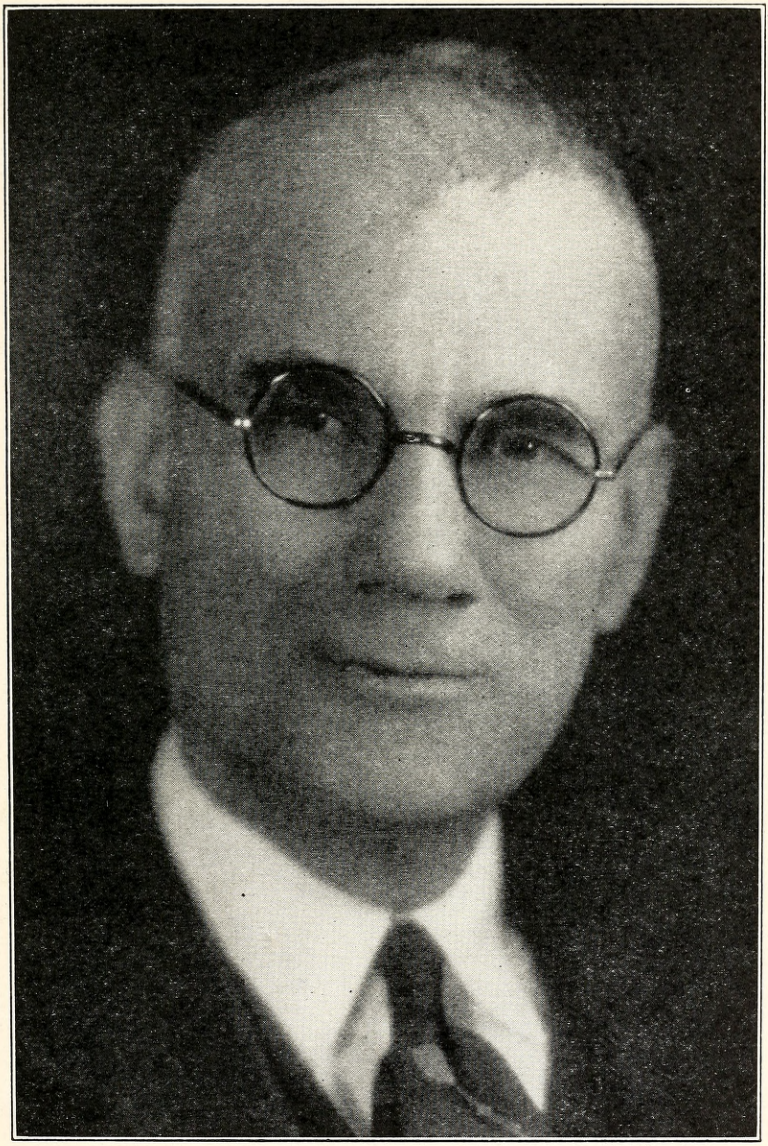


HON. DENNIS G. BRUMMITT
Attorney General, January, 1925-1935

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

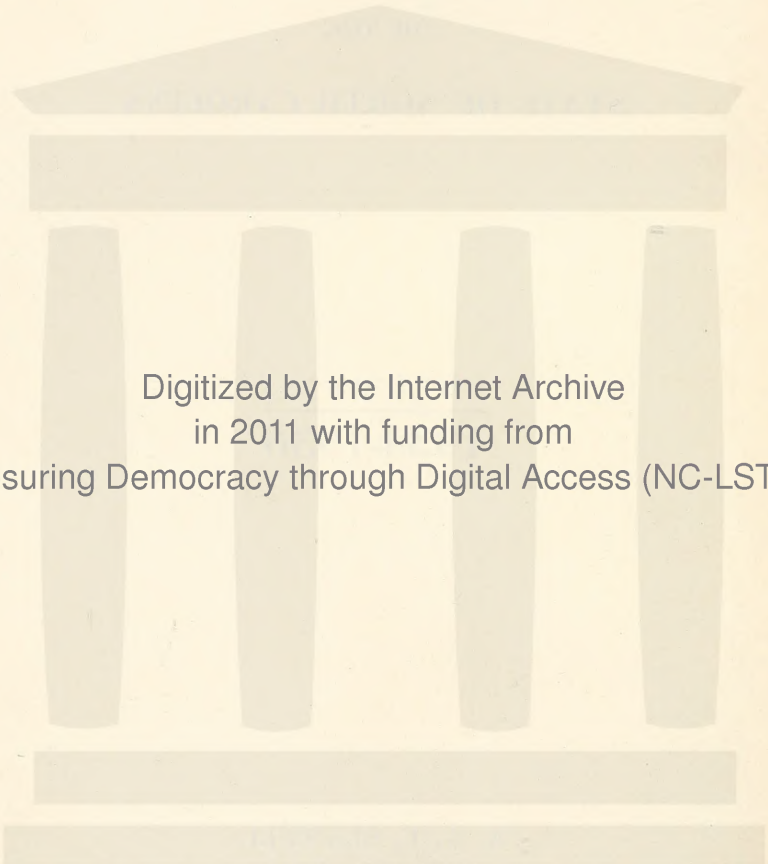
STATE OF NORTH CAROLINA

VOLUME 23

1934-1936

A. A. F. SEAWELL
ATTORNEY GENERAL

HARRY McMULLAN
T. W. BRUTON
ASSISTANT ATTORNEYS GENERAL



LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

	Term of Office
Avery, Waightsill	1777-1779
Iredell, James	1779-1782
Moore, Alfred	1782-1790
Haywood, J. John	1791-1794
Baker, Blake	1794-1803
Seawell, Henry	1803-1808
Fitts, Oliver	1808-1810
Miller, William	1810-1810
Burton, Hutchins G.	1810-1816
Drew, William	1816-1825
Taylor, James F.	1825-1828
Jones, Robert H.	1828-1828
Saunders, Romulus M.	1828-1834
Daniel, John R. J.	1834-1840
McQueen, Hugh	1840-1842
Whitaker, Spier	1842-1846
Stanly, Edward	1846-1848
Moore, Bartholomew F.	1848-1851
Eaton, William	1851-1852
Ransom, Matt W.	1852-1855
Batchelor, Joseph B.	1855-1856
Bailey, William H.	1856-1856
Jenkins, William A.	1856-1862
Rogers, Sion H.	1862-1868
Coleman, William M.	1868-1869
Olds, Lewis P.	1869-1870
Shipp, William M.	1870-1872
Hargrove, Tazewell L.	1872-1876
Kenan, Thomas S.	1876-1884
Davidson, Theodore F.	1884-1892
Osborne, Frank I.	1892-1896
Walser, Zeb V.	1896-1900
Douglas, Robert D.	1900-1901
Gilmer, Robert D.	1901-1908
Bickett, T. W.	1909-1916
Manning, James S.	1917-1925
Brummitt, Dennis G.	1925-1935
Seawell, A. A. F.	1935-

LETTER OF TRANSMITTAL

15 November, 1936.

To His Excellency,
J. C. B. EHRINGHAUS, *Governor,*
Raleigh, North Carolina.

DEAR SIR:

In compliance with statutes relating thereto, I herewith transmit the report of this Department for the biennium 1934-1936.

Yours very truly,

A. A. F. SEAWELL,
Attorney General.

S:T

EXHIBIT I

Civil Actions Disposed of or Pending in the Courts of North Carolina and in Other Courts

Pending in Superior Courts of North Carolina

Texas Company v. Polk County Board of Education.
J. A. Hall v. Maxwell, Commissioner of Revenue, et al.
M. P. Clark v. State Hospital.
Utilities Commissioner v. Blackburn.
Utilities Commissioner v. Eggers.
Belk Brothers Company v. Commissioner of Revenue.
State ex rel. Maxwell, Commissioner of Revenue, v. H. M. Burden, et al.
State ex rel. Maxwell, Commissioner of Revenue, v. H. J. Winfield.
D. R. Graham v. State Auditor, et al.
Jake Watson v. John M. Brewer, et al.
State ex rel. Union County, et al., v. Rodman-Heath Cotton Mills.
J. C. Allen v. Commissioner of Banks.
Sutton Motor Company v. Commissioner of Revenue.
Strader v. Commissioner of Revenue.
McCanless Motor Company v. Commissioner of Revenue.
City of Charlotte v. Coddington, Inc., et al.
Atlantic Joint Stock Land Bank v. Floyd.
Lorenza Williams v. Camp Manufacturing Company (compensation case).
Union National Bank, Admr. Squires Estate, v. Commissioner of Revenue.
State ex rel. State Hospital v. Lucy M. Anders, Admrx.

Disposed of in Superior Courts of North Carolina

Mrs. Sallie D. Holderfield v. George Ross Pou, et al.
T. A. Clark, Admr., v. Medford, Admr.
Commissioner of Revenue v. L. D. Melvin.

Commissioner of Revenue v. E. G. Richardson.

Ross Federal Service, Inc., v. Commissioner of Revenue.

Allison, et al., v. Sharpe, et al.

Distributing Corporation v. Commissioner of Revenue (two cases).

City of Greensboro v. James T. Enoch, et ux.

City of Greensboro v. John Sharp, et ux.

County of Harnett v. Ellis Goldstein, et al.

County of Harnett v. W. G. Douglas, et al.

County of Harnett v. Wash Bryant, et al.

State ex rel. Maxwell, Commissioner of Revenue, v. Mrs. Margaret H. Tull.

Price Mercantile Company v. Commissioner of Revenue.

Genelia Juanita Bridges v. Superintendent of Welfare.

State ex rel. Utilities Commissioner v. Southern Bell Telephone & Telegraph Company.

In re: Alpheus A. McCullen.

State v. Little, Rape, et al.

Peck Manufacturing Company v. Purdy.

Bernhard, et al., v. Secretary of State, et al.

State v. E. J. Godwin.

State v. Sutton.

Southeastern Realty Company v. Commissioner of Revenue.

Virginia-Carolina Joint Stock Land Bank v. State Board of Assessments.

Norfolk & Western Railway Company v. Commissioner of Revenue (three cases).

Stedman, Treasurer, v. Consolidated Indemnity Company.

University of North Carolina v. John D. Blake, et al.

Winston-Salem & Southbound Railroad v. Commissioner of Revenue.

Southeastern Express Company v. Commissioner of Revenue (two cases).

Rucker Bonded Warehouse Company v. Commissioner of Revenue.

Ann Cannon Reynolds vs. Zachary Smith Reynolds, et al.

Gaither White v. State School Commission.

Milton Harrell v. State School Commission.

Utilities Commissioner v. Plemmons.

Utilities Commissioner v. Hoke Smith.

Utilities Commissioner v. Rhea.

State ex rel. State Hospital v. Stevens, Guardian.

State ex rel. State Hospital v. Maggie Stewart, et al.

State ex rel. State Hospital v. Security National Bank, Guardian (Bridges)

State ex rel. State Hospital v. Security National Bank, Guardian (Betts).

State ex rel. State Hospital v. Carrie L. McLean, Admx.

State ex rel. State Hospital v. Thos. C. Hoyle, Guardian.

State ex rel. State Hospital v. E. F. White, Jr., Admr.

State ex rel. State Hospital v. Bertha M. Lee, Executrix.

State ex rel. State Hospital v. Fidelity Bank, Guardian.

State ex rel. State Hospital v. G. W. Watts.

State ex rel. State Hospital v. C. D. Wooten, Admr.

Pending in Supreme Court of North Carolina

Atlantic Ice & Coal Company v. Maxwell, Commissioner of Revenue.

Disposed of in Supreme Court of North Carolina

Atlantic Coast Line Railroad v. Maxwell, Commissioner of Revenue, 207 N. C. 746.

State ex rel. Maxwell v. Norfolk & Western Railroad, 208 N. C. 397.

State ex rel. Attorney General v. Harry Gorson, 209 N. C. 320.

State ex rel. Utilities Commissioner v. Southern Bell Telephone & Telegraph Company (appeal withdrawn May 21, 1936).

Stagg, et al., v. Nissen Company, 208 N. C. 285.

Reynolds, et al., v. Reynolds, 208 N. C. 578.

Allison, et al., v. Sharpe, et al., 209 N. C. 477.

Vinson v. Mrs. O'Berry, et al., 209 N. C. 287, 289.

State & Park Commission v. Surety Companies, 207 N. C. 725.

Distributing Corporation v. Maxwell, Commissioner of Revenue, 209 N. C. 47.

Powell v. Maxwell, Commissioner of Revenue, 210 N. C. 211.

Braak v. Hobbs, Commissioner, 210 N. C. 379.

In re: Trust Company v. Executors of George T. Brown, 210 N. C. 385.

State ex rel. State Hospital v. Security National Bank, Guardian, 207 N. C. 697.

State ex rel. Attorney General v. Winburn (terminated by disbarment).

Pending before Industrial Commission

Sawyer v. State School Commission.
MacDonald Swinson v. State School Commisison.
Shope v. Dept. Conservation & Development.

Disposed of before Industrial Commission

Ruff v. State School Commission.
White v. State School Commission.
Mercer v. State School Commission.
Harley Rhodes v. State School Commission.
Ayers v. Adjutant General.

Pending in General County Court

H. J. Rhodes v. Commissioner of Banks.

Pending in U. S. Circuit Court

U. S. of America v. Commissioner of Revenue.
Lucas v. City of Charlotte, et al.

Disposed of in U. S. District Court

S. C. National Bank of Charleston v. Ozark Mills.

Pending in Probate Court, Commonwealth of Massachusetts

In re: Eva Statler Davidson Estate.

Disposed of in U. S. Supreme Court

Security National Bank, Guardian, v. State Hospital, 295 U. S. 761; 79 L. ed. 1704 (memo).

Norfolk & Western Railroad v. Maxwell, Commissioner, 56 S. C. R. 625.

J. B. Carden v. State of North Carolina, 56 S. C. R. 960 (memo).

Gorson v. State of North Carolina, 56 S. C. R. 752 (memo).

Pending in U. S. District Court

American Telephone & Telegraph Company v. Maxwell, Commissioner of Revenue.

Shell Eastern Petroleum Products, Inc., v. Commissioner of Revenue.

J. M. Womble v. A. J. Maxwell, Commissioner of Revenue.

Disposed of in U. S. District Court

Central-Hanover Bank & Trust Company v. Norfolk Southern Railroad Company.

In re: James Logan, Receiver, First National Bank.

Smither, et al., v. State Warehouse Superintendent.

A. C. Case v. Maxwell, Commissioner of Revenue.

Disposed of in Supreme Court of New York State

Loftin, Receiver, v. Kenan, et al., 280 N. Y. S. 28.

Disposed of in Circuit Court of Baltimore (Md.)

Safe Deposit & Trust Company v. J. Edward Johnston. et al.

EXHIBIT II

LIST OF CRIMINAL CASES ARGUED BY THE ATTORNEY GENERAL AND HIS ASSISTANTS BEFORE THE SUPREME COURT: FALL TERM, 1934; SPRING TERM, 1935; FALL TERM, 1935; SPRING TERM, 1936.

FALL TERM, 1934

State v. Baxter, from Chatham; murder, first degree; defendant appealed; judgment arrested.

State v. Beard, from Burke; murder, first degree; defendant appealed; no error.

State v. Blanton, from Guilford; lottery; defendant appealed; no error.

State v. Branch, et al., from Cabarrus; abandonment, etc.; defendants appealed; error.

State v. Brown, from McDowell; murder, first degree; defendant appealed; new trial.

State v. Carden, from Durham; murder, first degree; defendant appealed; new trial.

State v. Clemmons, from Pitt; murder, second degree; defendant appealed; new trial.

State v. Cooke, from Cabarrus; non-support; defendant appealed; new trial.

State v. Corpening, from Forsyth; resisting officer; defendant appealed; affirmed.

State v. Deal, from Robeson; murder, first degree; defendant appealed; no error.

State v. Glover, et al., from Cumberland; murder, first degree; defendants appealed; no error.

State v. Gore, from New Hanover; accessory to murder; defendant appealed; no error.

State v. Green, et al., from Alexander; conspiracy to rob and murder, first degree; defendants appealed; no error.

State v. Gulledge, from Mecklenburg; violating municipal ordinance; defendant appealed; venire de novo.

State v. Henderson, from Randolph; abandonment, etc.; defendant appealed; affirmed.

State v. Hendricks, from Forsyth; breaking, entering, etc.; defendant appealed; no error.

State v. Hooker, from Forsyth; murder, first degree; defendant appealed; appeal dismissed.

State v. Houpe, from Iredell; carnal knowledge; defendant appealed; no error.

State v. Johnson, et al., from Sampson; murder, first degree; defendants appealed; no error.

State v. Jordan, from Richmond; larceny; defendant appealed; new trial.

State v. Martin, et al., from Forsyth; contempt proceeding; defendants appealed; error.

State v. Mansfield, from Carteret; non-support; defendant appealed; no error.

State v. Mickey, from Guilford; conspiracy to commit murder; defendant appealed; new trial.

State v. Moses, from Wayne; house burning; defendant appealed; no error.

State v. Mozingo, from Lenoir; accessory to murder; defendant appealed; no error.

McLamb, et al., from Scotland; conspiracy to bribe; defendant appealed; no error.

State v. Newton, et al., from Greene; violating prohibition and motor vehicle laws; defendants appealed; no error.

State v. Ray, from Orange; embezzlement; defendant appealed; new trial.

State v. Rooks, from Craven; appeal from order remanding case to Recorder's Court; defendant appealed; appeal dismissed.

State v. Stamey and Tull, from Buncombe; arson; defendants appealed; no error.

State v. Swan, from Pamlico; receiving deposits, knowing bank insolvent; defendant appealed; affirmed.

State v. Tuttle, from Stokes; seduction; defendant appealed; no error.

State v. Waggoner, from Catawba; aiding and abetting prostitution; defendant appealed; no error.

State v. Wilson, from Durham; A. D. W.; defendant appealed; no error.

DOCKETED AND DISMISSED ON MOTION

State v. Lonnie Upchurch, from Wake.
State v. Joe Lassiter, from Moore.
State v. Lackey, from Richmond.
State v. Frederick, from Buncombe.

SPRING TERM, 1935

State v. Anderson, et al., from Alamance; conspiracy to injure building; defendants appealed; appeal dismissed as to Kinney; Overman, new trial; all others, no error.

State v. Beasley, et al., from Johnston; kidnapping; defendants appealed; reversed in part, new trial in part.

State v. Caudle, from Stanly; non-support; defendant appealed; affirmed.

State v. Dills, from Guilford; murder, first degree; defendant appealed; new trial.

State v. Downing, et al., from Rockingham; murder, first degree; defendants appealed; new trial.

State v. Duncan, from Harnett; murder, second degree; defendant appealed; no error.

State v. Dunn, from Richmond; accessory after the fact; defendant appealed; no error.

State v. Lagerholm, from Mecklenburg; murder, second degree; defendant appealed; new trial.

State v. Lancaster, from Wayne; A. D. W.; defendant appealed; new trial.

State v. Lassiter, from Moore; violating prohibition law; defendant appealed; venire de novo.

State v. Leonard, from Guilford; manslaughter; defendant appealed; no error.

State v. Marshall, from Burke; manslaughter; defendant appealed; no error.

State v. Morris, from Lee; non-support; state appealed; special verdict; reversed.

State v. Morrison, from Mecklenburg; receiving stolen goods; defendant appealed; new trial.

State v. McDade, from Caldwell; seduction; defendant appealed; reversed.

State v. Pierce, from Bertie; burning barn, etc.; defendant appealed; no error.

State v. Rhodes, from New Hanover; A. D. W.; defendant appealed; error.

State v. Stathos, from Forsyth; receiving stolen goods; defendant appealed; new trial.

State v. Tyson, from Anson; non-support; defendant appealed; error.

State v. Walters, from Orange; violating municipal ordinance; defendant appealed; error.

State v. Williams, from Buncombe; abandonment, etc.; defendant appealed; appeal dismissed.

State v. Williams, from Lenoir; homicide, etc.; defendant appealed; affirmed.

State v. Yates, from Iredell; operating smoke screen device; defendant appealed; reversed.

DOCKETED AND DISMISSED ON MOTION

State v. Booker T. Watson, from Nash.
State v. Lewis Sentell, from Cleveland.
State v. Sidney Etheridge, from Onslow.
State v. Routh, from Montgomery.
State v. Lonnie Upchurch, from Wake.
State v. Taft Williams, from Columbus.
State v. Hugh Lunsford, from Forsyth.
State v. Dortch Waller, from Granville.

FALL TERM, 1935

State v. Allman, from Cabarrus; receiving stolen goods; defendant appealed; no error.

State v. Benton, from Columbus; involuntary manslaughter; defendant appealed; reversed.

State v. Blades, et al., from Pamlico; violating banking law; defendants appealed; appeal dismissed.

State v. Brockwell, from Wake; "milk bottle" law; defendant appealed; affirmed.

State v. Buffkin, from Columbus; murder, first degree; defendant appealed; no error.

State v. Cagle, from Guilford; manslaughter; defendant appealed; no error.

State v. Camby, from Cleveland; larceny; defendant appealed; error and remanded.

State v. Cain, from Wake; possessing burglary tools; defendant appealed; affirmed.

State v. Carden, from Durham; murder, first degree; defendant appealed; no error.

State v. Cook, from Cabarrus; receiving stolen goods; defendant appealed; no error.

State v. Crump, from Wake; violating prohibition law; defendant appealed; error and remanded.

