he moves his residence to a point a short distance outside the corporate limits of the town?

(A.G.) Where a town alderman moves his residence outside the corporate limits of the city with the intention of remaining outside permanently, such removal would have the effect of vacating his office as Town Alderman.

T. Justices of the Peace.
10. Jurisdiction.

To S. W. Brown. Inquiry: Does a magistrate have jurisdiction to dispose of a case in which a defendant is willing to plead guilty to a charge of speeding on a State highway?

(A.G.) Speeding is a violation of C. S. 2621(288). Subsection (c) of this section provides that a violation of that section shall be punished as provided in C. S. 2621(326). This section provides a penalty of imprisonment in a county or municipal jail for a period of not more than six months or by a fine of not more than $500, or by both such fine and imprisonment. It can thus be seen that a Justice of the Peace does not have jurisdiction of a violation of C. S. 2621(288).

To Dr. J. W. P. Smithwick.

(A.G.) A person elected in a municipal general election may qualify for office even though he did not file as a candidate for such office.

XII. STATE TAXES.
S. Sales Tax.
6. Exemptions.

To John A. Wilkins. Inquiry: Is a church required to pay sales tax on its purchases, which include such items as coal, oil, and printing?

(A.G.) The 1943 General Assembly repealed Section 406, subsection (p) of the Revenue Act of 1939, as amended, and enacted in lieu thereof the following: "Sales of tangible personal property to hospitals, not operated for profit, churches, orphanages, and other charitable or religious institutions or organizations not operated for profit, and educational institutions principally supported by the State of North Carolina, when such tangible personal property is purchased for use in carrying on the work of such institutions or organizations." This amendment broadens the exemption to include sales of all tangible personal property to churches when such tangible property is purchased for use in carrying on the work of such churches.

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UNEMPLOYMENT

(Continued from page 34)

the amount contributed by the employee to the partial dependents bears to the annual earnings of the deceased at the time of his injury. C. S. 8081(uu) (Sec. 40 of the Act) provides that if there are no dependents, the commuted value of the amount provided for whole dependents under C. S. 8081(tt) shall be paid to the next of kin. "Next of kin" is defined as the father, mother, widow, child, brother or sister. Under the two sections mentioned, if the deceased, unmarried, had been contributing a part of his earnings to the support of his parents who were only partially dependent upon him, they would receive less benefits after his death than they would if they had been in no degree dependent upon him, for in the latter case they might take as next of kin and receive the commuted value of the benefits provided for those wholly dependent. This situation is remedied by Ch. 163 (H.B. 164) which amends C. S. 8081(tt) to permit partial dependents, when they are all next of kin, to receive benefits as such rather than as partial dependents.

Subrogation—Right of Action of Employer.—C. S. 8081(r) (Sec. 11 of the Act) is amended by Ch. 622 (S.B. 321) to give the employer or his insurance carrier the exclusive right to commence an action against a third person tort-feasor after the Commission has issued an award or a written admission of liability has been filed by the employer or his carrier. As in the past, the action may be maintained in the name of the injured employee or his personal representative; and if the employer or his carrier does not take advantage of the right to institute suit within six months after the injury or death, the employee or his personal representative may bring the action in his own name. The section is further amended to provide that the amount of attorney's fees paid out in the distribution of the recovery against a third person shall be prorated to the employer and employee on the basis of their respective interest in the recovery. Formerly, attorney's fees were deducted before distribution of the proceeds of suit, with the result that if there was a sufficient excess after reimbursing the employer for the amount of the award paid by him, the whole amount of the attorney's fees came out of the share of the employee.

Child Labor—Working in Places Selling Beer.—The second sentence of Sec. 7 of Ch. 317, P. L. 1937 (the Child Labor Act), reads: "Nor shall any minor under 18 be employed or permitted to work in, about or in connection with any establishment where alcoholic beverages are distilled, rectified, compounded, brewed, manufactured, bottled, sold or dispensed, or in a pool or billiard room." To this sentence Ch. 670 (H.B. 680) adds a proviso: "that this section shall not prohibit a minor under the age of eighteen years from working in any establishment where beer is sold and not consumed on the premises, and to which has been issued only an 'off premises' license to sell beer."

Maximum Hours Increase.—Ch. 59 (H.B. 97) amends Ch. 409, P. L. 1937 (C.S. 6564(1) et seq.) to raise the maximum work hours per week under the State law from 55 to 56, for male employees. The amendment further provides for time and one-half of regular pay for work in excess of 55 hours per week. The prohibition against working for more than twelve days in any period of fourteen consecutive days was left unchanged. It is difficult to understand why this is so, as the amendment was apparently enacted for the purpose of allowing a schedule of an 8-hour day and 7-day week.

FOR THE FISCAL YEAR, 1943-1944

The Institute of Government Offers to County, City and Town Officials:

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1. CALENDAR OF DUTIES required by law to be performed on definite dates by county, city and town officials;
2. TAX COLLECTOR'S CALENDAR outlining Schedule B Privilege License Taxes for ready reference;
3. GUIDEBOOK FOR CITY AND COUNTY TAX COLLECTORS, outlining the accounting, bookkeeping and procedural steps in tax collection;
4. LEGISLATIVE SUMMARY OF STATEWIDE AND LOCAL LAWS passed by the General Assembly in 1943;
5. MONTHLY SUMMARY OF ATTORNEY GENERAL'S RULINGS AND SUPREME COURT DECISIONS interpreting the laws passed by the General Assembly and defining the powers and duties of officials in counties, cities and towns;
6. MONTHLY MAGAZINE, POPULAR GOVERNMENT, keeping local officials in constant touch with new developments in government and its administration arising out of the initiative and resourcefulness of officials in city halls and county courthouses throughout the State as new problems arise under the sudden shifts of total war;
7. CLEARING HOUSE OF INFORMATION on governmental problems arising in the offices of officials in city halls and county courthouses throughout the state.

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Put The Institute of Government in Your Budget for the Fiscal Year 1943-1944