State v. Davis, from Orange; involuntary manslaugher; defendant appealed; no error.

State v. Dingle, et al., from Forsyth; murder, first degree; defendants appealed; motion to dismiss; remanded.

State v. Gaddy, et al., from Moore; larceny, etc.; defendants appeared; reversed.

State v. Godwin, from Moore; murder, second degree; defendant appealed; no error.

State v. Gosnell, et al., from Madison; murder, first degree; defendants appealed; no error.

State v. Grier, from Forsyth; murder, first degree; defendant appealed; no error.

State v. Hardy, from Pitt; violating prohibition law; defendant appealed; no error.

State v. Henderson, from Wilkes; robbery; defendant appealed; no error.

State v. Hester, from Wake; murder, first degree; defendant appealed; remanded.

State v. Hinson, from Wayne; abandonment, etc.; defendant appealed; no error.

State v. Hill, et al., from Cleveland; receiving stolen goods; defendants appealed; error and remanded.

State v. Huffman, from Guilford; breaking and entering; defendant appealed; no error.

State v. Hughes, et al., from Mitchell; burglary, second degree; defendants appealed; no error.

State v. Jenkins, from Gaston; murder, first degree; defendant appealed; no error.

State v. Jones, et al., from Wake; violating prohibition law; defendants appealed; no error.

State v. Kirkman, from Lenoir; manslaughter; defendant appealed; new trial.

State v. Landin, et al., from Wake; manslaughter; defendants appealed; Landin, no error; Bryant, reversed.

State v. Langley, from Nash; violating prohibition law; defendant appealed; no error.

State v. Lawson, from Martin; manslaughter; defendant appealed; new trial.

State v. Lewis, from Guilford; murder, first degree; defendant appealed; new trial.

State v. Libby, from Guilford; violating prohibition law; defendant appealed; no error.

State v. Mitchell, from Wake; murder, first degree; defendant appealed; new trial.

State v. Moore, from Guilford; abandonment; defendant appealed; new trial.

State v. McLean, from Moore; embezzlement; defendant appealed; no error.

State v. Parker, from Sampson; non-support; state appealed; special verdict; reversed.

State v. Rhinehart, from Jackson; perjury; defendant appealed; new trial.

State v. Shinn, from Cabarrus; murder, second degree; defendant appealed; new trial.

State v. Simms, from Buncombe; unlawful burning; defendant appealed; reversed.

State v. Strickland, from Sampson; incest; defendant appealed; new trial.

State v. Tarlton, from Mecklenburg; non-support; defendant appealed; error.

State v. Watson, et al., from Durham; murder, first degree; defendants appealed; no error.

State v. Waters, from Lenoir; A. D. W.; defendant appealed; no error.

State v. Webb, from Forsyth; reckless driving, etc.; defendant appealed; error and remanded.

State v. Wells, from Forsyth; violating prohibition law; defendant appealed; no error.

State v. White, from Halifax; felonious assault; defendant appealed; reversed.

State v. Whitley, from Cabarrus; receiving stolen goods; defendant appealed; no error.

State v. Williams, from Cabarrus; A. D. W.; defendant appealed; reversed.

DOCKETED AND DISMISSED ON MOTION

State v. Robt. Dunlap, from Buncombe.
State v. Alex. Beasley, from Johnston.
State v. Allen, et al., from Rowan.
State v. Ralph Davis, from Iredell.
State v. John Pressley, from Gaston.
State v. Willie McLeod, from Cumberland.
State v. B. H. Hodgin, from Guilford.
State v. Tom Crotts, from Davidson.
State v. Van Myers, from Forsyth.
State v. William Long, from Alamance.

SPRING TERM, 1936

State v. Alston, from Orange; murder, first degree; defendant appealed; no error.

State v. Bradley, et al., from Forsyth; C. C. W.; defendants appealed; judgment arrested.

State v. Brooks, from Pender; manslaughter; defendant appealed; new trial.

State v. Dills, et al., from Guilford; robbery; defendants appealed; no error.

State v. Edmundson, from Wayne; murder, second degree; defendant appealed; new trial.

State v. Ellis, from New Hanover; violating prohibition law; defendant appealed; new trial.

State v. Ellis, from New Hanover; violating prohibition law; defendant appealed; new trial.

State v. Eubanks, from Jones; manslaughter; defendant appealed; no error.

State v. Gallman, from Forsyth; murder, first degree; defendant appealed; no error.

State v. Green, from Guilford; abandonment, etc.; defendant appealed; no error.

State v. Hampton, from Rockingham; arson-attempt; defendant appealed; no error.

State v. Harris, from Edgecombe; murder, second degree; defendant appealed: no error.

State v. Hatcher, from Mecklenburg; violating prohibition law; defendant appealed; new trial.

State v. Hodgin, from Forsyth; murder, first degree; defendant appealed; no error.

State v. Honeycutt, et al., from Pitt; receiving stolen goods; defendants appealed; no error.

State v. Horne, from Chowan; murder, first degree; defendant appealed; no error.

State v. Humphries, from Cumberland; lottery; defendant appealed; no error.

State v. Huskins, from Mitchell; larceny; defendant appealed; new trial.

State v. Ice & Coal Co., from Forsyth; violating monopolies and trusts act; defendant appealed; case not decided.

State v. Koutro, from Gaston; manslaughter; defendant appealed; no error.

State v. Lowe, from Madison; violating prohibition law; defendant appealed; no error.

State v. Morrison, from Robeson; doing business without license; state appealed; special verdict; no error.

State v. Murchison, from Harnett; reckless driving; defendant appealed; no error.

State v. McKnight, from Mecklenburg; violating prohibition law; defendant appealed; error.

State v. Oakley, from Rockingham; burglary, first degree; defendant appealed; new trial.

State v. Pace, from New Hanover; embezzlement; defendant appealed; no error.

State v. Perry, from Hertford; murder, first degree; defendant appealed; new trial.

State v. Robertson, from Rockingham; burglary, second degree; defendant appealed; no error.

State v. Shelton, et al., from Madison; larceny; defendants appealed; appeal dismissed.

State v. Shoaf, et al., from Davie; A. D. W.; defendants appealed; no error.

State v. Smith, et al., from Halifax; conspiracy; defendants appealed; modified and affirmed.

State v. Spencer, from Randolph; manslaughter; defendant appealed; new trial.

State v. Spillman, from Forsyth; non-support; defendant appealed; no error.

Stamey, et al., from Macon; murder, second degree; defendants appealed; petition dismissed.

State v. Stewart, et al., from Guilford; manslaughter; defendants appealed; new trial.

State v. Talley, from Chatham; abandonment, etc.; defendant appealed; appeal dismissed.

State v. Tate, from New Hanover; violating prohibition law; defendant appealed; no error.

State v. Webb, from Forsyth; violating motor vehicle law; defendant appealed; no error.

State v. Webber, from Guilford; manslaughter; defendant appealed; new trial.

State v. Williams, from Guilford; violating drug law; defendant appealed; reversed.

Docketed and Dismissed on Motion

State v. Godwin, from Harnett.
State v. Whitley, from Wake.
State v. Murphy, from Wake.
State v. Medlin, from Moore.
State v. Goff, F., from New Hanover
State v. Goff, T., from New Hanover.
State v. Lowe, from Guilford.
State v. Bruce, from Guilford
State v. Kinyon, from Granville.

SUMMARY

Affirmed on defendant's appeal	75
Affirmed on State's appeal	1
New trial or reversed on defendant's appeal	43
New trial or reversed on State's appeal	2
Remanded on defendant's appeal	13
Modified and affirmed	1
Continued to next term	1
Appeal dismissed	38
Judgment arrested	2
Venire de novo	2
Total	178

CRIMINAL STATISTICS

STATEMENT A

THE FOLLOWING STATEMENT SHOWS THE CRIMINAL CASES DISPOSED OF IN THE SUPERIOR COURTS DURING THE FALL TERM, 1934, SPRING TERM, 1935

COUNTIES	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total as to Counties
Alamance	49	21	------	66	4	70	------	------	------	70
Alexander	112	10	------	115	7	84	15	23	------	122
Alleghany	31	3	------	34	------	32	2	------	------	34
Anson	36	33	------	69	------	42	13	14	------	69
Ashe	51	------	------	47	4	47	4	------	------	51
Avery	130	13	------	130	13	96	12	35	------	143
Beaufort	59	52	------	110	1	81	13	17	------	111
Bertie	11	36	------	47	------	29	10	8	------	47
Bladen	10	21	------	28	3	22	1	8	------	31
Brunswick	37	19	------	52	4	35	14	7	------	56
Buncombe	252	134	------	339	47	347	38	1	------	386
Burke	116	15	------	122	9	119	12	------	------	131
Cabarrus	184	71	------	240	15	185	24	46	------	255
Caldwell	57	15	------	69	3	45	15	12	------	72
Camden	1	3	------	4	------	4	------	------	------	4
Carteret	22	7	------	26	3	29	------	------	------	29
Caswell	96	64	------	154	6	133	9	17	1	160
Catawba*	52	13	------	57	8	52	6	8	------	66
Chatham	26	13	------	39	------	33	6	------	------	39
Cherokee	119	9	------	121	7	119	9	------	------	128
Chowan	4	6	------	10	------	8	2	------	------	10
Clay	49	4	------	51	2	34	------	19	------	53
Cleveland	80	43	------	119	4	89	9	24	1	123
Columbus	125	63	------	174	14	119	20	48	1	188
Craven	80	82	------	155	7	109	18	35	------	162
Cumberland	82	94	2	172	6	129	4	45	------	178
Currituck	1	1	------	2	------	1	1	------	------	2
Dare	11	1	------	12	------	10	2	------	------	12
Davidson	164	36	------	193	7	152	26	20	2	200
Davie	55	18	------	68	5	56	5	12	------	73
Duplin	59	46	------	101	4	64	12	29	------	105
Durham	160	236	------	357	39	274	55	65	2	396
Edgecombe	49	87	------	133	3	94	20	22	------	136
Forsyth	405	383	------	726	62	652	135	------	1	788
Franklin	20	14	------	33	1	30	2	2	------	34
Gaston	252	71	------	311	12	250	65	8	------	323
Gates	5	1	------	6	------	6	------	------	------	6
Graham	120	------	------	116	4	59	28	33	------	120
Granville	29	28	------	56	1	42	8	7	------	57
Greene	31	43	------	68	6	46	19	9	------	74
Guilford	341	192	------	494	39	417	66	46	4	533
Halifax	98	81	------	171	8	121	29	27	2	179
Harnett	93	69	------	155	7	103	29	30	------	162
Haywood	161	25	------	167	19	84	22	79	1	186
Henderson	85	35	------	102	18	73	18	29	------	120
Hertford	47	61	------	105	3	77	12	19	------	108
Hoke	13	16	3	31	1	22	5	5	------	32
Hyde	14	26	------	40	------	33	1	6	------	40
Iredell	135	56	------	184	7	145	16	30	------	191
Jackson	197	15	2	195	19	164	10	40	------	214

STATEMENT A—Continued

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total as to Counties
Johnston	164	44	------	188	20	125	46	35	2	208
Jones	20	48	------	63	5	47	10	11	------	68
Lee	17	12	------	29	------	25	1	2	1	29
Lenoir	44	70	------	103	11	73	23	18	------	114
Lincoln	30	14	------	43	1	35	6	3	------	44
Macon	89	10	------	96	3	58	12	29	------	99
Madison	142	3	------	137	8	124	20	------	1	145
Martin	25	48	------	71	2	49	14	10	------	73
McDowell	65	14	------	77	2	54	13	10	2	79
Mecklenburg	316	309	------	566	59	425	125	72	3	625
Mitchell	97	------	------	95	2	81	4	12	------	97
Montgomery*	77	56	------	129	4	36	5	93	------	134
Moore	20	50	------	65	5	57	5	8	------	70
Nash	117	86	------	194	9	126	20	55	2	203
New Hanover	115	140	------	243	12	182	32	39	2	255
Northampton	46	115	------	156	5	99	39	23	------	161
Onslow	110	53	------	153	10	102	10	50	1	163
Orange	59	50	------	104	5	79	7	22	1	109
Pamlico	10	7	------	15	2	11	3	3	------	17
Pasquotank	27	30	------	56	1	37	11	9	------	57
Pender	14	17	------	28	3	21	6	4	------	31
Perquimans	12	13	------	22	3	16	1	8	------	25
Person	19	13	1	33	------	32	1	------	------	33
Pitt	69	109	------	162	16	110	18	50	------	178
Polk	61	51	------	98	14	82	21	9	------	112
Randolph	135	42	------	175	2	114	11	52	------	177
Richmond	166	78	------	239	5	195	19	28	2	244
Robeson	170	143	130	418	25	230	46	167	------	443
Rockingham	86	44	------	128	2	85	19	26	------	130
Rowan	91	50	------	135	6	100	8	32	1	141
Rutherford	112	59	------	163	8	144	10	17	------	171
Sampson	52	35	3	88	2	63	12	15	------	90
Scotland	13	20	5	38	------	27	10	1	------	38
Stanly	28	18	------	44	2	36	6	4	------	46
Stokes	119	29	------	144	4	116	8	24	------	148
Surry	164	17	------	171	10	140	29	12	------	181
Swain	138	3	22	153	10	107	18	38	------	163
Transylvania	115	14	------	120	9	92	4	33	------	129
Tynell	16	15	------	31	------	22	8	1	------	31
Union	25	42	------	65	2	47	14	6	------	67
Vance	48	39	------	84	3	70	16	1	------	87
Wake	237	293	------	495	35	367	72	90	1	530
Warren	24	29	------	47	6	32	17	4	------	53
Washington	15	13	------	27	1	15	8	5	------	28
Watauga	16	3	------	19	------	19	------	------	------	19
Wayne	65	129	------	185	9	106	24	64	------	194
Wilkes	463	36	------	447	52	232	45	218	4	499
Wilson	98	174	------	249	23	126	42	102	2	272
Yadkin	93	17	------	101	9	61	18	31	------	110
Yancey	103	4	------	99	8	61	9	37	------	107
Totals*	8,773	5,093	168	13,167	867	9,760	1,768	2,468	40	14,036

*1 Corporation

STATEMENT B

THE FOLLOWING STATEMENT SHOWS THE OFFENSES WITH WHICH DEFENDANTS WERE CHARGED IN THE SUPERIOR COURTS OF THE STATE DURING THE FALL TERM, 1934 AND SPRING TERM, 1935

COUNTIES	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Buggery	Burglary—1st Degree	Burglary—2nd Degree
Alamance							1	2	1								1
Alexander						3	3	12	1	3			1				2
Alleghany						2		5									
Anson					4	1	2	4	1	2			5				
Ashe							2	8									
Avery	2			11		4	2	6					1				
Beaufort	3				1	10		5		1		2	21				
Bertie				5		1		11	4	1	4		7				1
Bladen								9									
Brunswick						4		2	1	2		1	2				
Buncombe	5				2	5	6	39	3	8		1			2		
Burke	2					6	8	12					5				
Cabarrus	6					6	3	47				2	20		1		
Caldwell	2					1	4	10									
Camden						1											
Carteret						4		3									
Caswell						10		31									
Catawba		3	1			1		12		1		2	9				
Chatham			1					2				1	3				
Cherokee				11		3	1	8		2			3				

Chowan													2					
Clay	2			2				10										
Cleveland						4		11	2	1		1	27					1
Columbus	3	1				6	3	24	10			2	13					
Craven	4						1	21	3			1	32					
Cumberland						29	3	3		2		1	38					
Currituck																		
Dare						1		1				1						
Davidson					1	6	6	6	1			1	24					
Davie	1			1		2	2	10					5		1			
Duplin						2		14	4	1	5							
Durham						4		32	3				10					1
Edgecombe	1				1	1	1	13	1									
Forsyth	5			1		6	20	56	4	1		1	4			1		3
Franklin	1			1	1	1	1	5		1								
Gaston	5			1	4	8	5	27	1	3		2	35					
Gates													1					
Graham	3	2		4				19					6					
Granville	1				1			5	2									
Greene						3	2	12	4	1			3					
Guilford	5			4		9	17	28	8	3		2	107		1			2
Halifax		5				16	2	16	1			1	26	1	1			
Harnett				1	1	5	3	13	6	2		4			2			
Haywood	4	1		3		8		30		1		2	3					1
Henderson	1		1		2	4	1	14				4	33					
Hertford	1			2		8	3	7	1				1					
Hoke								4					4					
Hyde							2	20					1					
Iredell		1		2		1	3	8	4	8			14					3
Jackson	1	1		20		3	1	12		1		1						

STATEMENT B—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Buggery	Burglary—1st Degree	Burglary—2nd Degree
Johnston	8	9		4		8	5	14		1		2					
Jones	1					1		16					6				
Lee						3							6				
Lenoir	3				1	3		6	1				8				
Lincoln	1					2	1	7					3				
Macon	2			3		3	3	9		1			4				
Madison	3				5	5	1	17					1		1		
Martin	2					1	2	7	1				4				
McDowell	2						1	4		1			19				
Mecklenburg	4					14	11	56	6	1			11		2		3
Mitchell	4					3		10					6				
Montgomery	2			5	1	16	1	14				1					1
Moore							1	15					14				2
Nash	2	2		2		3	5	18	1								
New Hanover	2	1			1	6	3	33	2	2			1				2
Northampton						10	3	34	2				12				
Onslow	2					2	8	16					15				1
Orange								16				1	1			1	
Pamlico	1					1		1		1	1						
Pasquotank						1		4					9				1

Pender						2		1				2	2				
Perquimans								2					1				3
Person				1		5	1						3				
Pitt					2	2	4	16		1		3	28				
Polk	1			12	1	5		8					13				
Randolph	3					16	3	1		1			10				
Richmond	3	6				2	5	15			5	4	62				18
Robeson	8	1				14	5	70		1			25				5
Rockingham	2	2		2		3	3	27		1		1	20		1		
Rowan	6					2	3	12	4	2		2	12				1
Rutherford	1				3	17	2	6		1			21				
Sampson	1				1	2		10	1	1			6				1
Scotland						1			2	2			18	2			
Stanly	1					2		5		2			5				
Stokes	4					4	1	34					7				1
Surry	4			2		6	3	20				1					
Swain	5			3	2	28		12									2
Transylvania	2			2		15	2	11					7				
Tyrrell			1			5		4						2			
Union						1			8	1	1		21				
Vance	1	1			2	2		9				1	22				2
Wake	12					1	23	31	26	3					1		8
Warren						1	2	5	2				4				2
Washington								3									
Watauga								3					2				
Wayne	2	2			1	7		6	8	2		1	18				1
Wilkes	8			10		18	4	73	5	2			11		1		
Wilson	1					14	8	32	3				4				
Yadkin	2			1		4		14									
Yancey	2			8		5	1	6					11				
Totals	166	38	4	124	38	455	223	1,382	138	72	16	52	919	5	14	2	69

STATEMENT B—Continued

Counties	Burning Other than Arson	C. C. W.	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery
Alamance				8													1
Alexander		2								2			3				4
Alleghany		2						1			10		2				
Anson					1		1			1	2		1				1
Ashe		3				2		3			1					2	
Avery		3						4		4	1		1			1	
Beaufort																	4
Bertie																	
Bladen		1								1						1	
Brunswick	4	1					1			1						2	2
Buncombe		1				2				2			5				5
Burke		1				4		1								2	1
Cabarrus		5											1			5	
Caldwell		3											1				4
Camden																	
Carteret						2				1							
Caswell		8								1	2		1			10	1
Catawba													1				
Chatham	1										1		1			3	2
Cherokee		5				2		1								4	

Chowan																		
Clay	2	1						2			2		1					
Cleveland	5					1							1			1	3	
Columbus		3								5				1			1	
Craven		4		1										5		5	1	
Cumberland	2	1														1	1	
Currituck																		
Dare																		
Davidson		2		4		1	1						2			5	5	
Davie		4									2					2	1	
Duplin				2						1	2		2	4		4		
Durham		9		3		6				3	5		13			4	6	
Edgecombe										1	3						2	
Forsyth	2	11			3	1				7	1		6			2	3	
Franklin		2														2		
Gaston		5				1	1	2		2			4			1	1	
Gates																		
Graham		9			4			7		1				2		2	1	
Granville																	1	
Greene		3		1	1								1				1	
Guilford		5								6	3		7			8	21	
Halifax		3					1			1	2	1					6	
Harnett				4			1			2			1				11	
Haywood	3	3						3		4			8				3	
Henderson		2	1				1			1			2			6	3	
Hertford		1						1								2	1	
Hoke		1														1		
Hyde														1		2		
Iredell										2	5		2	1		1	10	
Jackson		11					1	1		2	2		2	4		3		

STATEMENT B—Continued

Counties	Burning Other than Arson	C. C. W.	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery
Johnston	1					1		1		3			1	2			3
Jones		1		1	1			8									
Lee										1			2				
Lenoir		1								1	1		2			1	2
Lincoln																	
Macon		8				2				1							1
Madison		7					1	2		1	1		1			1	
Martin		2								1			2				
McDowell		5											2				4
Mecklenburg		4				5	1			1	2		5			2	5
Mitchell		2									2		2				4
Montgomery		9						1		1		2				6	
Moore																	5
Nash		3								3			2	5			3
New Hanover		3		1						2			3				1
Northampton		9		2				7			1		2				
Onslow		4			2	3	1	8					2			7	
Orange		2					1				4					4	1
Pamlico																	
Pasquotank											1		1				2

Pender																	
Perquimans		1															
Person																4	
Pitt		2		2						4							3
Polk		5				3					1		1	2		2	
Randolph		3			1					1							
Richmond		3								4			6				3
Robeson	2	8			1	4	1			2	3		5			14	
Rockingham		2											1				1
Rowan										3			1		2		
Rutherford		3					1	3		1			1	1		1	
Sampson							1			3			2			2	2
Scotland										1	1						
Stanly		1								1			1				
Stokes		12						1		1	2						
Surry		2											2			2	1
Swain		11			1		1	1					1				
Transylvania		3					2	3					3	1		1	1
Tyrrell		3						1									
Union													2				7
Vance		1								2			1				5
Wake	3	6				3	2			7	1		4	1		1	5
Warren			1							1			1				
Washington		1								2						3	
Watauga																	
Wayne		1				1				10			3			1	3
Wilkes	2	14			1	34	2	4	5	2	3		1	1		7	2
Wilson		7		3		3				1			3				2
Yadkin		3						1								1	
Yancey		6			1											5	
Totals	27	273	2	32	17	81	22	67	5	112	67	3	135	31	2	147	173

STATEMENT B—Continued

Counties	Fornication and Adultery	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway
Alamance		1		20	1	2	21			3			1				
Alexander							9			2	5			2	1		
Alleghany						1									1		
Anson					1		26			3				2	1		
Ashe	2			5		1	7				1		1		1		
Avery	6	6				2	13				3				3	1	
Beaufort							10				6			7	1		
Bertie							4			1				5			
Bladen							9				1			2			
Brunswick	1						10			1	4						
Buncombe				85		2	89			6	2	1		12			
Burke							37			2	3			6	3		
Cabarrus		6					45			3	15			2	2		
Caldwell			1			1	15							7			
Camden							2				1						
Carteret		4				1	11				1			1			
Caswell							14			3	3	4		2	3		
Catawba						1	16	1		1	2	1		1		1	
Chatham				1			13			1				5			
Cherokee	3	11				1	10			2	1			2			

Chowan							2			2	2							
Clay	2						9			1				3				
Cleveland		2					33				3			2				
Columbus	4	7					25	1		3	6			22				
Craven						1	25			3	18		1	4		1		
Cumberland	4						43				5			12	2			
Currituck										1								
Dare							8								1			
Davidson	2				2	1	23			4	13			1	5			
Davie				1			17			1	2			2				
Duplin				12			16		1	4	2			9				
Durham		9		18	1	3	61			16	12	1		12	7	4		
Edgecombe				51			26	1		7	12			4				
Forsyth	9	12		30		5	140	1		14	69	4	2	9	7	6		
Franklin				4			8				1				1			
Gaston	1	12		3	1		54	1		6	7			9	3			
Gates																		
Graham				3		1	17				1			1				1
Granville				10	1		15			3	3		1	1				
Greene	2					1	8			1	3			2				
Guilford	1	11			1	2	100	3		12	13	1	2	15	8			
Halifax	2	3					21			1	2			9	2			
Harnett				33	1		19			1	4			4				
Haywood	12	7		16			24				6			1	1			
Henderson	4						18								1	1		
Hertford				5			24			3	2							
Hoke							6			3								
Hyde							5							1				
Iredell	1	2		3			58			2	2			3	3			
Jackson	8	2	1	1			30			2	4							

STATEMENT B—Continued

Counties	Fornication and Adultery	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway
Johnston	6			11	1	1	61			2	3				1		
Jones	5						4			1	3						
Lee							6			1						1	
Lenoir				1			45			3	6	1		4	1		
Lincoln						2	12				1			1			
Macon						2	12				4			2			
Madison				1		1	18				2		3	3			
Martin				19			11			2	2			5			
McDowell						2	19				6			6			
Mecklenburg	1	8		27		4	114	4		11	30	5	1	21	34		
Mitchell		1					9				1						
Montgomery	2	2		14			10			3	1			4			
Moore			1			3	10				1		1	4			
Nash				34			35			6	14	1	1	9	1		
New Hanover		20		30			38			6	5	1		3	1	2	
Northampton		4			1	1	25	1		5	6			2			
Onslow	5			1		1	13				7		1	3	1	3	
Orange							15			2	7			3	4	2	
Pamlico							4			1				1			
Pasquotank							23			1				1	2		

Pender	2			6			4				1			3			
Perquimans							3			2				1			
Person				1			3				2			1	1		
Pitt						1	55			6	5			8			
Polk	2					2	10			2	2			1			
Randolph		4				1	26			6	1			1	1		
Richmond	1						57			3	4			5			
Robeson	11	1				6	68			10	40			13	2	7	
Rockingham	1			1	1		16			7	4		2	2		2	
Rowan	2					1	34			6	3		2	2			
Rutherford	2	2			1		13	1		2	5			1	1		
Sampson	1						23			6	2			2			
Scotland							6			2				2			
Stanly					1		10			2				3	2		
Stokes							11			2	7			1			
Surry	5			15	1	1	18			1	11		1	3	1		
Swain	4	3					19				10			5			
Transylvania	1					2	16				2	1		2			
Tyrrell	1										1	1					
Union							17			2				3			
Vance						1	1	2		5	6			3			
Wake			1	72	1	1	95	1		8	16			14	2		
Warren	1						19			1	1			3			
Washington							2					1				2	
Watauga							6				1						
Wayne	1			5		1	43			3	4			14		1	
Wilkes	18			4		7	61			4	16			13	4	7	
Wilson		1		13		1	52	2		6	9	1		1			
Yadkin	9					1	13				2			3	2		
Yancey		2				1	13				2	1					1
Totals	145	143	4	556	16	70	2,394	19	1	248	496	25	20	364	118	41	2

STATEMENT B—Continued

Counties	Official Misconduct	Perjury	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Alamance			3					2								2	70
Alexander			54	1	2		5				1		1		1	2	122
Alleghany			6									3				1	34
Anson			2		1	1	1			2						3	69
Ashe			11				1										51
Avery		1	62							2			1		1	2	143
Beaufort		1	26			1	3	1		2	1				1	4	111
Bertie			2										1				47
Bladen			4		2					1							31
Brunswick			5	1				1			1					9	56
Buncombe		1	66		2			24						1	5	4	386
Burke			37													1	131
Cabarrus			68					2		3					1	12	255
Caldwell			18							2			1			2	72
Camden																	4
Carteret			1														29
Caswell			60			2		4								1	160
Catawba	1		3					3		2			2			1	66
Chatham			2										1			1	39
Cherokee			54				1								1	2	128

Chowan			1													1	10
Clay			13			1	2										53
Cleveland		1	9					6		2			1		3	3	123
Columbus		1	31				1	2		2		4	1			6	188
Craven			8					10		3			2		7	1	162
Cumberland			22					6							2	1	178
Currituck			1														2
Dare																	12
Davidson			63	4	2		1	4							4	6	200
Davie			16	2								1					73
Duplin			13	1		1		2				2				1	105
Durham		5	67				3	17				37	2		1	21	396
Edgecombe			8					2					1				136
Forsyth		3	200	1	1		3	28		3		52	4	14	2	31	788
Franklin			4				1										34
Gaston			95				2	3				7			2	9	323
Gates								4					1				6
Graham			24				5			1			2			4	120
Granville		2	8					1								2	57
Greene			12				3	3		1			3			3	74
Guilford		2	64		3		4	17		1			23	1	3	10	533
Halifax			33					9		3		1	3		1	6	179
Harnett		1	18	1		2	1	2		2			3		5	9	162
Haywood		2	35								1					4	186
Henderson		5	11					1		1						2	120
Hertford			44													2	108
Hoke		1	4					3								5	32
Hyde			5			1							1			1	40
Iredell			32	2		1		4		3			1		2	7	191
Jackson		1	90				3			2					2	2	214

STATEMENT B—Continued

Counties	Official Misconduct	Perjury	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Johnston		2	29			2	1	3		6	1	1	2		3	9	208
Jones			16													4	68
Lee			4							2			2		1		29
Lenoir			7	3						2		2			1	8	114
Lincoln			12										1			1	44
Macon			32				3	4		1					1	1	99
Madison			65				1	1							1	2	145
Martin			5				1					2	1			3	73
McDowell			5							1			1			1	79
Mecklenburg			121				4	16				85	2			4	625
Mitchell			40				1			2			7			3	97
Montgomery			32				4			1						1	134
Moore			5		1			3		1						3	70
Nash			29			1	1	13		2					4	3	203
New Hanover		1	29					14		1		33				8	255
Northampton		1	31				1									1	161
Onslow			38				1	11				4				3	163
Orange			30				3					1	7			4	109
Pamlico			1									4				1	17
Pasquotank								3				7				1	57

Pender			1							2		2				3	31
Perquimans			5				1	5							1		25
Person			6		1		2									2	33
Pitt			20				1	2		2					6	5	178
Polk			33				1	1		2						2	112
Randolph			91										4		1	2	177
Richmond	2	1	22	1				4		1	1		1			5	244
Robeson		1	68		1		3	12		5			14	1	2	9	443
Rockingham			21							1			1	1	2	2	130
Rowan			17		1		1	8							3	11	141
Rutherford			79	1		1											171
Sampson			11	2		1		1		1			2		1	4	90
Scotland																1	38
Stanly			8								1					1	46
Stokes			54				2			1	1		1		1		148
Surry			71		1	2		2					1		1	3	181
Swain			49						1	1			1		2	1	163
Transylvania			43					1		1			1			6	129
Tyrrell			7									1				4	31
Union			2							2							67
Vance			16				1								1	2	87
Wake			130	2		4	2	24		1				2	2	14	530
Warren			3					1		1		3				1	53
Washington		1	3										1		3	6	28
Watauga			4				1			2							19
Wayne			12	2	2		3	14				13	2		1	6	194
Wilkes		3	116	1	1	2		7	2	1	2	2	5		4	9	499
Wilson			60				1	12		1		1	8	9	3	10	272
Yadkin			42	2		2	2			3	1	1	1				110
Yancey			30	1			2			2	1					6	107
Totals	3	37	2,970	28	21	25	84	323	3	87	12	269	121	29	89	360	14,036

STATEMENT A-1

THE FOLLOWING STATEMENT SHOWS CRIMINAL CASES DISPOSED OF IN COURTS BELOW THE SUPERIOR COURT, REPORTING TO THIS DEPARTMENT DURING THE FALL TERM, 1934, SPRING TERM, 1935

COUNTIES	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total as to Counties
Bertie	27	115	------	134	8	133	8	1	------	142
Brunswick	126	85	------	195	16	111	57	43	------	211
Buncombe	453	148	------	511	90	482	96	23	------	601
Caldwell	413	39	------	424	28	328	76	48	------	452
Chatham	157	152	------	288	21	281	28	------	------	309
Chowan	43	35	------	76	2	64	13	1	------	78
Columbus	426	264	1	644	47	449	178	64	------	691
Craven	145	220	------	333	32	284	66	15	------	365
Cumberland	639	631	------	1,157	113	953	242	75	------	1,270
Davidson	870	232	------	1,051	51	1,025	74	3	------	1,102
Duplin	143	162	------	284	21	170	25	107	3	305
Franklin	63	51	------	112	2	89	25	------	------	114
Gaston*	1,134	475	------	1,474	135	1,345	120	145	------	1,610
Gates	21	73	------	90	4	74	15	5	------	14
Granville	56	169	------	214	11	188	33	4	------	225
Halifax	308	438	1	675	72	577	123	47	------	747
Harnett	633	518	28	1,045	134	962	171	45	1	1,179
Haywood	159	35	------	171	23	193	1	------	------	194
Henderson	286	89	------	305	70	209	99	67	------	375
Hertford	32	103	------	127	8	119	12	4	------	135
Iredell	308	230	------	498	40	385	76	77	------	538
Lee	85	58	------	138	5	143	------	------	------	143
Lincoln	135	45	------	170	10	165	13	2	------	180
McDowell	127	19	------	139	7	113	21	11	1	146
Mecklenburg	4,100	2,489	------	5,812	777	5,608	655	315	11	6,589
Moore†	330	363	------	651	42	547	68	79	1	695
Nash	203	244	------	419	28	303	84	59	1	447
Northampton	24	45	------	62	7	55	12	2	------	69
Orange	178	109	------	273	14	217	43	27	------	287
Pamlico	30	28	------	56	2	35	20	3	------	58
Person	100	99	2	197	4	183	16	2	------	201
Richmond	273	182	------	412	43	347	69	39	------	455
Rockingham	552	404	1	851	106	806	112	30	9	957
Surry	655	73	------	691	37	640	49	39	------	728
Tyrrell	21	29	------	48	2	31	18	1	------	50
Union	628	394	------	959	63	823	119	80	------	1,022
Vance	456	253	------	661	48	604	79	26	------	709
Wake	268	306	------	534	40	434	102	38	------	574
Washington	38	148	------	171	15	127	42	17	------	186
Wilson	617	751	------	1,232	136	1,006	235	120	7	1,368
Total‡	15,262	10,303	33	23,284	2,314	20,608	3,295	1,664	34	25,601

*1 Corporation.
†2 Corporations.
‡3 Corporations.

STATEMENT B-1

THE FOLLOWING STATEMENT SHOWS THE OFFENSES WITH WHICH DEFENDANTS WERE CHARGED IN THE COURTS BELOW THE SUPERIOR COURT, REPORTING TO THIS DEPARTMENT DURING THE FALL TERM, 1934, AND SPRING TERM, 1935

COUNTIES	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burglary—2nd Degree	Burning Other than Arson	C. C. W.
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie				3		4	9	30	4								10
Bladen																	
Brunswick	1	2		3	1	50	3	12					4			3	6
Buncombe	46					36	12	20									8
Burke																	
Cabarrus																	
Caldwell	4					20	20	45					2			1	10
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham	1			10		13	4	21		1							8
Cherokee																	

Chowan						9		2										
Clay																		
Cleveland																		
Columbus	7	3		1		48	11	102	2				2			1	19	
Craven	5			4		1	11	96									14	
Cumberland	4	1		9		277		2					6			2	40	
Currituck																		
Dare																		
Davidson	6			5		14	11	25					3				13	
Davie																		
Duplin	8					14	27	50					1				5	
Durham																		
Edgecombe																		
Forsyth																		
Franklin	3			1		5	3	13									6	
Gaston	8			15		31	71	82				1					23	
Gates						4		27					4				1	
Graham																		
Granville	9			2		3	9	32					1				8	
Greene																		
Guilford																		
Halifax	12	1		24		67	34	88									20	
Harnett	22	1	1	46	2	85	26	115	1				1				18	
Haywood				3		9											1	
Henderson	6			2		25	11	53					2				6	
Hertford				14		19	7	8									4	
Hoke																		
Hyde																		
Iredell	3					12	11	53		1			7				11	
Jackson																		

STATEMENT B-1—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burglary—2nd Degree	Burning Other than Arson	C. C. W.
Johnston																	
Jones																	
Lee	2			3		14	1										6
Lenoir																	
Lincoln	1			2		7	2	10					3				4
Macon																	
Madison																	
Martin																	
McDowell	3			6		2	6	23									2
Mecklenburg				70		218	18	249	1	1		1	4		1		67
Mitchell																	
Montgomery																	
Moore	4			9		45	16	89	2				6		1	1	25
Nash	14	2		17		10	13	76					1				6
New Hanover																	
Northampton	1			6		8	1	5									6
Onslow																	
Orange				2		17	2	12					1				2
Pamlico						10	1	10									2
Pasquotank																	

Pender																	
Perquimans																	
Person	5			2		25	11	7					2				6
Pitt																	
Polk																	
Randolph																	
Richmond	11			7		12	17	63					2				19
Robeson																	
Rockingham	15			8		45	36	72	2				1				11
Rowan																	
Rutherford																	
Sampson																	
Scotland																	
Stanly																	
Stokes																	
Surry	1			12		34	21	39									6
Swain																	
Transylvania																	
Tyrrell				6		10		3					1				2
Union	5					79	2	69	5				1				17
Vance	4					104	10	32					7				10
Wake	4	3		17		50	27	36					4				25
Warren																	
Washington				8		30	1	34					1				5
Watauga																	
Wayne																	
Wilkes																	
Wilson	7			8		50	42	116	1				1				16
Yadkin																	
Yancey																	
Totals	222	13	1	325	3	1,516	507	1,821	18	3		2	68		2	8	468

STATEMENT B-1—Continued

Counties	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery	Fornication and Adultery
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie							3								1	1	
Bladen																	
Brunswick					1		3						9		3	2	2
Buncombe					12	1		2	4	3		5	4		2	1	4
Burke																	
Cabarrus																	
Caldwell				1	3		4			2							2
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham					3		1	1		1			5		1		2
Cherokee																	

Chowan							1											
Clay																		
Cleveland																		
Columbus				1	2	1	8			5		2	6		2		12	
Craven										3			3					
Cumberland					1	1	10		1	8	1	1	2				22	
Currituck																		
Dare																		
Davidson									1						3			
Davie																		
Duplin					2	3			1			3	11		1		6	
Durham																		
Edgecombe																		
Forsyth																		
Franklin							3								2			
Gaston			1				8		3	5		6					4	
Gates				2								1			1	2		
Graham																		
Granville						1	3			7		1			3			
Greene																		
Guilford																		
Halifax					6		5					1	2		1		22	
Harnett			1	2	6	1	4					2	16				21	
Haywood												1						
Henderson				2	14	2	3		1			2	1		16		13	
Hertford							1								1		2	
Hoke																		
Hyde																		
Iredell					1					5	4	2			1		16	
Jackson																		

STATEMENT B-1—Continued

Counties	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery	Fornication and Adultery
Johnston																	
Jones																	
Lee						1				11							2
Lenoir																	
Lincoln							3					1			42		2
Macon																	
Madison																	
Martin																	
McDowell					1		2		2				1			1	4
Mecklenburg				1	23	3	4		2	7		4	3	1	7	1	20
Mitchell																	
Montgomery																	
Moore						4	12		1	6			4		8		7
Nash				1			13			1	1	1					8
New Hanover																	
Northampton										1			6		4		2
Onslow																	
Orange					1	3							1			1	
Pamlico												1	2				
Pasquotank																	

Pender																		
Perquimans																		
Person							5			1					2			
Pitt																		
Polk																		
Randolph																		
Richmond						2	10			1		6	1		1			11
Robeson																		
Rockingham					1	1	2			4		1			11			6
Rowan																		
Rutherford																		
Sampson																		
Scotland																		
Stanly																		
Stokes																		
Surry					2		3			9		1			7	1		10
Swain																		
Transylvania																		
Tyrrell																		
Union				1			3			2					4			2
Vance					6		4		1		2	5	1		6			
Wake			2		3		3		1	1		1			10			2
Warren																		
Washington										1						1		
Watauga																		
Wayne																		
Wilkes																		
Wilson				1	10		2			6		3			4	2		5
Yadkin																		
Yancey																		
Totals			4	12	98	24	123	3	18	90	8	51	78	1	144	13		209

STATEMENT B-1—Continued

Counties	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway	Official Misconduct
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie			4		1	27	1			4							
Bladen																	
Brunswick					5	18				17			1	1	1		
Buncombe	16				7	110				12					2		
Burke																	
Cabarrus																	
Caldwell	2				5	31			2	30			1	29			
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham					2	21				15					3		
Cherokee																	

Chowan	2					20	4		1	7				1				
Clay																		
Cleveland																		
Columbus	1	1	1		1	81	2			71				2				
Craven	6					69	2			44					7			
Cumberland	135	1			5	183	14			89	8			20				
Currituck																		
Dare																		
Davidson	45				2	12	5			97	76			1				
Davie																		
Duplin					1	30		2		8					11		1	
Durham																		
Edgecombe																		
Forsyth																		
Franklin	3					12				7				2				
Gaston	55				3	80				38	171							
Gates						22				6	2			1				
Graham																		
Granville					3	35				12				4				
Greene																		
Guilford																		
Halifax	20				3	95			1	46				3		1		
Harnett	12		3		1	103	1			43	5		1	1	1	2		
Haywood						1				3	1							
Henderson	2				5	57				16				4	2			
Hertford	2					14	1			8					1			
Hoke																		
Hyde																		
Iredell					6	69				35				17				
Jackson																		

STATEMENT B-1—Continued

Counties	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway	Official Misconduct
Johnston																	
Jones																	
Lee	2				1	6				9	2						
Lenoir																	
Lincoln					1	19			1	5				3	2		
Macon																	
Madison																	
Martin																	
McDowell	1				5	25				6							
Mecklenburg	194	1	14		35	375	29		4	621	641			4	3		
Mitchell																	
Montgomery																	
Moore	3			2	4	54	2	1		23			1	5			
Nash	15				6	38			1	32	2		1	3	1		
New Hanover																	
Northampton						5				1					1		
Onslow																	
Orange	5				1	18				9	96			2	1		
Pamlico						7								1	1		
Pasquotank																	

Pender																	
Perquimans																	
Person	3			1	2	22				2				3			
Pitt																	
Polk																	
Randolph																	
Richmond	9				3	69				22			1	5			
Robeson																	
Rockingham	4				7	86			2	108	16		1	1	22		
Rowan																	
Rutherford																	
Sampson																	
Scotland																	
Stanly																	
Stokes																	
Surry	3		1		7	28	4			26	6			1	5		
Swain																	
Transylvania																	
Tyrrell	1				3	1				1				2			
Union	20	4			8	93	1			126	6		1	2			
Vance	7				4	56	8			56	15			9	11		
Wake	20				4	32				23				2			
Warren																	
Washington	1				1	24	1			1				2	27		
Watauga																	
Wayne																	
Wilkes																	
Wilson	79		3		9	99	3			109	1		1	5	1		
Yadkin																	
Yancey																	
Totals	668	7	26	3	151	2,147	78	3	12	1,788	1,048		9	136	103	3	1

STATEMENT B-1—Continued

Counties	Perjury	Poisoning	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie	1		31				1				2		2		1	2	142
Bladen																	
Brunswick	3		43				2				1		5			9	211
Buncombe	1		260				1				1		8		1	22	601
Burke																	
Cabarrus																	
Caldwell			203	6			1			2			11		7	8	452
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham			172	3			6						1		1	13	309
Cherokee																	

Chowan			27				1								1	2	78
Clay																	
Cleveland																	
Columbus			222			4					3		19		2	46	691
Craven			82	1			1						6	1	4	5	365
Cumberland	1		349		1		7	5		1	4		19	3	3	34	1,270
Currituck																	
Dare																	
Davidson			717	12									8	2	8	36	1,102
Davie																	
Duplin	1		90	7		2	2						2		2	14	305
Durham																	
Edgecombe																	
Forsyth																	
Franklin			48								2					4	114
Gaston			883	9				1		1	1	1	9	1	15	84	1,610
Gates			5			1	2						4			9	94
Graham																	
Granville			79	1			3						2	2	2	3	225
Greene																	
Guilford																	
Halifax			262	1									8	3	2	19	747
Harnett	1		524	13	1	2	6	1		1	2		37	1	13	33	1,179
Haywood			168										1	5		1	194
Henderson			95	1		2	8	1			1		14			8	375
Hertford			45				1						3		1	3	135
Hoke																	
Hyde																	
Iredell			240	1			6		8	1			7	2	1	18	538
Jackson																	

STATEMENT B-1—Continued

Counties	Perjury	Poisoning	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Johnston																	
Jones																	
Lee			78										5				143
Lenoir																	
Lincoln			57								1		3	1		8	180
Macon																	
Madison																	
Martin																	
McDowell	1		49										1	1	1	3	146
Mecklenburg	1		3,608	4			20	7				18	50	5	18	231	6,589
Mitchell																	
Montgomery																	
Moore			266	4			13			1			23	2	1	50	695
Nash			145			1	1			1	1		9	1	3	22	447
New Hanover																	
Northampton			17													5	69
Onslow																	
Orange			89					1					13		2	8	287
Pamlico			17				3						2			1	58
Pasquotank																	

Pender																		
Perquimans																		
Person			85	1			2						2		3	9	201	
Pitt																		
Polk																		
Randolph																		
Richmond			140	4			6			1	1		11	3	1	16	455	
Robeson																		
Rockingham			411			2	5	1					10		21	44	957	
Rowan																		
Rutherford																		
Sampson																		
Scotland																		
Stanly																		
Stokes																		
Surry			455	2		1	3	1		2	1		9	4	1	22	728	
Swain																		
Transylvania																		
Tyrrell			13												3	4	50	
Union			504			2	8				2		23	1	5	26	1,022	
Vance			276			1	2			2	1		19	1	11	38	709	
Wake			257	1	1		5	1					5	4	5	25	574	
Warren																		
Washington			22	1		1							4		2	18	186	
Watauga																		
Wayne																		
Wilkes																		
Wilson			661	2			4	4				2	13	17	6	75	1,368	
Yadkin																		
Yancey																		
Totals	10		11,695	74	3	19	121	24	8	13	24	21	368	60	147	978	25,601	

STATEMENT C

THE FOLLOWING STATEMENT SHOWS THE CRIMINAL CASES DISPOSED OF IN THE SUPERIOR COURTS DURING THE FALL TERM, 1935, AND SPRING TERM, 1936

COUNTIES	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alamance	86	46	------	126	6	86	11	35	------	132
Alexander	72	10	------	78	4	50	7	25	------	82
Alleghany	42	2	------	43	1	42	2	------	------	44
Anson	22	32	------	54	------	41	3	10	------	54
Ashe	41	------	------	36	5	35	5	1	------	41
Avery	90	1	------	87	4	68	4	18	1	91
Beaufort	87	44	------	128	3	69	38	24	------	131
Bertie	8	32	------	39	1	29	11	------	------	40
Bladen	37	21	2	59	1	38	7	15	------	60
Brunswick	23	19	------	39	3	17	10	15	------	42
Buncombe	194	107	------	265	36	282	17	1	1	301
Burke	47	12	------	56	3	51	7	1	------	59
Cabarrus	228	66	------	280	14	177	55	61	1	294
Caldwell	68	16	------	81	3	54	14	16	------	84
Camden	3	4	------	6	1	7	------	------	------	7
Carteret	9	7	------	15	1	14	2	------	------	16
Caswell	35	57	------	85	7	65	15	12	------	92
Catawba	79	12	------	89	2	81	7	3	------	91
Chatham	15	12	------	26	1	21	6	------	------	27
Cherokee	123	2	------	110	15	111	14	------	------	125
Chowan	13	20	------	33	------	30	3	------	------	33
Clay	26	2	------	28	------	24	3	------	1	28
Cleveland	116	82	------	189	9	125	34	39	------	198
Columbus	98	70	------	158	10	121	15	32	------	168
Craven	66	65	------	123	8	88	19	24	------	131
Cumberland	74	92	2	145	23	108	27	33	------	168
Currituck	5	13	------	15	3	9	7	2	------	18
Dare	7	4	------	11	------	8	------	3	------	11
Davidson	120	35	------	153	2	133	18	3	1	155
Davie	46	34	------	77	3	61	12	7	------	80
Duplin	21	64	------	81	4	70	9	6	------	85
Durham	258	194	------	414	38	298	77	77	------	452
Edgecombe	100	111	------	202	9	116	29	63	3	211
Forsyth	449	381	------	763	67	714	111	2	3	830
Franklin	24	24	------	48	------	29	11	8	------	48
Gaston	261	93	------	342	12	260	54	39	1	354
Gates	6	8	------	12	2	5	6	2	1	14
Graham	50	------	------	49	1	25	2	20	3	50
Granville	44	32	------	72	4	51	7	18	------	76
Greene	34	87	------	107	14	90	19	11	1	121
Guilford	431	258	------	642	47	525	73	89	2	689
Halifax	51	48	------	98	1	61	27	11	------	99
Harnett	114	75	------	180	9	103	27	59	------	189
Haywood	321	6	------	297	30	160	24	140	3	327
Henderson	80	34	------	109	5	81	8	23	2	114
Hertford	10	44	------	50	4	33	14	7	------	54
Hoke	14	41	2	54	3	31	11	14	1	57
Hyde	20	13	------	32	1	24	5	4	------	33
Iredell	134	62	------	187	9	157	16	21	2	196
Jackson	151	7	3	152	9	131	10	20	------	161
Johnston	136	69	------	197	8	170	28	6	1	205
Jones	31	37	------	66	2	57	6	5	------	68

STATEMENT C—Continued

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Lee	29	9	------	38	------	28	5	5	------	38
Lenoir	46	68	------	100	14	84	10	18	2	114
Lincoln	30	8	------	36	2	26	7	5	------	38
Macon	89	10	------	95	4	63	5	31	------	99
Madison	105	4	------	106	3	100	9	------	------	109
Martin	24	24	1	46	3	39	6	4	------	49
McDowell	35	11	------	42	4	34	4	8	------	46
Mecklenburg	305	293	------	519	79	401	129	64	4	598
Mitchell	98	1	------	94	5	70	10	18	1	99
Montgomery	32	24	------	54	2	38	11	6	1	56
Moore	37	55	------	87	5	58	19	15	------	92
Nash	107	107	------	189	25	130	19	64	1	214
New Hanover	166	146	------	287	25	197	64	50	1	312
Northampton	13	28	------	39	2	26	9	6	------	41
Onslow	125	49	------	163	11	116	24	34	------	174
Orange	116	77	------	188	5	149	16	28	------	193
Pamlico	13	3	------	16	------	14	1	1	------	16
Pasquotank	29	50	------	76	3	67	7	5	------	79
Pender	10	21	------	28	3	19	8	4	------	31
Perquimans	6	12	------	16	2	11	5	2	------	18
Person	14	15	------	29	------	22	6	1	------	29
Pitt	125	107	------	226	6	136	31	63	2	232
Polk	109	26	------	119	16	107	13	15	------	135
Randolph	86	26	------	110	2	84	15	13	------	112
Richmond	92	54	------	140	6	104	24	15	3	146
Robeson	119	143	118	354	26	229	53	97	1	380
Rockingham	127	85	------	198	14	151	43	18	------	212
Rowan*	90	10	------	98	2	72	9	18	2	101
Rutherford	107	24	------	129	2	91	22	18	------	131
Sampson	50	53	------	95	8	84	7	11	1	103
Scotland	9	10	5	23	1	24	------	------	------	24
Stanly	39	18	------	53	4	47	9	1	------	57
Stokes	148	46	------	187	7	172	7	14	1	194
Surry	138	13	------	135	16	134	14	2	1	151
Swain	134	6	16	147	9	97	12	46	1	156
Transylvania	66	8	------	69	5	45	6	23	------	74
Tyrrell	1	3	------	4	------	3	1	------	------	4
Union	34	29	------	62	1	34	17	12	------	63
Vance	52	35	------	82	5	65	18	4	------	87
Wake†	289	294	------	565	18	373	77	138	1	589
Warren	13	30	------	41	2	31	10	1	1	43
Washington	27	25	------	49	3	30	6	16	------	52
Watauga	10	3	------	12	1	13	------	------	------	13
Wayne	70	115	------	172	13	121	21	39	4	185
Wilkes	203	20	------	200	23	134	21	67	1	223
Wilson	181	202	------	352	31	197	30	155	1	383
Yadkin	144	18	------	155	7	112	8	40	2	162
Yancey	91	1	------	86	6	46	8	38	------	92
Totals‡	8,603	5,026	149	12,899	879	9,664	1,803	2,258	60	13,785

*1 Corporation.
†6 Corporations.
‡7 Corporations.

STATEMENT C-1

THE FOLLOWING STATEMENT SHOWS CRIMINAL CASES DISPOSED OF IN COURTS BELOW THE SUPERIOR COURTS, REPORTING TO THIS DEPARTMENT DURING THE FALL TERM, 1935, SPRING TERM, 1936

COUNTIES	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Bertie	56	92	------	141	7	126	17	5	------	148
Brunswick	142	114	------	231	25	139	69	48	------	256
Buncombe	627	170	------	707	90	677	101	16	3	797
Caldwell	439	73	------	477	35	340	105	67	------	512
Chatham	102	139	------	231	10	212	29	------	------	241
Chowan	64	65	------	121	8	102	27	------	------	129
Columbus	552	287	1	802	38	565	206	67	2	840
Craven	144	192	------	323	13	266	65	5	------	336
Cumberland	589	608	8	1,079	126	768	319	117	1	1,205
Davidson	1,040	328	------	1,297	71	1,211	140	16	1	1,368
Duplin	210	151	------	335	26	243	79	38	1	361
Franklin	104	144	------	239	9	173	58	17	------	248
Gaston	1,756	464	------	2,048	172	1,954	138	127	1	2,220
Gates	62	78	------	139	1	103	29	7	1	140
Granville	102	173	------	262	13	220	43	11	1	275
Halifax	301	427	------	680	48	567	110	51	------	728
Harnett	577	521	5	1,005	98	909	151	42	1	1,103
Haywood	328	31	------	329	30	355	4	------	------	359
Henderson	283	80	------	308	55	215	87	60	1	363
Hertford	76	172	------	234	14	200	41	7	------	248
Iredell*	283	208	------	432	59	399	46	44	3	492
Lee	136	87	------	216	7	208	14	1	------	223
Lincoln	116	53	------	166	3	143	16	10	------	169
McDowell	355	44	------	378	21	345	31	22	1	399
Mecklenburg	5,526	2,771	------	7,459	838	7,123	755	417	2	8,297
Moore	341	286	------	593	34	532	69	25	1	627
Nash	273	258	------	496	35	363	112	54	2	531
Northampton	64	134	------	195	3	150	43	5	------	198
Orange	173	229	------	369	33	321	44	37	------	402
Pamlico	32	47	------	74	5	52	27	------	------	79
Person	155	159	2	308	8	293	19	4	------	316
Pitt	87	153	------	218	22	210	24	6	------	240
Richmond	235	152	------	364	23	305	46	35	1	387
Rockingham	472	389	------	780	81	701	120	29	11	861
Surry	645	64	------	678	31	636	46	25	2	709
Tyrrell	15	17	------	31	1	24	7	1	------	32
Union	594	360	------	910	44	793	71	90	------	954
Vance	340	190	------	492	38	394	87	49	------	530
Wake	379	308	------	650	37	543	92	51	1	687
Washington	65	129	------	184	10	128	50	16	------	194
Wilson	1,216	1,530	------	2,437	309	1,957	513	275	1	2,746
Totals*	19,056	11,877	16	28,418	2,531	24,965	4,050	1,897	38	30,950

*1 Corporation.

STATEMENT D

THE FOLLOWING STATEMENT SHOWS THE OFFENSES WITH WHICH DEFENDANTS WERE CHARGED IN THE SUPERIOR COURTS OF THE STATE, DURING THE FALL TERM, 1935, AND SPRING TERM, 1936

COUNTIES	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Buggery	Burglary—1st Degree	Burglary—2nd Degree
Alamance	2	1				1	13	9				2	28				
Alexander	1						2	10	4	1							
Alleghany					1	1		4									
Anson						2		4				1	13				
Ashe								5									1
Avery		1		3			4	9					1				
Beaufort	2					3		2	1				16				
Bertie						1	2	6	2				4				
Bladen					1		1	14		2			5				
Brunswick	1					3			3			1	2				
Buncombe	4				4	8	11	38	1	1		1	2		1		
Burke					2	1	2	4	4	2			18				
Cabarrus	4			2		10	5	35	1			1	7	1	1		
Caldwell						1	5	9	5	2		1	5				
Camden						1											
Carteret	1						2	3					3				
Caswell						9	4	16					2				
Catawba				2		2	1	8		2			16				
Chatham					1	4	1			1		1	1				
Cherokee				6		4	1	11				1	1				

Chowan						1		3	2									
Clay	1			10			6											
Cleveland	1					9		19		2		3	35				1	
Columbus	1				1	1	3	29	7				24					
Craven	1				1	1		9	1	1		1	41					
Cumberland	4					10	1	5					36					
Currituck								1					1					
Dare																		
Davidson	1					3	4	11					29				1	
Davie				9		2	1	9	1	1			4					
Duplin					1	1	2	10	2				1				1	
Durham				5		19	2	23	3			1	15		1			
Edgecombe	1			3		1	4	19										
Forsyth	5	3		1	1	3	22	60	5	2		1	5		4		3	
Franklin						4	3	7	1	1							2	
Gaston	11					6	8	24	5	1		1	24		1			
Gates						2		1										
Graham	1			2		1		9		1								
Granville		3				3		3	1								1	
Greene	1					1	1	6	1			2	20					
Guilford	6					11	5	38	12	3		3	108		6		2	
Halifax	1	3			1	5	2	1		3		1	23					
Harnett	8			3		1	1	10	5			2						
Haywood	6	3	1	13		6		52					9		1			
Henderson						1	1	18				2	21				2	
Hertford								10	2	2		1	2					
Hoke								2	4	1		2	7					
Hyde								8										
Iredell	5					13		14		4			35		1		16	
Jackson	1			20		1	1	6		1	1	1						

STATEMENT D—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Buggery	Burglary—1st Degree	Burglary—2nd Degree
Johnston	2	9		6		5	7	28		1							1
Jones	1					13		7									
Lee	1					8							2				
Lenoir	2				1			10					15				3
Lincoln						2	1	2					6				
Macon	3						2	11					9				
Madison	1				2	4		9	6				4				
Martin						3	1	2				2	3				1
McDowell	1		2	1		1	1	1					11				
Mecklenburg	1		1		3	14	4	58	5	3		1	19				6
Mitchell	4						2	13		1		1	5				
Montgomery	1					6		5					1				
Moore	1					1		11	3		4	1	18				
Nash	2			5			2	27									
New Hanover	5		5	3	1	8	6	15	7	2			1	13			
Northampton						1	1	2	1	3			6				
Onslow	1			6		1	6	33		1		3	8				2
Orange						5	2	25	2	1			2				
Pamlico								1					1				
Pasquotank						1			3				1		1		1

Pender					1	1		2				1	1				
Perquimans										1							
Person							1	3					3				
Pitt	1					3		27		1		1	20				2
Polk	4	1		6		7	2	12					9				
Randolph						15	1	8	2			1					
Richmond	2			1		2	3	16				1	30				
Robeson	2	2		4	1	18	4	60					34				
Rockingham	6					4	5	29		1			19			1	2
Rowan	4					2	5	4	3	1		1	20		4		
Rutherford	2			1		9		15					7				
Sampson						3	4	10	3	1			14				
Scotland								1		1		1	7				
Stanly						4		8	1	2			7				
Stokes				2	1	8	2	15					14		2		
Surry						9	1	18									
Swain	2					20		6				1	13				
Transylvania	1			1		10		3		1			1				
Tyrrell																	
Union						1	1	5	2				12		1		1
Vance		1				2	2	8				1	24		2		1
Wake	11	1		2	3	5	9	33	17	4		2	8		1		21
Warren						4	2	2		1			9				2
Washington						4		12					6				2
Watauga								3					1				
Wayne	1	1				25		2	9				16				1
Wilkes	6	1				14	6	24	1				2				
Wilson	6			1	2	16	4	29		2		1	11				
Yadkin	2		1	9		5		27									
Yancey	1			4		1		8					12				
Totals	147	30	10	131	29	422	208	1,244	138	62	5	49	976	14	27	1	76

STATEMENT D—Continued

Counties	Burning Other than Arson	C. C. W.	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery	Fornication and Adultery
Alamance		1		1		1			2	1		5			3		
Alexander		2			1			2				1					2
Alleghany		2					6								1		
Anson		1								2			2			5	
Ashe		1					2					1			8		2
Avery		1					1		2	3		4					4
Beaufort					1				1			1	31		1	1	
Bertie	1	1					1								1		
Bladen		1										3			4		
Brunswick				2					1				1			2	
Buncombe		1			4							2				4	
Burke		1														2	
Cabarrus		4							2			1			2	2	1
Caldwell		1							1			2				5	1
Camden																	
Carteret	2																
Caswell		2					2			1					1		
Catawba															1	4	
Chatham																1	
Cherokee		5					1								2	1	3

Chowan		1																
Clay						1												
Cleveland	1	1	6	1					5			1				3		
Columbus		1					1		5				1			7		
Craven		4	4									1	9		1			
Cumberland		2			1				3						2	1		
Currituck																		
Dare																		
Davidson		2			1	1				3			3		2			
Davie									1				1					
Duplin		1							1			1			3	3		
Durham		8			1	2			1	1		3			7	8		
Edgecombe		4							3	1		7				1		
Forsyth		18	2		4				5			7			6	3	6	
Franklin	2	3										1				1		
Gaston		6					1					1			1		1	
Gates																		
Graham		1										1	1			2		
Granville		1					1					2			2	2	2	
Greene		6	9									1				2	2	
Guilford		4		2		1			11	4		17		2	10	34		
Halifax			3						1							3		
Harnett	3								1			2				2		
Haywood	1	8				2	7		4	2		5	4		1	2	5	
Henderson					1				2			2			4	3	3	
Hertford									1						2	2	2	
Hoke													2		4		2	
Hyde							1									1		
Iredell		1				1						4				8	6	
Jackson	1	3					1		1						2		4	

STATEMENT D—Continued

Counties	Burning Other than Arson	C. C. W.	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery	Fornication and Adultery
Johnston	1	1		1	2				1			2	2			4	
Jones				1			1		1			1	1				2
Lee			2			1											
Lenoir		1	4						3	1		2	1		2	5	3
Lincoln				1								1			1		
Macon	2	7					4	1		2		1				1	
Madison		4				1						1			3	1	
Martin						1			1						1		
McDowell		1														1	
Mecklenburg		4			3				4			3			4	8	
Mitchell		2				1	1					2			2		2
Montgomery									1	1							
Moore									5								
Nash	1	1							1		1	2	9		1	2	
New Hanover		1			1				3	1						8	
Northampton																	
Onslow		1		2		1						7			6		2
Orange		2								2		4			1	5	2
Pamlico																	
Pasquotank												2		1		2	

Pender		1			1	1											
Perquimans																	
Person																	
Pitt		4							2							6	
Polk	1	1			2		1					2					7
Randolph		1				2									1	1	
Richmond		2								1		1	1			3	1
Robeson		4	3				2			1			1		5	17	6
Rockingham		4		1		1	2		1			2			4	1	
Rowan	1					1			1	2			1				
Rutherford							2		5			1				7	
Sampson					1	3				2					2	3	
Scotland																1	
Stanly					2				1								2
Stokes		8				1	7			2			1				5
Surry		1		1								2			3	6	4
Swain		8					1					6				3	6
Transylvania		1				1	1									1	
Tyrrell																	
Union				1					3			1					
Vance					1				2							2	1
Wake		7	2			4	1		5			1	1		1	19	1
Warren		1							1			2					
Washington									5							2	
Watauga							1								2		
Wayne	1	1							8			2	2			8	
Wilkes	2	10			2	2			1	1		2			6		5
Wilson		10	3	1	5	1	1		3			6	2			10	
Yadkin		3			2		3		2						2		2
Yancey		6							1			1	1		1		2
Totals	20	197	38	15	36	31	53	3	115	34	1	133	78	3	119	242	99

STATEMENT D—Continued

Counties	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway	Official Misconduct
Alamance			2		1	15			4	5			2	1			
Alexander	11					8			1				1				
Alleghany						9							1	2			
Anson				1		13			3								
Ashe			2			5				1				1			
Avery						5			1	3				5			
Beaufort	1				4	8	1	2		3			16				
Bertie		1	1			8			2	2			2				
Bladen						6			1	4				1	1		
Brunswick						5			6	1			2			1	
Buncombe			85			50			4				15	1			
Burke						16			3				2				
Cabarrus	1				4	64			2	12			11	7	1		
Caldwell						12			3	1				1			
Camden						3							1				
Carteret						3								1			
Caswell						11			2	4			1	1			
Catawba						17			5	4			1	3			
Chatham						4			2	2							
Cherokee					3	10			3	8				1	2		

Chowan					1	15			2			1	1				
Clay						6				1			2				
Cleveland	13				2	41				6			7				
Columbus			1			36	2		4	4			7			1	
Craven						21			1	7			5		2		
Cumberland						31			1	5	1	3	11	1	5		
Currituck						11			3	2							
Dare						4											
Davidson	1					26			2	9			2	2			
Davie			3		1	20			1	2				1			
Duplin			28			10			3	2			5				
Durham	26		12		2	57			11	23	6	2	15	2	13		
Edgecombe		1	58			35	4		6	12			2	2			
Forsyth	11		45	3	5	120			10	137	8	3	10	5			1
Franklin			5			5			4	2			1				
Gaston			2		2	70	2		3	13	1	1	7	6			
Gates						2				1	1						
Graham			4			7							2				
Granville	5		7			13			2	3			1	1			
Greene						42			1	3					1		
Guilford					1	166	1		22	31	1		14	9		1	
Halifax						18		2	1	6		1	5	1			
Harnett			39	1	3	49			1	10	1		9				
Haywood	8		14		6	31	1		1	13			7	3			
Henderson	1					18	1		5		1		4	1			
Hertford		13				11					1	2	2				
Hoke					1	12			5	5			5				
Hyde						6				1							
Iredell						22			4	8			3				
Jackson					3	24			1	5			2	1	2		

STATEMENT D—Continued

Counties	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway	Official Misconduct
Johnston	1		23			40				10		1					
Jones						9			1	1			4	1	1		
Lee						9	1		1	1			1	1			
Lenoir	5		3			28			1	2			8				
Lincoln						11			1	2							
Macon						11			2	2							
Madison			2			18			1				1	1			
Martin			5			12			2				2				
McDowell					1	13			1	1							
Mecklenburg	4		43		1	82			3	29	17		26	6			5
Mitchell	5				4	13				2							
Montgomery			8	1		9			2	1			4				
Moore				1	1	18			1	1			9	1			
Nash	2		25		4	58			2	17			5	2			
New Hanover	15		16		3	39			9	4			12		2		1
Northampton						8				2			6				
Onslow						14				10				4	1		
Orange			9		4	20	2			10	1		1	7	1		
Pamlico						8			1	1							
Pasquotank	2		1	1		17	1		4	2				3			

Pender			1		2	3			1	1			5				
Perquimans			1		2	6			1	2			1	1			
Person						9			1	3	1						
Pitt	4				1	44	2		3	20			6	1	1	1	
Polk			1			10			2	2			1				
Randolph					4	13			2	6				1			
Richmond	2	1				35			5	2			1	3			
Robeson	4		3		3	54			16	33			18	1	3		
Rockingham				1	1	30			3	7	1		9		3		
Rowan	1			1		9			1	8			3				
Rutherford						15				7	1		2	5			
Sampson					1	14			6				2				
Scotland						5			4				2				
Stanly						5			2	3							
Stokes						13				1			3				
Surry			10		1	22			5	2			3	1			
Swain	5				1	12			1	15						1	
Transylvania					1	12				1			2	1			
Tyrrell						3				1							
Union						15			3	5			1	1			
Vance	2					9			1	9			2				
Wake	14		79		1	94			7	44	1		16	4			
Warren						9			1	2				1			
Washington	2					7											
Watauga						5											
Wayne	1		15			36			1	4			4				
Wilkes	3		3	2	2	38			3	7			3	3		2	
Wilson	1		34	2	3	59			3	19	1		8	1	3		
Yadkin			6			19				7			1	1			
Yancey	2				5	10			3						2		
Totals	153	3	609	14	85	2,253	18	4	243	670	43	13	356	111	44	7	7

STATEMENT D—Continued

Counties	Perjury	Poisoning	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Alamance	1		12	1				8		1			1		1	7	132
Alexander			30		1		1						1			2	82
Alleghany			10					6								1	44
Anson			4													3	54
Ashe			8			3										1	41
Avery			39										2		1	2	91
Beaufort			19			1	5	3					2		3	3	131
Bertie			2			1										2	40
Bladen			6		2			3		2			1			2	60
Brunswick			5							1			2			3	42
Buncombe			31					19		1			1	8	1	3	301
Burke			1							1							59
Cabarrus			85			4	4		1	3			2			14	294
Caldwell			21				1	3					1			3	84
Camden								1								1	7
Carteret			1														16
Caswell			33				1	2									92
Catawba			20					2								3	91
Chatham			7										1			1	27
Cherokee			45	11												6	125

Chowan			1				1	1		1					2		33
Clay			1														28
Cleveland			24		4			2		1			3	1	2	4	198
Columbus	2		13		1			10		2						4	168
Craven			3		1		5	5					3			3	131
Cumberland			24					14		1			2	1		3	168
Currituck																	18
Dare			2					2					1		2		11
Davidson			37				3	3		1					3	5	155
Davie			20				1									2	80
Duplin			2				1	2				4				1	85
Durham			100	1			3	17				22	3		7	30	452
Edgecombe			34					3		2					4	4	211
Forsyth	3		201	4	2		2	8			1	50	1	11		23	830
Franklin			6														48
Gaston			116		2		1	4		2		17	4		1	9	354
Gates			2				3	1								1	14
Graham			11								1	2	2			2	50
Granville			15		1						1		4		1	1	76
Greene			14				1				1				1	5	121
Guilford	3		98	1	2		1	28					3		3	25	689
Halifax			9										2		1	6	99
Harnett			25	1	1		2	4		1			1		1	2	189
Haywood	1		77			2					1		4		1	25	327
Henderson	4		12					7									114
Hertford	3																54
Hoke			2		1							1				1	57
Hyde			10					2					3			1	33
Iredell			29		1		3	2		2			1		2	11	196
Jackson	1		68				3			2						5	161

STATEMENT D—Continued

Counties	Perjury	Poisoning	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Johnston			39				1	6			1		4		5	1	205
Jones			12				4	1		2			1		2	1	68
Lee			4							1			2			3	38
Lenoir			4	2				2		1						5	114
Lincoln			5	2				1					1			1	38
Macon			35												4	2	99
Madison			40					7					1			2	109
Martin			9					1								3	49
McDowell			9											1			46
Mecklenburg	1		128			1	2	19		1	1	50	5		2	31	598
Mitchell	1		27				4						3			4	99
Montgomery			13							1					1	1	56
Moore			11					3								2	92
Nash			32					1		1				2	3	6	214
New Hanover	3		71	1			2	18				18	1		5	12	312
Northampton			10													1	41
Onslow	3		43	1		1	3	1			3		1			9	174
Orange			63	5			1	1				11	2		1	1	193
Pamlico			1												2	1	16
Pasquotank	1		9				1					25					79

Pender			4										1			4	31
Perquimans			1												1	1	18
Person			7													1	29
Pitt			46				1	9		1			3		9	13	232
Polk			59				1								3	1	135
Randolph			47				3	3							1		112
Richmond	1		20				1			3	1		2			5	146
Robeson	1		42			3		9					6		3	17	380
Rockingham			49		3	3	1	8					1			9	212
Rowan	3		17				2	1		1			1			3	101
Rutherford			37					3		1			6	1	3	1	131
Sampson			12	6			1	4		1					3	7	103
Scotland			2														24
Stanly			13		1		1	3		2							57
Stokes			102	1			1	4								1	194
Surry			50							3						9	151
Swain	2		48										1			4	156
Transylvania			33													3	74
Tyrrell																	4
Union			8							1					1		63
Vance			8				1	3					1			4	87
Wake	1		90			4	2	48		2				2	1	20	589
Warren								3				1				2	43
Washington			3				2	1							4	2	52
Watauga			1														13
Wayne	1		2	1			1	13		1		11				17	185
Wilkes	1		30	13	1			3		1			5		1	17	223
Wilson	1		93		4		5	7	1				2		1	21	383
Yadkin	1		60	1			1					2		1		4	162
Yancey			28				1				2					1	92
Totals	39		2,812	52	28	23	85	345	2	51	12	216	97	30	91	483	13,785

STATEMENT D-1

THE FOLLOWING STATEMENT SHOWS THE OFFENSES WITH WHICH DEFENDANTS WERE CHARGED IN THE COURTS BELOW THE SUPERIOR COURTS, REPORTING TO THIS DEPARTMENT, DURING THE FALL TERM, 1935, AND SPRING TERM, 1936

COUNTIES	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Buggery	Burglary—1st Degree	Burglary—2nd Degree
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie		2		1		1	6	28		1							
Bladen																	
Brunswick						51	3	19									
Buncombe	41					49		45									
Burke																	
Cabarrus																	
Caldwell	2				1	14	28	59					1				
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham	3			3	1	12	6	27									
Cherokee																	

Chowan						11		9					5					
Clay																		
Cleveland																		
Columbus	15	1				44	22	92	2				11					
Craven	5					2	14	57										
Cumberland	1	1		11	1	305		2		1		1	3					
Currituck																		
Dare																		
Davidson	6			10		16	19	61										1
Davie																		
Duplin	2					13	11	78										
Durham																		
Edgecombe																		
Forsyth																		
Franklin	3			1		9	11	36										
Gaston	33			16		27	64	84										
Gates	1			2		23		26										
Graham																		
Granville	5			4		1	12	30										
Greene																		
Guilford																		
Halifax	9			24		60	19	74										
Harnett	19	5		48	1	75	35	134		1			1					
Haywood				9		7												
Henderson	2					12	24	54										
Hertford	4			4		17	9	16										
Hoke																		
Hyde																		
Iredell	2					5	4	60	1				5					
Jackson																		

STATEMENT D-1—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Buggery	Burglary—1st Degree	Burglary—2nd Degree
Johnston																	
Jones																	
Lee	5					24											
Lenoir																	
Lincoln	3	3		1		7	2	16					5				
Macon																	
Madison																	
Martin																	
McDowell	3			11		19	5	27		1			2				1
Mecklenburg				54	1	263	15	260	1	2			2		2		
Mitchell																	
Montgomery																	
Moore	3			18		25	7	64	1			1	6				
Nash	9			10		16	13	69									
New Hanover																	
Northampton	4			9		27	1	13					4				
Onslow																	
Orange				8		22		22					6		1		
Pamlico				3		13		9		1							
Pasquotank																	

Pender																		
Perquimans																		
Person	2			4		17	14	47					1					
Pitt	2			29		13	5	4										
Polk																		
Randolph																		
Richmond	5			3		17	16	56					3					
Robeson																		
Rockingham	7			11		15	36	47					2					
Rowan																		
Rutherford																		
Sampson																		
Scotland																		
Stanly																		
Stokes																		
Surry	4			2		35	9	29										
Swain																		
Transylvania																		
Tyrrell						8		8	1									
Union	9					42	1	59										2
Vance	5			6	1	56	7	31					4					
Wake	7			20		80	30	77					7					
Warren																		
Washington	1			5		31		60										
Watauga																		
Wayne																		
Wilkes																		
Wilson	12	1		52		89	90	137		3			15					
Yadkin																		
Yancey																		
Totals	234	13		379	6	1,573	538	2,026	6	10		2	83		3		4	

STATEMENT D-1—Continued

Counties	Burning Other than Arson	C. C. W.	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery	Fornication and Adultery
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie		3											1		2		
Bladen																	
Brunswick	1	3					2			5		2	4				1
Buncombe	3	8		4	9		2		1	10		1	2	3	8		7
Burke																	
Cabarrus																	
Caldwell		10			2	2	4		2	7		2	8				6
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham		8				2	1			2		3			2		8
Cherokee																	

Chowan		2												1				
Clay																		
Cleveland																		
Columbus		17		3	2	1	2			3		4	8				2	7
Craven	3	15			2					5								
Cumberland		30		9	2	5	5		1	1		4	1		2		1	7
Currituck																		
Dare																		
Davidson		12			1	1									3			
Davie																		
Duplin	1	9		2	1	3	2					1	17	1	7			21
Durham																		
Edgecombe																		
Forsyth																		
Franklin		11			1		14			3			1		2			9
Gaston		8				1	1		2			2						
Gates		2													2			
Graham																		
Granville	1	7			1	2	13			3		5	1		2			
Greene																		
Guilford																		
Halifax		18			1	1				1	1		3					10
Harnett		15		1		1	5			1		1	5		2			7
Haywood							4											
Henderson		9			1	2						2	3		24			11
Hertford		5								3		1			1			2
Hoke																		
Hyde																		
Iredell		10				1	4			1		2			4			8
Jackson																		

STATEMENT D-1—Continued

Counties	Burning Other than Arson	C. C. W.	Conspiracy	Cruelty to Animals	Disorderly House	Disposing of Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass	Forgery	Fornication and Adultery
Johnston																	
Jones																	
Lee		13					2			3		1					1
Lenoir																	
Lincoln		6				1	2					1					
Macon																	
Madison																	
Martin																	
McDowell	1	9			6										1		12
Mecklenburg		73	2		10	2	4		6	11		4	5	1	11	2	9
Mitchell																	
Montgomery																	
Moore		16			7		2			1		2					4
Nash		15					2			4					2		4
New Hanover																	
Northampton		4		2		1	3			1			1		2		
Onslow																	
Orange		5			4							1					1
Pamlico		2					1						1				
Pasquotank																	

Pender																		
Perquimans																		
Person		10		1			1					3			1		2	
Pitt		2			4				1			1					4	
Polk																		
Randolph																		
Richmond		6		1		3	1			2		2	1				6	
Robeson																		
Rockingham		13								3					13		4	
Rowan																		
Rutherford																		
Sampson																		
Scotland																		
Stanly																		
Stokes																		
Surry		6					2								11		2	
Swain																		
Transylvania																		
Tyrrell									1								2	
Union		21				1	7										1	
Vance		3				1	1			3		5			7	2		
Wake		8			2		4		1	3		3	1		6		2	
Warren																		
Washington		4			1	2	1			1								
Watauga																		
Wayne																		
Wilkes																		
Wilson		39	5	1	24	3	1		2	8	3	8			3		8	
Yadkin																		
Yancey																		
Totals	10	457	7	24	81	36	93		17	85	4	61	64	5	118	7	166	

STATEMENT D-1—Continued

Counties	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway	Official Misconduct
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie					1	19				16							
Bladen																	
Brunswick	10		1		2	15				34	8		5		10		
Buncombe	7				3	92				144						2	
Burke																	
Cabarrus																	
Caldwell	1			1	9	50			2	65				30			
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham					5	11				15				2	2		
Cherokee																	

Chowan	9					18				18				8				
Clay																		
Cleveland																		
Columbus	10				5	70	5			223				4	3			
Craven	4					57				68					3			
Cumberland	21	1			2	193	9			95	4			14	9			
Currituck																		
Dare																		
Davidson	23		1		6	36	5			183	143			5	1			
Davie																		
Duplin	4					31	2			21	4			5	1			
Durham																		
Edgecombe																		
Forsyth																		
Franklin			3		2	17				30								
Gaston	35	1			5	84			1	359	191							
Gates					1	8				36	4			2				
Graham																		
Granville	1	1	7		2	31	1		1	45				7				
Greene																		
Guilford																		
Halifax	54				5	85				69				8		1		
Harnett	11		4		8	87	4			68	5		1		3			
Haywood						5				1								
Henderson	1				3	53				29	2			1	2			
Hertford	3					35	1			30				1				
Hoke																		
Hyde																		
Iredell	13				2	57	1	2		67				11				
Jackson																		

STATEMENT D-1—Continued

Counties	Gambling or Lottery	Health Laws—Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder—1st Degree	Murder—2nd Degree	Non-support	Nuisance	Obstructing Public Highway	Official Misconduct
Johnston																	
Jones																	
Lee	1					10				22	1			1			
Lenoir																	
Lincoln	1					16				19				1			
Macon																	
Madison																	
Martin																	
McDowell	1				3	34	5			76				8	1		
Mecklenburg	167	1	9		29	480			1	1,887	754						
Mitchell																	
Montgomery																	
Moore					6	36	2		1	47				6		1	
Nash	31				7	50				71			1	2	1		
New Hanover																	
Northampton					1	21				47				1			
Onslow																	
Orange		1			5	22				50	10			5			
Pamlico	2	6				6				8				1			
Pasquotank																	

Pender																	
Perquimans																	
Person	13				3	14	1			29				12			
Pitt					1	17		1		15	7			1			
Polk																	
Randolph																	
Richmond	11				3	54			1	23				14			
Robeson																	
Rockingham	17				3	54			1	124	3				9	1	
Rowan																	
Rutherford																	
Sampson																	
Scotland																	
Stanly																	
Stokes																	
Surry	27		2		6	29	4	1		57	10			1	2		
Swain																	
Transylvania																	
Tyrrell						4				2				1			
Union	23	1			3	81				95	32		4				
Vance		2			2	42				40	11			15	2		
Wake	12				5	24				42	1			5			
Warren																	
Washington					4	19				1	4		1	2	24	3	
Watauga																	
Wayne																	
Wilkes																	
Wilson	227		9		35	173	2			188	7			8	2		
Yadkin																	
Yancey																	
Totals	740	14	36	1	177	2,240	42	4	8	4,459	1,201		12	182	75	8	

STATEMENT D-1—Continued

Counties	Perjury	Poisoning	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Alamance																	
Alexander																	
Alleghany																	
Anson																	
Ashe																	
Avery																	
Beaufort																	
Bertie			59			1	1					1	2			3	148
Bladen																	
Brunswick			51				2	2		1	2		12			10	256
Buncombe			293	2			4				1		19	1	1	35	797
Burke																	
Cabarrus																	
Caldwell			176	3			7			2			9		2	7	512
Camden																	
Carteret																	
Caswell																	
Catawba																	
Chatham			102			1	1				1		5			18	241
Cherokee																	

Chowan			41			2										5	129
Clay																	
Cleveland																	
Columbus			212		1	1					2		17		7	44	840
Craven			96				1								4		336
Cumberland			351	1		1	8	5		3			27		13	54	1,205
Currituck																	
Dare																	
Davidson			773	7			2						10	7	7	29	1,368
Davie																	
Duplin			102	7			2						1	1	1	10	361
Durham																	
Edgecombe																	
Forsyth																	
Franklin			88				1									6	248
Gaston			1,163	13			3				1		9		11	106	2,220
Gates			18				1								2	12	140
Graham																	
Granville			64			1	2				1		2		13	9	275
Greene																	
Guilford																	
Halifax			243	1			7			1			12	1	3	17	728
Harnett			440	6		3	1	2		1			57		6	39	1,103
Haywood			329											3		1	359
Henderson	1		89			5	4				2		6	3		18	363
Hertford			107			1	5								1	2	248
Hoke																	
Hyde																	
Iredell			189	2			8		1				1			31	492
Jackson																	

STATEMENT D-1—Continued

Counties	Perjury	Poisoning	Prohibition Laws—Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws—Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Johnston																	
Jones																	
Lee			132				1						2			4	223
Lenoir																	
Lincoln			75							2	1		3		1	3	169
Macon																	
Madison																	
Martin																	
McDowell			161	1			1			1			3		2	4	399
Mecklenburg			3,873	5			31	19				8	42	2	7	242	8,297
Mitchell																	
Montgomery																	
Moore	2		269	2			11	1	7				11	2		66	627
Nash			172		4	2	3			1			7	2	1	32	531
New Hanover																	
Northampton			49				1	1								5	198
Onslow																	
Orange			205	1									4		3	26	402
Pamlico			13										9		2	2	79
Pasquotank																	

Pender																	
Perquimans																	
Person			126				1						2		4	8	316
Pitt			109										6		1	17	240
Polk																	
Randolph																	
Richmond			137				7						4		3	8	387
Robeson																	
Rockingham			441	2			7	1					5	3	6	33	861
Rowan																	
Rutherford																	
Sampson																	
Scotland																	
Stanly																	
Stokes																	
Surry			436		1		2						6		2	23	709
Swain																	
Transylvania																	
Tyrrell			5														32
Union			506			3	4	1		2			13		2	41	954
Vance			197	5			3	2			2		26		8	41	530
Wake			281	12	1		6			1	1	1	5		11	28	687
Warren																	
Washington			5	2		1	2						6			14	194
Watauga																	
Wayne																	
Wilkes																	
Wilson			1,281	3		1	7	4			1	8	35	19	21	211	2,746
Yadkin																	
Yancey																	
Totals	3		13,459	75	7	23	147	38	8	15	15	18	378	44	145	1,264	30,950

STATEMENT E

Comparative Statement as to Sex, Race, Judgment, Etc.	Superior Courts		Courts Below Superior Court	
	From July 1, 1934 to July 1, 1935	From July 1, 1935 to July 1, 1936	From July 1, 1934 to July 1, 1935	From July 1, 1935 to July 1, 1936
Males	13,167	12,899	23,284	28,418
Females	867	879	2,314	2,531
Corporations	2	7	3	1
Total	14,036	13,785	25,601	30,950
White	8,773	8,603	15,262	19,056
Colored	5,093	5,026	10,303	11,877
Indian	168	149	33	16
Corporations	2	7	3	1
Total	14,036	13,785	25,601	30,950
Convictions, including submissions	9,760	9,664	20,608	24,965
Acquittals	1,768	1,803	3,295	4,050
Nolle Pros.	2,468	2,258	1,664	1,897
Otherwise disposed of	40	60	34	38
Total	14,036	13,785	25,601	30,950

STATEMENT F

Alphabetical List of Crimes—(Superior Courts)	From July 1, 1934 to July 1, 1935	From July 1, 1935 to July 1, 1936
Abandonment	166	147
Abduction	38	30
Abortion	4	10
Affray	124	131
Arson	38	29
Assault and Battery	455	422
Assault on Female	223	208
A. D. W.	1,382	1,244
Assault with Intent to Kill	138	138
Assault with Intent to Rape	72	62
Banking Laws—Violation	16	5
Bigamy	52	49
Breaking and Entering	919	976
Bribery	5	14
Buggery	14	27
Burglary—First Degree	2	1
Burglary—Second Degree	69	76
Burning other than Arson	27	20
C. C. W.	273	197
Compounding Felony		
Concealing Birth of Child	2	
Conspiracy	32	38
Cruelty to Animals	17	15
Disorderly House	81	36
Disposing Mortgaged Property	22	31
Disturbing Meetings	67	53
Election Laws—Violation	5	3
Embezzlement	112	115
Escape	67	34
Failure to List Taxes	3	1
False Pretense	135	133
Fish and Game Laws—Violation	31	78
Food and Drug Laws—Violation	2	3
Forcible Trespass	147	119
Forgery	173	242
Fornication and Adultery	145	99
Gambling or Lottery	143	153
Health Laws—Violation	4	3
Housebreaking	556	609
Incest	16	14
Injury to Property	70	85
Larceny and Receiving	2,394	2,253
License, Doing Business Without	19	18
License, Practicing Profession Without	1	4
Manslaughter	248	243
Motor Vehicle Laws—Violation	496	670
Municipal Ordinances	25	43
Murder—First Degree	20	13
Murder—Second Degree	364	356
Non-Support	118	111
Nuisance	41	44
Obstructing Public Highway	2	7
Official Misconduct	3	7

STATEMENT F—Continued

Alphabetical List of Crimes—(Superior Courts)	From July 1, 1934 to July 1, 1935	From July 1, 1935 to July 1, 1936
Perjury	37	39
Poisoning		
Prohibition Laws—Violation	2,970	2,812
Prostitution	28	52
Rape	21	28
Removing Crop	25	23
Resisting Officer	84	85
Robbery	323	345
School Laws—Violation	3	2
Seduction	87	51
Slander	12	12
Storebreaking	269	216
Trespass	121	97
Vagrancy	29	30
Worthless Checks	89	91
Miscellaneous	360	483
Total	14,036	13,785

STATEMENT F-1

Alphabetical List of Crimes—(Courts Below Superior Court)	From July 1, 1934 to July 1, 1935	From July 1, 1935 to July 1, 1936
Abandonment	222	234
Abduction	13	13
Abortion	1	
Affray	325	379
Arson	3	6
Assault and Battery	1,516	1,573
Assault on Female	507	538
A. D. W.	1,821	2,026
Assault with Intent to Kill	18	6
Assault with Intent to Rape	3	10
Banking Laws—Violation		
Bigamy	2	2
Breaking and Entering	68	83
Bribery		
Buggery		3
Burglary—First Degree		
Burglary—Second Degree	2	4
Burning other than Arson	8	10
C. C. W.	468	457
Compounding Felony		
Concealing Birth of Child		
Conspiracy	4	7

STATEMENT F-1—Continued

ALPHABETICAL LIST OF CRIMES—(COURTS BELOW SUPERIOR COURT)	From July 1, 1934 to July 1, 1935	From July 1, 1935 to July 1, 1936
Cruelty to Animals	12	24
Disorderly House	98	81
Disposing Mortgaged Property	24	36
Disturbing Meetings	123	93
Election Laws—Violation	3	
Embezzlement	18	17
Escape	90	85
Failure to List Taxes	8	4
False Pretense	51	61
Fish and Game Laws—Violation	78	64
Food and Drug Laws—Violation	1	5
Forcible Trespass	144	118
Forgery	13	7
Fornication and Adultery	209	166
Gambling or Lottery	668	740
Health Laws—Violation	7	14
Housebreaking	26	36
Incest	3	1
Injury to Property	151	177
Larceny and Receiving	2,147	2,240
License, Doing Business Without	78	42
License, Practicing Profession Without	3	4
Manslaughter	12	8
Motor Vehicle Laws—Violation	1,788	4,459
Municipal Ordinances	1,048	1,201
Murder—First Degree		
Murder—Second Degree	9	12
Non-Support	136	182
Nuisance	103	75
Obstructing Public Highway	3	8
Official Misconduct	1	
Perjury	10	3
Poisoning		
Prohibition Laws—Violation	11,695	13,459
Prostitution	74	75
Rape	3	7
Removing Crop	19	23
Resisting Officer	121	147
Robbery	24	38
School Laws—Violation	8	8
Seduction	13	15
Slander	24	15
Storebreaking	21	18
Trespass	368	378
Vagrancy	60	44
Worthless Checks	147	145
Miscellaneous	978	1,264
Totals	25,601	30,950

STATEMENT G

COMPARATIVE STATEMENT OF DISPOSITION OF VIOLATIONS OF THE PROHIBITION LAW

	Superior Courts		Courts Below Superior Court	
	From July 1, 1934 to July 1, 9935	From July 1, 1935 to July 1, 1936	From July 1, 1934 to July 1, 1935	From July 1, 1935 to July 1, 1936
Convictions	2,223	2,118	10,568	12,030
Acquittals	275	307	760	1,022
Nolle Pros.	461	376	358	403
Otherwise Disposed of	11	11	9	4
Totals	2,970	2,812	11,695	13,459

FEES TRANSMITTED BY ATTORNEY GENERAL TO STATE TREASURER SINCE FEBRUARY TERM, 1934, THROUGH FEBRUARY TERM, 1936

State v. Sheffield	$10.00
State v. Henderson	10.00
State v. Moses	10.00
State v. Rooks	10.00
State v. Mansfield	10.00
State v. Waggoner	10.00
State v. Tuttle	10.00
State v. Arledge	10.00
State v. Hollingsworth	10.00
State v. Hendricks	10.00
State v. Pierce	10.00
State v. Caudle	10.00
State v. Dunn	10.00
State v. McLamb	10.00
State v. Leonard	10.00
State v. Duncan	10.00
State v. Harrell	10.00
State v. Amos Jones	10.00
State v. Wilson	10.00
State v. Whitley	10.00
State v. Hughes and Vance	20.00
State v. Cagle	10.00
State v. Allman	10.00
State v. Blades (2)	20.00
State v. Huffman	10.00
State v. Wells	10.00
State v. Godwin	10.00
State v. Jones and Hamilton	20.00
State v. Stamey and Wood	20.00
State v. Anderson	10.00
State v. Golden	20.00
State v. Henderson	10.00
State v. Cook	10.00
State v. McLean	10.00
State v. Davis	10.00
State v. Cain	10.00
State v. Smith, et al.	30.00
State v. Shoaf, et al.	20.00
State v. Eubanks	10.00
State v. Ray	10.00
State v. Green	10.00
Maxwell v. Norfolk & Western Ry. Co. (U. S. Supreme Court)	20.00
Totals	$510.00

THE WORK OF THE OFFICE

Since the publication of the Biennial Report of 1932-1934, the State suffered the loss, by death, of Attorney General Dennis G. Brummitt. His death occurred January 12, 1935, and the present Attorney General, by appointment of Governor Ehringhaus, succeeded him. Mr. Brummitt filled the office of Attorney General of North Carolina longer than any other man, and left to his State a high standard of unselfish and efficient public service.

The position of Assistant, made vacant by appointment of the incumbent as Attorney General, was filled by the appointment of Mr. John W. Aiken, of Hickory, N. C., and the office had the benefit of his excellent services until February 5, 1936, when he resigned to accept the office of Assistant to the Attorney General of the United States in the Anti-Trust Department at Washington. The State was very fortunate in securing as his successor Mr. Harry McMullan, an able lawyer, with a background of experience in taxation and matters requiring the attention of the office.

During the session of the 1935 General Assembly, provision was made for the employment of two Law Clerks in this Department, and a beginning was thereby made to put the Attorney General's Department in line with similar departments of other states, nearly all of which have such Law Clerks. Mr. Emmett Willis, of Lexington, North Carolina, and Mr. Joseph L. Carlton, of Winston-Salem, North Carolina, were appointed to fill these positions, and entered the service July 1, 1935. Both are graduates of leading law schools, are licensed attorneys at law, and were chosen on the basis of legal attainment, ability, and training in legal research. Their work has been outstanding for its thoroughness, accuracy, and general excellence, and fully justifies the addition to the staff.

Some of the more important opinions or rulings rendered during the period covered by this report are printed in the following pages. The number of opinions so printed is necessarily limited by the appropriation for that purpose, and we are following precedent in omitting a large number of the less important. Amongst those printed will be found a large number of advisory opinions written to numerous district, county, and municipal boards and officers, relating to problems about which they inquire. It is a custom of this office of long standing to answer such inquiries, and the service will be continued as long as legislative acquiescence and the limitations of the Department permit. In this connection we may add that the total number of advisory letters written on such subjects has substantially decreased during the past year. This, undoubtedly, has been due to the better public dissemination of the opinions of the Attorney General, and especially to the bulletin service of "Popular Government," a magazine published by the Institute of Government, which reaches a large number of County Attorneys, boards and officers, and in which the opinions of the Attorney General are currently reported. This has reduced duplication of inquiry on the same subject.

Summary of the Constitutional and Statutory Duties of the Attorney General

References are herein given to provisions of the Constitution of North Carolina, and laws enacted in pursuance thereto, prescribing the duties and functions of the Attorney General.

As legal advisor to the Council of State and as a member of the various boards and commissions hereinafter listed, the participation of the Attorney General in the consideration of matters coming before meetings of the Council of State and such Boards and Commissions will be disclosed in the reports made therefrom. It is not required that they should be further detailed in this report.

The Constitution of North Carolina, Article III, Section 13, provides that the duties of the "Attorney General shall be prescribed by law." Pursuant to this section, the General Assembly has vested in the Department of the Attorney General the following powers, obligations, and duties:

> C. S. 7694. "Duties.—It shall be the duty of the attorney general—
>
> "1. To defend all actions in the supreme court in which the state shall be interested, or is a party; and also when requested by the governor or either branch of the general assembly to appear for the state in any court or tribunal in any cause or matter, civil or criminal, in which the state may be a party or interested.
>
> "2. At the request of the governor, secretary of state, treasurer, auditor, corporation commissioners, insurance commissioner or superintendent of public instruction, he shall prosecute and defend all suits relating to matters connected with their departments.
>
> "3. To represent all state institutions, including the state's prison, wherever requested so to do by the official head of any such institution.
>
> "4. To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.
>
> "5. To give, when required, his opinion upon all questions of law submitted to him by the general assembly, or by either branch thereof, or by the governor, auditor, treasurer, or any other state officer.
>
> "6. To pay all moneys received for debts due or penalties to the state immediately after the receipt thereof into the treasury.
>
> "7. To compare the warrants drawn by the auditor on the state treasury with the laws under which they purport to be drawn."

In addition to these duties, the following ones are prescribed:

To institute actions to recover taxes due under the Revenue Act (C. S. 7880 (167)), and to approve all tax refunds made by the State (C. S. 7979 (a)).

To enforce the statutes relative to monopolies and trusts (C. S. 2567-2573).

To institute actions to prevent ultra vires acts on the part of corporations, or to dissolve corporations for certain offenses (C. S. 1143, 1185, 1187).

To institute quo warranto proceedings to oust public officers who refuse to perform their official duties, and to begin actions to protect State lands (C. S. 870).

To see that the solicitors prosecute violations of the act relating to the practice of medicine (C. S. 6625).

To enforce charitable trusts (C. S. 1143).

To prescribe the rules of practice for land registration under the Torrens Act (C. S. 2379).

To institute proceedings for the dissolution of fraternal insurance societies (C. S. 6524-6525).

To appeal on behalf of the court or other officer on appeal in contempt proceedings (C. S. 980).

To investigate extradition cases, at the request of the Governor (C. S. 4556 (d)).

To institute actions to enforce the rulings and orders of the Utilities Commission, and to represent said Commission in the enforcement of intrastate rates before the Interstate Commerce Commssion and in federal or state courts (C. S. 1062 and 1065).

To give advice to the State Board of Elections as to the form of ballots (C. S. 6046).

To institute action against persons, firms, or corporations who violate the terms of the act regulating the quality of agricultural seeds. This duty may be delegated to the solicitor (C. S. 4828).

To approve deeds and grants to the State of property given to, or purchased by, it for park purposes (C. S. 6124).

To collect from inmates of state institutions the cost of their upkeep, provided they are able to pay (C. S. 7534 (k)).

To approve the grant of easements by state institutions to public-service corporations (C. S. 7525).

To compare warrants drawn by the Auditor on the treasury with the forms under which they were purported to have been drawn (C. S. 7693).

The Attorney General is a member of, or advisor to, the following boards, councils, and commissions: Legal adviser to the Executive Department (Const., Art III, S. 14); member of the State Board of Education (C. S. 5394), of the State Board of Assessments (C. S. 7971 (3)), of Advisory Board of Paroles (C. S. 7757), of Advisory Commission for the Commissioner of Banks (C. S. 220), of the State Text-Book Purchase and Rental Commission (C. S. 5754 (1)), of Board of Public Buildings and Grounds (C. S. 7025), of Municipal Board of Control (C. S. 2779), of the Eugenics Board (C. S. 2304 (q)); and legal advisor to the Soldier's Settlement Board (C. S. 7508).

Office Conferences and Consultations with State Officers and Departmental Officials

The Constitution of the State provides in Article III, Section 14, as follows:

> "The Attorney General shall be, ex officio, legal adviser of the Executive Department."

Consolidated Statutes 7694 provides (in part): "It shall be the duty of the Attorney General—

3. To represent all State institutions, including the State's prison, whenever requested so to do by the official head of such institution.

5. To give, when required, his opinion upon all questions submitted to him by the General Assembly or either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer."

Under this constitutional provision and the provision of the statute above referred to, and other statutes under which are expressly defined the duties of this department, a very large part of the time of the Attorney General and the Assistant Attorneys General is taken up in office conferences and consultations with the various State officials and the heads of the various departments and agencies of the State and those connected therewith. The coöperation between this department and the various State officials and department heads and those in charge of the State agencies has been cordial and complete. Acknowledgment must be made to them for the consideration shown this department in limiting, so far as possible, the time consumed in the various necessary conferences and consultations.

Notwithstanding the consideration shown by the various State officials, the fact remains that the duties imposed by the Constitution and laws of the State in making the Attorney General the legal advisor of all the departments of the State, constitutes one of the major activities in this office.

No detail record is kept of the various conferences with the various State officials. As a result of these conferences and by action taken upon the advice of the Attorney General, a large part of the State's business which might actually get into the courts is transacted without litigation. Questions which are the subject of many conferences would, unless adjusted, be sources of litigation. In this report record is given of some litigated cases. No record can be furnished of a great number and variety of problems and questions which arise in the State departments which might be the subject of litigation, but which, through conferences with the department and the citizens concerned, result in settlements and adjustments.

Under the provision of the statute, Assistant Attorney General Bruton maintains his office in the Revenue Building and is available at all times for consultation and advice to the officials of the Revenue Department. The problems which arise are many and varied, making heavy demand upon his services and advice.

Outside of and in addition to the questions connected with the State's revenues which arise and are acted upon in the office of Assistant Attorney General Bruton, many other problems connected with the State's revenue are considered by the Attorney General and the entire staff in his department. It may be correctly said that the questions which arise in connection with the collection of the State's revenue exceed in number and importance all other problems presented to this department. We are fortunate in having always the able advice and consideration of the Commissioner of Revenue, who is a fair and able student of taxation and with a very complete knowledge of its proper purposes and application. Every consideration is shown to this department in bringing before us only major questions which in his opinion demand and require our advice and opinon. These conferences most frequently result in hearings accorded to the taxpayers presented by attorneys representing them. Briefs are submitted and examined by us and, so far as possible, independent investigations are made to make available a complete study of problems involved.

Without any attempt to magnify the extent and importance of this service rendered by the department, recognition must be given to the fact that, upon the whole, it involves a major activity requiring a great amount of the time

of the entire staff in dealing with it. It would serve no useful purpose to keep a record of these matters. Therefore, the office did not maintain any means of setting forth in detail the complete statement thereof.

Following precedent, we specially mention a few of the civil cases of importance now pending, or recently concluded.

Anne Cannon Reynolds, et al., vs. Zachary Smith Reynolds, W. N. Reynolds, and R. E. Lassiter, Guardian, et al.

Upon the death of Zachary Smith Reynolds, the State undertook to assert a claim for inheritance tax upon the succession of the interest of this decedent in the Reynolds Trust, which was being administered by The Safe Deposit and Trust Company of Baltimore City. The Zachary Smith Reynolds interest in this trust was at that time reported to be around $20,000,000.00.

Meanwhile, a suit had been brought in the Superior Court of Forsyth County, in which it was sought to make a family settlement of the interests of those entitled to the succession in the trust fund.

The State was permitted to intervene in this case and to assert its claim of taxes.

There was an offer of compromise and settlement, which included a provision for the payment to the State of North Carolina of the sum of $2,000,000.00 as inheritance taxes. This offer was accepted by all of the parties except The Safe Deposit and Trust Company, which deemed it necessary to resist the tax until it was declared to be valid and assessable by a court of competent jurisdiction.

Upon the hearing of the matter in Forsyth Superior Court, by Judge Clayton Moore, a judgment was rendered in accordance with the terms of the compromise, in which the validity of the tax was sustained.

Upon the appeal of the trustee to the State Supreme Court, and after argument thereupon, the judgment of the court below was affirmed. The case is reported in 208 N. C., 578, et seq.

Thereupon, in accordance with the provision made in the decree of settlement, the matter was submitted to the Circuit Court of Baltimore City, Md., in a case there pending and argument made therein. This is the case next mentioned.

Safe Deposit and Trust Company of Baltimore, Maryland, vs. J. Edward Johnston, et al.

A suit had been instituted in the Circuit Court of Baltimore, Maryland, by the Safe Deposit and Trust Company of Baltimore vs. J. Edward Johnston, et al., which was pending at the time the suit in the Superior Court of Forsyth County, North Carolina, was tried. In this case, the Safe Deposit and Trust Company of Baltimore, Maryland, petitioned the court for instructions as to its duty as trustee under the provisions of the will of R. J. Reynolds and the will and deed of Katherine S. Johnson, widow of R. J. Reynolds, under which instruments the said trust company was made trustee and under which it held all of the funds subject to the litigation.

After the decision in the North Carolina case, a certified transcript of the proceedings of North Carolina was filed in the pending suit in the Circuit Court of Appeals of Baltimore, Maryland, by all the parties interested in the litigation. By order of the court, the State of North Carolina was allowed to intervene therein for the purpose of asserting its rights under the judgment rendered in North Carolina.

After hearings in the Circuit Court of Baltimore, Maryland, before Judge Eli Frank, the judgment of the Superior Court of Forsyth County, affirmed on appeal to the Supreme Court of North Carolina, was approved and the trustee was directed to be governed thereby and to pay out and disburse the funds in its hands in accordance with this judgment. Under and in pursuance to this judgment, there was paid to the State of North Carolina the principal sum of the compromise agreed to $2,000,000 and, in addition thereto, the sum of $15,000, representing the accrued earnings of the trust after the judgment in the Circuit Court of Appeals had been rendered.

The case in the Circuit Court of Baltimore was handled by this department without the employment of any outside counsel. The entire case involved no expense to the State of North Carolina, except the minor sums of travel for the Attorney General and Assistant Attorney General Harry McMullan.

Richard Braak and Wife vs. Graham K. Hobbs, Commissioner World War Veterans Loan Fund

This was a test suit instituted in the Superior Court of New Hanover County and involved a matter of great importance to the Commissioner of the World War Veterans Loan Fund.

The Citizens National Bank of Raleigh was named and designated as trustee in the deeds of trust given to secure loans made to veterans of the World War. The Citizens National Bank of Raleigh was liquidated for the purpose of merging with the banks entering into the North Carolina Bank and Trust Company. Incident to this liquidation and merger, the Citizens National Bank, being a national bank, was required to liquidate and it caused to be created a State bank under the name of the Citizens Bank of Raleigh, which when created, took over all of the assets of the national bank. The Citizens Bank of Raleigh thereupon merged with the North Carolina Bank and Trust Company.

Defaults having occurred in many of the deeds of trust in which the Citizens Bank of Raleigh was named as trustee, foreclosures of these deeds of trust were made in the name of the North Carolina Bank and Trust Company as successor trustee.

The plaintiff, Braak and wife, had agreed to purchase a tract of land subject to title approval by their attorneys. The title to this tract of land depended upon the validity of one of these foreclosures. The attorneys for the plaintiff declined to accept the title upon the grounds that the North Carolina Bank and Trust Company did not succeed to the powers and trust held by the original trustee.

About 400 foreclosures in the State depend upon the validity of similar foreclosure sales.

The Superior Court held with the plaintiff, from which the Commissioner

appealed. The Supreme Court of North Carolina reversed the judgment of the Superior Court and upheld the validity of the foreclosure. The case is reported in 210 N. C. 379.

Shell Eastern Petroleum Products, Inc., vs. A. J. Maxwell, Commissioner of Revenue

By action of the General Assembly of 1935, the chain store tax was extended to cover filling stations engaged in selling gasoline and petroleum products which had been exempted under the previous law. After enactment of this legislation, all of the larger oil companies operating in North Carolina, changed most of their contracts and leases with filling station operators and contended that by reason of the changed nature of the contracts and leases most of their stations were exempt from the chain store license tax. All of them paid taxes on most of the stations under protest and are contesting liability for payment.

A suit has been instituted in the District Court of the United States for the Eastern District of North Carolina, at Raleigh, by the Shell Eastern Peroleum Products, Incorporated, to recover the sum of $9,000.00 paid by them under protest. In this suit it is contended that the taxpayer does not have the control of the 130 filling stations for which the tax was assessed and paid.

This is an important case, as it not only involves a tax of the plaintiff corporation, but all other oil companies operating in North Carolina.

This case is now pending and undecided in the said court.

W. A. Powell vs. A. J. Maxwell, Commissioner of Revenue

This is a test case brought to determine the validity of Subsection 13, Section 404, Chapter 371, Public Laws of 1935. Under this law, the Legislature of 1935 had imposed a tax for the use of motor vehicles in North Carolina, equivalent to the amount imposed under the sales tax law. This tax was to be remitted if the purchase was made of the motor vehicle from a North Carolina dealer and the tax paid through the dealer.

This tax was imposed to protect the State's revenue and the North Carolina merchants from purchases made out of the State and purchases made in interstate commerce. Under this law, every person using a motor vehicle in North Carolina became subject to the same amount of sales tax or its equivalent, the use tax. The plaintiff contended the act violated both the Federal and State Constitutions.

The case was decided in favor of the State in the hearing before Judge Barnhill in the Superior Court and his judgment was affirmed on appeal to the Supreme Court. The case is reported in 210 N. C. 211.

McCanless Motor Company vs. A. J. Maxwell, Commissioner of Revenue

This suit was instituted in the Superior Court of Rowan County to recover sales tax paid by the plaintiff on transactions comprised of the sale of second-hand automobiles under the sales tax law of 1933. The Commissioner of Revenue had assessed against motor vehicle dealers, under regulations adopted by him of the sales of second-hand or used motor

vehicles, except the sale of second-hand or used motor vehicles accepted in part payment for the sale of the new motor vehicle.

This tax is contested by the plaintiff and many other motor car dealers throughout the State as being both unconstitutional and not in accordance with the provisions of our statute. It involves a very large amount of State revenue under the sales tax law.

The case was heard before Judge W. L. Small in the Superior Court of Wake County, having been transferred to said court by consent. A judgment was rendered in favor of the plaintiff, from which an appeal has been perfected to the Supreme Court, where it is now pending.

J. M. Womble, et al., vs. A. J. Maxwell, Commissioner of Revenue
A. C. Case, et al., vs. A. J. Maxwell, Commissioner of Revenue

These two suits were instituted in the District Court of the United States for the Eastern District of North Carolina. An injunction was obtained in the suit of A. C. Case vs. A. J. Maxwell, Commissioner of Revenue, enjoining the collection by the Commissioner of tax of $20.00 each on slot music machines imposed under Schedule "B" of the Revenue Act of 1933. Upon motion of the defendant, the injunction was dissolved before Judge Meekins and the suit dismissed.

Immediately thereafter a second suit of J. M. Womble, et al., vs. A. J. Maxwell, Commissioner of Revenue, was instituted by the same parties for the same purpose. Motion was made by the State to dismiss this suit and, pending the hearing of the motion, the parties plaintiff agreed to pay the tax in accordance with the provisions of the statute. The Commissioner allowed them until November 1, 1936, to complete the payment, one-half of which has already been paid. The suit will be dismissed at the completion of the payment on November 1, 1936.

American Telephone and Telegraph Company vs. A. J. Maxwell, Commissioner of Revenue

This suit was instituted in the District Court of the United States for the Eastern District of North Carolina at Raleigh. The suit involves the validity of the North Carolina income tax law as applied to the plaintiff corporation. The plaintiff corporation contends that it is engaged exclusively in interstate commerce and by reason thereof is not subject to payment of any income tax to the State of North Carolina. The case involves the question which will decide income tax liability for the years involved in this suit as well as subsequent years and also are the taxpayers similarly situated.

The suit is now pending and has not as yet been heard upon its merits.

North Carolina Park Commission vs. Century Indemnity Company

This case was referred to on page 99 of the Biennial Report for 1933-34. As shown in said report, the case in the said court of Wake County had been decided in favor of the Park Commission, from which an appeal was taken to the Supreme Court. On appeal to the Supreme Court, the judg-

ment of the Superior Court was affirmed. The case is reported in 207 N. C. 725.

Since the decision of the case on appeal to the Supreme Court, the full amount due the Park Commission on account of its deposits in the Central Bank and Trust Company of Asheville has been paid.

State of North Carolina vs. Little, et al.

The Attorney General's office participated in the trial of this case in the Superior Court of Mecklenburg County. The defendants were indicted for alleged cruelty to two negro prisoners, Shropshire and another. Assistant Attorney General Aiken attended the trial, which lasted for about one week in Charlotte. The trial resulted in an acquittal for the defendants.

Atlantic Coast Line Railroad Company vs. A. J. Maxwell, Commissioner of Revenue

This case was mentioned in the 1932-34 Biennial Report of the Attorney General. The case involved the right of the State to collect its income tax from that part of the income of the Atlantic Coast Line Railroad Company which was received from the United States Government for carrying mail. The tax involved in this case was $4,403.98. It also involved the similar question with all other railroads in North Carolina. From a judgment favorable to the State in the Superior Court, the railroad company appealed to the Supreme Court. In the Supreme Court, the judgment in favor of the State was sustained. The case is reported in 207 N. C. 746.

State ex rel. Attorney General vs. Harry A. Gorson

This case is referred to on page 101 of the 1932-34 Biennial Report of the Attorney General. It was decided in the Supreme Court by an opinion filed on January 22, 1936, reported in 209 N. C. 320. The court held that it had the power to revoke a license to practice law upon the ground that the issuance was procured by fraudulent concealment or by false representation of fact made by an attorney applying for license. The motion of the Attorney General to disbar the respondent, Harry A. Gorson, was allowed by the Supreme Court and this attorney disbarred.

Thereafter the respondent petitioned for a writ of certiorari to the United States Supreme Court. This petition was answered by the Attorney General and the petition was denied.

Scott M. Loftin, Receiver, Florida East Coast Railway Company, vs. William R. Kenan, Jr., Lawrence Haines, Trustee, University of North Carolina, et al.

This case was brought in the Supreme Court of the State of New York on May 31, 1932, and is mentioned on page 106 of the 1932-34 Biennial Report as pending in that court.

The court rendered a decision in accordance with the contentions of the University of North Carolina sustaining the bequest made by Mrs. Mary

Lily (Flagley) Bingham, providing for the payment of $75,000.00 per year to the trustees of the University of North Carolina to be used for the purpose of paying the salaries of professors. Honorable George Gordon Battle of the firm of Battle, Levy, Van Tine and Fowler, 37 Wall Street, New York City, assisted this department as special counsel for the University in the trial of this case. No appeal was taken from the decision and this matter is now finally settled. This case is reported in 280 N. Y. Supp. 28.

North Carolina Utilities Commission vs. Southern Bell Telephone Company

This litigation was the outgrowth of an order by the Utilities Commission, made after a full and extensive hearing before the Commission, requiring the Telephone Company to substantially reduce its rates on certain classes of Service and equipment.

The case was tried before Judge Vernon Cowper, without a jury. It lasted more than seven weeks and a great volume of evidence was taken, the case was fully argued and briefs were filed. Before judgment the parties agreed on a settlement of the case, which resulted in substantially sustaining the order of the Commission in reducing the rates.

In this case the Utilities Commission was represented by Hon. L. P. McLendon and this Department. Mr. John W. Aiken, Assistant Attorney General, was assigned to the case and his time was taken up entirely with the case during its actual trial, and during the necessary period of preparation.

This case is mentioned here separately both because of its importance and as illustrative of the time of the staff frequently taken up with trials and court hearings.

A. J. Maxwell, Commissioner of Revenue, vs. Norfolk & Western Railway Company.

While the case was entitled as above, the suit was really prosecuted by the Railway Company to recover income taxes paid under protest for the years 1927, 1928, and 1929. Four other similar suits were pending relating to the taxes of subsequent years, challenged upon the same ground. In the immediate case the sum of $86,421.71 in taxes was involved, and a much greater sum in all the cases.

But, more important, the suit involved the constitutionality of the statute under which the State has collected, and still collects, income taxes out of all the railroad companies doing business in the State. The question presented was a very intricate matter of allocation of interstate income, requiring consideration of rates, costs, revenue, apportionment, and the always difficult matter of applying the allocation statute to the business of the taxpayer. The record and briefs contain 857 pages.

The case was referred to Hon. J. Crawford Biggs, who, after an extensive hearing, rendered a report sustaining the contention of the Railroad. Upon objections to this report, after argument, Judge H. A. Grady rendered a judgment in favor of the State, from which the Railroad Company appealed.

The appeal was heard at the ensuing term of the Supreme Court and the judgment below was affirmed. See 208 N. C. 397.

From the judgment of the State Court, the Railroad Company appealed to the United States Supreme Court, where the case was argued on March 6, 1936. The Court handed down its opinion on March 30, 1936, unanimously sustaining the judgment of the court below. The opinion is reported in 80 L. ed. 609. As it had been agreed that the other pending cases should abide the result of this case, all the other cases were withdrawn by nonsuit.

It is believed that the State of North Carolina is pioneer in sustaining this particular type of taxing law. The case presented some important features of "first impression" with the court, and the opinion in this case will be a valuable addition to the authorities on Income Tax Law.

The case was carried through to a conclusion without outside legal assistance.

In Re: Atlantic and North Carolina Railroad Company—Norfolk Southern Receivership

The lease of the franchise and properties of the Atlantic and North Carolina Railroad Company to the Norfolk Southern Railroad Company, and controversies concerning the same, is involved in the receivership cases now pending in the United States District Court for the Eastern District of Virginia, in which court Receivers for the Norfolk Southern were appointed.

The litigation between the Atlantic and North Carolina Railroad Company and the Receivers concerns the demand of the Atlantic and North Carolina Railroad Company against the Norfolk Southern Railroad Company and its Receivers for payment of amounts due under the lease, and for damages by reason of its breach, particularly the failure to keep up the road and its rolling stock. The counter demand by the Norfolk Southern Railroad Company and its Receivers is based on a claim that during the receivership, and before the operation of the railroad was resumed by the Atlantic and North Carolina Railroad Company, the Receivers had operated at a loss, which the Atlantic and North Carolina Railroad Company was legally bound to repay.

These differences represent a very substantial sum.

The interests of the Atlantic and North Carolina Railroad Company are represented by Col. Tazewell Taylor, of Norfolk, Va., and Maj. L. P. McLendon, of Greensboro, N. C., and by this Department, by virtue of the fact that 73 per cent of the Atlantic and North Carolina Railroad Company is State owned.

The case is still pending.

Morehead City Port Commission

In order to secure the Federal assistance necessary to the development and construction of the Port Terminal at Morehead City, the Port Commission found it necessary to have its bonds guaranteed by the Atlantic and North Carolina Railroad Company, and the Railroad Company undertook such assistance because of its physical and economic relation to its More-

head City terminus. The negotiations with the Federal authorities made a long and tedious file and necessitated many interviews in Raleigh and many conferences with the Railroad Transportation Division at Washington, and necessitated numerous opinions from this office on the legal matters involved. The negotiations finally ended in action satisfactory to the parties involved.

Lucas vs. City of Charlotte and A. J. Maxwell, Commissioner of Revenue, et al.

This was an action instituted in the United States Court for the Western District of North Carolina to restrain the collection of a tax on photographers under Section 109 of the Revenue Act. At the hearing in the District Court the restraining order was dissolved, an appeal was taken by the plaintiff to the United States Circuit Court of Appeals in Richmond, Va. This case was there argued and an opinion has not been handed down by that court.

Stagg vs. Nissen Wagon Company

In this case the Nissen Wagon Company, a Forsyth County corporation in receivership, protested the payment out of funds in the hands of the Receiver to the State of North Carolina for franchise tax levied against this company after it had been placed in the hands of Receiver by an order of the Superior Court. The validity of the tax assessment was upheld in Superior Court, an appeal was taken by Receiver to the North Carolina Supreme Court, in which the judgment of the lower court was affirmed. This case is reported in 208 N. C. 285. At the time this case was argued, a similar case in the United States Court was pending, that of J. M. Logan, Receiver of the First National Bank of Charlotte, in which the same position was taken by the Commissioner of Revenue with regard to the assessment against the receiver for franchise tax during the period of receivership and during which time the Receiver operated the corporation as a going concern. Immediately after the Stagg vs. Nissen case was decided, the United States Judge for the Western District held that the tax was properly assessed against the Receiver.

Metro-Goldwyn-Mayer vs. A. J. Maxwell, Commissioner of Revenue

This is a case in which the plaintiff sued the Commissioner of Revenue for a refund of taxes which it contended were unlawfully assessed but which had not been paid under protest as provided by statute. The Commissioner of Revenue demurred to the complaint and the demurrer was sustained in the Superior Court. The plaintiff appealed and the judgment of the lower court was affirmed in 209 N. C. 47, the court holding that the State can only be used in the manner provided by the statute.

The 1933 General Assembly by enacting the Sterilization Law provided that the Attorney General was ex officio a member of the State Eugenics Board. This Board meets quarterly and passes on such cases which come before it. There has been one appeal from a judgment of this Board ordering the sterilization of one Genelia Juanita Bridges. This Department

represented the Welfare Officer of Iredell County, who was the prosecutor in this sterilization case. The act was upheld in Iredell County and sterilization ordered by the presiding Judge. The plaintiff in this case did not prosecute the appeal further.

During the past two years the department has been called upon to represent the State Hospital at Raleigh for representation in habeas corpus proceedings in the Wake County Superior Court, instituted by patients who had been committed to the hospital as inebriates. There have been approximately 40 of these hearings during the past biennium.

Compensation Cases

During the period covered by this report, this Department has represented various institutions in actions brought by employees under the Workmen's Compensation Act. Among these are the following:

Shope vs. Department of Conservation & Development

An action brought by the claimant for compensation for injuries received by him as the result of an accident arising out of and in the course of his employment. Compensation was denied by the Trial Commissioner and this was affirmed by the full Commission. Appeal pending in the Superior Court of Macon County.

Harley Rhodes vs. Department of Conservation & Development

This claimant, an employee in the Department in the capacity of Fire Warden, claimed compensation for injuries received by falling off a telephone pole while about his official duties. Claimant failed to appear at trial in Bumcombe County and the action was dismissed. No appeal was taken.

Since the broadening of the scope of the Wokmen's Compensation Act, bringing within its meaning all State employees, including school teachers and other employees of the State School Commission, numerous actions have been brought for damages, among which are the following:

McDonald Swinson vs. State School Commission

This claimant alleged injuries received by him as a school bus driver while about his official duties, claiming that a motor back-fired, breaking his arm and inflicting painful and permanent injuries. Compensation was denied by the Trial Commissioner. The case is now pending before the full Commission for review.

Sawyer vs. State School Commission

This claimant was Superintendent of Public Schools of Gates County. It was established by this claimant's next of kin and by witnesses to the accident that he was killed in an automobile accident while about his official duties. An award was made by the Trial Commissioner, which was affirmed in a subsequent hearing by the full Commission. This case was not carried

further, it being the opinion of this Department that after all the evidence was heard the award was properly and justly made.

Mercer vs. State School Commission

This was an action brought by the next of kin of a colored employee of the Wilson County Schools. This claimant, from all the evidence available, was killed while in the employ of the defendant when the truck in which he was riding was struck by a train in the City of Wilson.

Ruff vs. State School Commission

The claimant in this case was a school bus driver who was killed on his school bus route after being stopped by an assailant who blocked the road on which he was traveling, assaulted the deceased, actually killing him with a shotgun inside the truck which he had been operating. An award was made by the Trial Commissioner. Defendant appealed to the full Commission, an award confirmed, appealed to the Superior Court of Rutherford County, where the opinion of the full Commission was upheld. An appeal was not carried further.

Gaither White vs. State School Commission

This is a case of another school bus driver who claimed a back injury as the result of a faulty jack which he was using to repair a tire on a school bus. It was established in a hearing before the Trial Commissioner that this form of work was not a part of the duties of a school bus driver. Compensation was denied by the Trial Commissioner. This action was affirmed by the full Commission. Appeal by claimant to the Superior Court has not been perfected and the appeal has been dismissed.

There has been one compensation case in which this Department represented the Department of Adjutant General. This case was brought in New Hanover County by the next of kin of Sgt. Ayers of the North Carolina National Guard. Sgt. Ayers was killed during the summer encampment of his National Guard Unit at Fort Moultrie. The Department denied compensation on the ground that this guardsman did not meet his death as the result of an accident arising out of and in the course of his employment. This position was upheld by the Trial Commissioner, compensation was denied, claimant appealed to the full Commission, and his claim was again denied. He did not prosecute his appeal further.

Needs of the Office

In his Biennial Report for the years 1932-1934, the former Attorney General stressed the rapidly increasing business of the office and the need of at least two additional assistants. The business of the Department has very greatly increased since that time.

Reference has been made elsewhere to the employment of Law Clerks. These men are doing a specialized type of work, found indispensable in any legal department dealing with a large volume of business. Their employment does not dispense with the necessity for additional assistants,

which is greater now than it was when the former Attorney General made his request, and increases with the importance and volume of the business handled through this office.

For convenience, we reprint information as to the set-up in the offices of the Attorney General in the several States as it was in the year 1932:

Alabama, 6; Arizona, 4; Arkansas, 5; California, 24; Colorado, 10; Connecticut, 5; Delaware, 4; Florida, 5; Georgia, 6; Idaho, 4; Illinois, 28; Indiana, 10; Iowa, 6; Kansas, 5; Kentucky, 6; Louisiana, 6; Maine, 4; Maryland, 5; Massachusetts, 10; Michigan, 13; Minnesota, 10; Mississippi, 3 assistants and 2 special agents; Missouri, 9; Montana, 4; Nebraska, 7; Nevada, 1; New Hampshire, 1; New Jersey, 15; New Mexico, 4; New York, 104 deputies and assistants, 32 investigators, and 17 title examiners; North Dakota, 5; Ohio, 19; Oklahoma, 8; Oregon, 5; Pennsylvania, 22; Rhode Island, 4; South Carolina, 2; South Dakota, 5; Tennessee, 7; Texas, 18; Utah, 4; Vermont, 1 special investigator and 1 special counsel; Virginia, 2 regular and 4 special assistants; Washington, 6; West Virginia, 3; Wisconsin, 8 deputies and assistants and 4 investigators; Wyoming, 3.

The State's Legal Work

Many situations arise which make it desirable to employ counsel outside the established Legal Department in special litigation, and this will, no doubt, have to be done in some instances in the future. Sometimes legal services have to be performed in other and distant jurisdictions; and at other times it is apparent that local counsel may be employed with profit. More often, however, such employment has become necessary where important litigation is so prolonged and exacting in its demands that it would absorb the attention of the whole staff, and give little time for the performance of other equally important duties of the office.

The legal business of the State should be done through the Department of the Attorney General as far as possible; and it is possible to confine such business to the care and control of the Legal Department to a far greater extent than has obtained in the past. It is the logical thing to do and it will result in substantial economy and more uniform and efficient control.

Administration of the Criminal Law

The administration of the criminal law in this State cannot be considered an enterprise of the State itself. It is now, as it was 150 years ago, a community, or neighborhood, affair. In view of conditions admittedly existing in our State in relation to the increase of crime, many thoughtful people have urged me to present in this report the desirability of creating some form of responsible State authority through which the administration of the criminal law might be made more effective and a more organized and united effort made for the protection of society. It is the opinion of those in position to speak with authority on the subject that much may be done in this direction without an amendment to the Constitution, and with this I agree. The creation of a Department of Justice, or some similar State authority by whatever name called, has been strongly recommended in the public press, has been recommended by the State Bar Association, and

strongly urged by the Conference on Social Service, which held its annual session in the City of Durham.

We are sure there is a popular and practically unopposed demand for some effort on the part of the Legislature to meet the menace of crime in a more satisfactory and responsible way, through State authority and direction in the enforcement of its criminal law.

The crime situation in other states has been met in the same way. It is my considered opinion that a system can be worked out which will not unreasonably add to the expenses of the State, and which will result in greater efficiency and uniformity in the administration of the criminal law, and go far to remove the reproach upon the State because of the inefficiency and inadequacy of its present method of dealing with crime.

We repeat here the statement made in the Biennial Report of 1932-34:

> Crime has become one of our major problems. North Carolina should have a better setup for enforcement of the laws. This should head up in the Attorney General's office. That can be done under our present Constitution and without encroachment upon the constitutional powers and duties of other officers.

Crime Laboratory

Recent occurrences in the State have accentuated the necessity of setting up in some department a conservatively equipped and staffed laboratory, for the analysis of criminal evidence, to which prosecuting officers in all the courts of the State might resort in the preparation of cases for trial. Such an office would be equipped not only with means of analyzing blood and poisons, and for ballistic examination, handwriting comparison, examination of fingerprints, and other similar work, but it should have a few men trained in the investigation of crime who might be sent to various parts of the State, when necessity requires, to help the local officers in investigating evidence, identifying criminals and preparing cases for trial.

The State is now spending many thousands of dollars in radio equipment for apprehending criminals, while at the same time criminals are escaping the consequences of serious crimes for the reason that the officials are unable to discover the proper person to apprehend.

The percentage of unsolved crime, of crime solved only after the most expensive and prolonged efforts, and often solved too late, is far larger than the public generally supposes.

I do not consider it amiss in conclusion to call attention again to the necessity of the codification of laws, both civil and criminal—and especially of the criminal laws. Not only should codification be made, but it is my profound impression that much good could be done by rather drastic revision of outmoded and outworn practices, both in the trial and review of cases, which seriously impede the administration of justice.

OPINIONS TO GOVERNOR AND BUDGET BUREAU

Atlantic & North Carolina Railroad Co., Charter and Amendments Thereto

31 July, 1934.

Complying with your request to investigate the Atlantic & North Carolina Railroad Co. charter, and amendments thereto, relating to the voting strength of the stock of the State of North Carolina in that concern, and the possibilities of control of policies and corporate action by the stockholders, I beg to report as follows:

The charter of the Atlantic & North Carolina Railroad Co. is found in Chapter 136 of the Acts of the General Assembly of 1852 (page 484) and amendments thereto. Under that act there was an authorized capital stock of $900,000.00, and the business might be begun when $300,000.00 of this was subscribed. Singularly, the law does not fix the par value of the shares of stock, nor have I found this matter referred to in any of the amendments; but shares of stock of the par value of $100.00 each were issued, and the par value of shares has always been treated as of that amount.

In this act the voting of stock is referred to in sections 9 (as to the election of directors) and 12 (as to other voting), and the voting strength was in accordance with the stock held, that is to say, each share had one vote.

The charter was amended by Chapter 232 of the Laws of 1854 and 1855, for which see page 298. In that act the capital stock was increased and made $1,600,000.00. Under section 4 of the act, a complicated method was set up fixing the voting strength, under which arrangement the voting strength of shares of stock progressively decreased as the total stock increased in amount. The section is as follows:

> Sec. 4. Be it further enacted, That in all elections, and upon all questions taken in any general meeting of the stockholders, in which a vote by stock may be had, the vote shall be taken according to the following scale: the owner of one or two shares shall be entitled to one vote; the owner of not less than three nor more than four shares, shall be entitled to two votes; the owner of not less than five nor more than six shares, shall be entitled to three votes; the owner of not less than seven shares nor more than eight shares, to four votes; the owner of not less than nine nor more than eleven shares, to five votes; the owner of not less than twelve nor more than fifteen shares, to six votes; the owner of not less than sixteen shares nor more than twenty shares, to seven votes; the owner of not less than twenty-one nor more than twenty-six shares, to eight votes; the owner of not less than twenty-seven shares nor more than thirty-three shares, to nine votes; the owner of thirty-four shares nor more than forty shares, to ten votes; and the owner of every ten shares above forty, shall be entitled therefor, to one vote: Provided, that no individual or company holding stock in said company, shall be entitled to more than two hundred votes, except the State, who shall be entitled to three hundred votes, but should the

> State hereafter transfer any part of its stock, then its vote shall be in the proportion of what may be retained as compared with the amount now represented in said corporation; the State shall at general meetings of the stockholders, be represented by an agent or proxy, appointed by the Governor, and such agent or proxy, shall be entitled in the general meetings aforesaid, to vote according to the above scale on all questions, except in the election of directors by the individual stockholders.

From the above you will note the limitation on the voting of total State stock to be 300 votes.

This act further provides for the appointment by the Board of Internal Improvements (it would now be by the Governor, C. S. Section 6553.f) of eight directors, and the election by the other stockholders of four directors.

A provision was made in this act by which the State and the counties through which the road should pass were permitted to subscribe for stock (see sections 5 and 6 relating to the State). The law required the State to subscribe for two-thirds of the stock of the road, and made a provision for borrowing money for the purpose of being able to make such subscription good. This was done, and under this law the State acquired 10,666 shares of stock.

By an amendment to the charter (Laws of 1866-1867, page 120), the capital stock was increased to $18,000,000.00, and an indebtedness of the road to the State of $200,000.00 was considered and provision made for its conversion into stock. This was apparently carried out, because I find in the reports made to the stockholders that the number of shares held by the State is stated to be 12,666.

Another amendment to the charter was made by Chapter 3, page 3, Laws July Special Session 1868, which relates to the voting of the State stock, and which is as follows:

> Sec. 2. Be it further enacted, That the vote of the State in all elections and upon all questions taken in any general meeting of the stockholders of said Atlantic and North Carolina Railroad Company, in which a vote by stock may be had, shall be increased over three hundred votes the number fixed by the amended charter of said company in the ratio of any stock thereafter purchased or otherwise acquired, or which may be purchased or otherwise acquired to the original stock owned by the State.

Referring to the last report available—that made to the stockholders at the meeting of August 10, 1933—I find a list of the stock outstanding held by various persons, together with a statement of the voting strength of the stock so held. (Pages 22 to 28.) On page 28 of this report, the total outstanding stock is reported to be 17,972 shares, and the total voting strength 1,096 votes. In so far as I am able to judge, the voting strength opposite the number of shares held by each stockholder is properly calculated in accordance with aforesaid section 4 of Chapter 232, Laws of 1854-1855. I have not, however, made a complete test of this. However, I find that the total vote of the State is put at 300, notwithstanding the provisions of the 1868 Act. There is a possibility, of course, of some amendment justifying this which I may have overlooked, but it is not in accordance with the section I have above referred to.

I have access to the minutes of the corporation from the September 1st,

1904, meeting down to the present, and find that down to the meeting of August 7, 1913, and including that meeting, the State was allowed 350 votes for its 12,666 shares. At the meeting of August 6, 1914, under the proxy committee's report, the State was permitted to vote 300 votes for its 12,666 shares, and, apparently, this has continued down to the present time. I have been unable to find an explanation for the change. An examination of the Public and Private Laws of the current period does not disclose an amendment to the charter under which it might be justified, although, of course, there may have been an amendment which I have overlooked. The addition of fifty votes assigned to the State's stock would be in approximate agreement with the section above referred to. However, this apparent incongruity is not of great importance as affecting the conclusions I have reached, as it is quite insufficient to give the State control of the policies and of the corporate action of the Railroad Company in so far as these may be dependent upon action of the stockholders.

I note that the largest stockholders appear to be as follows:

State of North Carolina	12,666	shares
Mr. Geo. R. Loyal, Norfolk, Va	1,633	shares
Mr. M. S. Hawkins, Norfolk, Va	1,500	shares
County of Craven, New Bern, N. C	1,293	shares
County of Pamlico, Bayboro, N. C	202	shares

I do not list those having less than 50 shares, but the entire list is, of course, available from the report above mentioned. I have not checked this with the stock book, and am unable to vouch either for its accuracy or to indicate what changes in holdings have taken place since this report. Upon this showing it appears that the total voting strength of the State, and of the counties of Craven and Pamlico combined, constitutes a majority of all of the legal votes, and would be controlling upon any matter decided by stock vote, if the foregoing figures are correct. If my interpretation of the Laws of 1868, Section 2, is correct, additional voting strength must be assigned to the State of North Carolina, making the present number of votes allowed by law to be cast for the stock held by the State to be 350, which would, of course, increase the majority to that extent if the State and the counties aforesaid vote together.

The State owns more than two-thirds of the stock in this railroad, and without now questioning the causes which led to the result, I merely point out that it does not have that controlling influence in the corporation to which it would ordinarily be entitled in those matters where the stock may control the directorate. It seems to me that the reasons, whatever they were, for this disparity must have passed away; and the history of the road and its service to the sections through which it passes, and to the State at large, especially in view of more recent developments, clearly indicate a necessity for more adequate State control and protection. I do not think that the difficulties in the way of accomplishing this are insuperable.

The Constitution of the State contains a provision incorporated in 1915 which would, in my judgment, prohibit direct special legislative action. Article VIII, Section 1, provides:

> Sec. 1. Corporations under general laws. No corporation shall be created nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the pa-

> tronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the General Assembly may at any time by special act repeal the charter of any corporation.

The Atlantic & North Carolina Railroad Co. is, of course, not a municipal corporation, and proceedings for amendment to its charter must originate with the stockholders, under appropriate corporation laws. See C. S. 1131 (b). To do this, obviously the State must have assistance from other stockholders. But, as the interest of the counties through which the road passes is identical with that of the State, it should not be difficult to obtain this.

Until the stockholders act in a matter in which it is their right to control the directorate, the directors, of course, act for the corporation; and the State has control through the directorate approximately commensurate with its holding of stock; but final control in important matters must rest upon the voting strength of the stock.

Should you require any further investigation in this situation, I will be glad to respond to your request.

RECORDER'S COURTS; VACANCIES; APPOINTMENT OF SUCCESSOR TO DECEASED; CHAPTER 398, PUBLIC LAWS 1909.

23 August, 1934.

I am today in receipt of your letter, accompanied by telegram from Mr. Marsden Bellamy, County Attorney, New Hanover County, in relation to appointment of successor to Mr. George Harris, deceased, Judge of Recorder's Court of New Hanover County.

Chapter 398, Public Laws 1909, which created this court, contains no provision for appointment of successor to a Recorder of such Court who has died. I am unable to find any provision in any general statute prescribing how such successor shall be appointed. I am assuming from Mr. Bellamy's telegram that there is no public-local statute amending Chapter 398 of 1909, which contains provision regulating the manner of appointment of successor to the deceased Recorder. The Constitution, Article IV, Section 25, is in part as follows:

> Sec. 25. Vacancies. All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointments of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly, when elections shall be held to fill such offices.

It is quite evident that the Recorder's Court of New Hanover County was established under Constitution Article IV, particularly sections 2 and 30.

Assuming then, upon Mr. Bellamy's telegram, that there is no applicable statute other than Chapter 398, Public Laws 1909, I am of the opinion that under Constitution Article IV, Section 25, the Governor has the power to fill the vacancy created by the death of Mr. Harris until the next regular election for members of the General Assembly.

Diversion of Gasoline Tax Funds

22 March, 1935.

The inquiry relates to the application of the Hayden-Cartwright Act relating to Federal aid to highways, and more particularly to the application of section 55 (U. S. C. A. Title 23) to the question of Federal aid to State highways.

The question presented here is:

Whether the continued transfer of the sum of one million dollars from the State Highway Fund to the General Fund might constitute such diversion of funds as would jeopardize the State's highway appropriation.

The phraseology employed in section 55 of the Federal act is not so clear as to admit of positive construction beyond all doubt. It may be contended that the expression "The amounts now provided by law for such purposes" is to be considered as meaning the amounts actually raised and used for such purposes according to the experience in the collection of taxes as of June 18, 1934, the date of the ratification of the Federal act. It is obvious, however, that such a construction would not be very effective in accomplishing the declared purpose of the act, and hardly an effective expression of the principle which is the declared basis of the law, which is thus set out: "Since it is unfair and unjust to tax motor vehicle transportation unless the proceeds of such taxes are applied to the construction, improvement or maintenance of highways, etc." The only manner in which that principle could be logically enforced year by year, so that actual diversion might not occur, would be to give to the statute a more elastic interpretation so that it might take care of these situations as they might arise. In my opinion, the limitation of a state to the funds actually collected and used upon the highways, as of June 18, 1934, or as of June 30, 1935, with carte blanche permission to use all funds in excess of that amount for any other purpose for a series of ensuing years, during which such fixed amounts might bear no particular relation to the amounts raised by gasoline taxes, simply abandons the principle which is the basis of the act, and has no further relation to it.

For that reason, it was probably the intention of this act to meet a situation rather difficult to put in detail by referring to the provisions of the law existing at the time of the ratification of the act by the use of the word "now," rather than the actual amounts raised under that law. A better construction, then, would be that the act means by "amounts now provided by law" the amounts to be raised by the application of the rates provided by law to the tax basis without specific reference to the actual figures representing such amounts by experience in collection.

This, of course, would mean that no diversion of proceeds arising from gasoline taxes, or the other taxes mentioned in the act, could take place without violation of this act, unless the *provisions of the law* were so changed as to raise larger *proportionate* amounts which would involve increase in rates or impositions of other forms of taxes.

It is obvious, therefore, upon the latter construction, that the continuation of the practice of allocating one million dollars out of the gasoline taxes for another purpose, or to the General Fund, might, indeed, offend the Hayden-Cartwright act.

Division of Highway Funds

1 April, 1935.

In reply to your request for a construction of section 4 of Chapter 282, Public Laws of 1933, relating to the transfer of $1,000,000 from the Highway Fund to the General Fund, in its relation to the Hayden-Cartwright Act, a portion of the Federal Highway Act (section 55), enacted June 18, 1934, I will say that in my opinion, this section of the law fixes a permanent and continuing policy of the State with regard to the relation betweeen the General Fund and the Highway Fund, based upon the reasonable assumption that, inasmuch as the Highway Department is a part of the general government of the State and is dependent upon other departments for its efficient administration, it should make a reasonable contribution to the General Fund out of which debt service and cost of general government is paid.

In my opinion, while this policy could be reversed by appropriate legislation, no such reversal has taken place; and although there is a separate appropriation measure enacted biennially, the fixing of $1,000,000 in the Act of 1933 as being a reasonable amount to transfer is only incidental to the general purpose of the Act. In my opinion, this Act is a part of the *provisions of law* existing at the time that the Hayden-Cartwright Act was passed, and it was not the intention of the latter Act to interfere with it; nor, indeed, would such result be produced by a literal construction of the Federal Act mentioned, which in terms recognizes the law which existed at the time of its passage.

Chapter 414, Public Laws 1935; Parole Commission Appropriation; Compensation and Expenses

19 June, 1935.

I understand from your letter of June 19th that an enlargement of the activities of the Parole Department was contemplated by the General Assembly at the time appropriations were considered, and while it does not appear definitely in the appropriations as distinct items, it was intended that $8,224.00 should go to the Parole Department from the Governor's Office, and $9,000.00 from the State Highway and Public Works appropriation. The latter was intended for three Parole Supervisors and their traveling expenses. It is not now questioned that the sum of $17,224 might be available in this way according to the original intention of the Legislature.

However, later, under the Cooper-Sentelle Bill, Chapter 414, Public Laws 1935, this Department was very much enlarged, both as to personnel and as to activities. In this law an Advisory Board was set up, an unlimited number of Investigators and Supervisors was authorized, and provision was made for the appointment of Assistants to the Parole Commissioner. It is perfectly apparent that this set-up was not under consideration at the time the above-mentioned $17,224 was provided, and it is also obvious that the sum of $17,224 will be far from sufficient to maintain the Department in the new form created by the Legislature.

The question now arises as to whether or not this presents a situation justifying a resort to the Contingency and Emergency Fund, or whether or not the appropriation to the Highway and Public Works Department may be available to the extent that it may be necessary, above the $17,224, for the purpose of carrying out this Act.

In my opinion, if there had been no other provision for the necessary funds for carrying out this Act, the Contingency and Emergency Fund would, under the law, be available for that purpose. Section 5 of Chapter 414, Public Laws 1935, expressly provides, however:

> The salaries and expense allowances of all personnel appointed under sections two, three and four of this Act shall be fixed by the Governor, with the approval of the Advisory Budget Commission, and all such salaries and expenses, other than that of the Parole Commissioner, shall be paid by the State Highway and Public Works Commission upon vouchers approved by the Commissioner of Paroles.

This directly authorizes a resort to the appropriation of the State Highway and Public Works Commission for the maintenance of the Parole Department, in the respects set up in the section, and to the extent that may be necessary for such purpose. In addition to the salaries and personal expenses, there are other expenses, to which I refer below, and in my opinion, these also may be legally paid out of such appropriation.

It has been noticed that the sums making up the aggregate of $17,224 do not appear as separate items, either in the appropriation to the Executive Office or the appropriation to the State Highway and Public Works Commission. It is understood, however, and this is verified by the minutes of the meetings of the Joint Appropriations Committee, that these items were considered as affecting the appropriation made. I do not think this is at all significant as affecting or as limiting the provisions of the Cooper-Sentelle Act, setting up an enlarged Parole Department. It is not, therefore, necessary to keep any account as between any such sum and the total expenditures necessary to maintain the Department, in the sense that any such sum must be exhausted before a general resort to the appropriation to the State Highway and Public Works Commission under Chapter 414. I think the latter Act justifies resort to the appropriation of the Highway and Public Works Commission to the full extent that may be necessary to support the expanded set-up, exclusively, of course, of the salary of the Parole Commissioner.

You mention in your letter the necessity of furnishing forms to the Clerks of the Superior Courts, and perhaps some other incidental expenses in carrying out this Act. In this connection, I wish to say that these will almost certainly be of a character closely connected with personal administration, and, no doubt, might be charged as an expense to the State Highway and Public Works Commission, regardless of this Act. The specific forms mentioned in the bill are required to be furnished by the Highway and Public Works Commission without charge.

It is true that a broad discretion was given in the authority for the set-up of this Department, which was, no doubt, necessary in order that such authority would be sufficiently elastic to cover a situation which might vary with experience, and to secure both economy and efficiency in the operation of the Department; this, however, has nothing to do with the construction of the law requiring its maintenance.

COURTS—CONFLICTING TERMS, REGULAR AND EMERGENCY JUDGES AND COURTS

17 July, 1935.

The availability of Emergency Judges has caused some confusion in the laws as to holding courts. An examination of the laws amendatory of Consolidated Statutes, section 1443, will doubtless show that in a number of Judicial Districts two or more conflicting courts have been established. Such a situation occurred, but rarely, through inadvertence heretofore. Now, however, the conflict seems to be deliberately made.

I find it impossible to say which of such terms of court could be designated as regular—perhaps both.

It is my opinion that when the first weeks of such terms do not conflict, it is the duty of the Regular Judge of the District to go to the court whose term begins first; the other court would then, of course, have to be supplied by an Emergency or Regular Judge designated by the Governor for the purpose.

However, where there is no conflict with any other court in the District, the Regular Judge holding the courts of that District by rotation is the proper Judge to hold the court. In other words, the Regular Judge holds all the courts in his District, unless a conflict renders this impossible or unless a change is effected or a Special Judge sent to hold that court.

DISPOSITION OF "INTERIM PAY FUND"; P. L. 1933, 554

4 September, 1935.

Pursuant to your request, I have given consideration to Chapter 554, Public Laws of 1933, the same being an act relating to what is known as the "Interim Pay Fund" and as the "Spanish-American War Relief Fund."

I am informed that this fund was paid by the Federal Government to the State of North Carolina in trust for the benefit of certain designated veterans of the Spanish-American War, to be paid by the State to such veterans upon demand.

A considerable portion of the original sum, together with accrued interest, still remains in the State treasury. The accrued interest, of course, is impressed with the same trust imposed upon the principal fund.

The act above named designates you as Trustee of said fund and directs payment by you of the accrued interest to the quartermaster of the Department of North Carolina United Spanish-American War Veterans, to be used by this organization for welfare work among Spanish-American War veterans, their widows and children, and for current use of said organization.

Compliance by you with this provision of the act will of necessity divert a portion of the trust fund from those in whom it is vested into channels entirely foreign to the purposes for which the appropriation was originally made by the Federal Congress.

In my opinion this requirement of the act is violative of Section 17,

Article I, of the Constitution of North Carolina, and of section 1 of the Fourteenth Amendment to the Constitution of the United States.

This fund having vested in certain designated parties, any legislation, either State or Federal, requiring or directing payment of this fund or any part thereof to parties other than those in whom the fund is vested will not be enforceable at law.

It is suggested that the constitutional barrier might be lifted by the enactment of an amendment to Chapter 554, Public Laws of 1933, requiring that claim on the part of those in whom the fund is vested, or their legal representatives, be made within a reasonable time to be stipulated in said amendment, and further requiring that notice be given that, in absence of such claim being made within such time, the fund should then be disposed of in the manner set forth in the original act.

There is authority to the effect that such a statute limiting time for presentment of claim is not in violation of the due process clauses of the constitutions, even though title to the fund involved has already vested in the claimant.

Rewards; Officers Entitled to the Same

22 October, 1935.

This office is of the opinion that the provision in Consolidated Statutes 4555 which prohibits a reward to be made to any sheriff or other officer for any arrest made for a crime committed within the county of such sheriff or officer making the arrest applies only in cases where the original apprehension or arrest of a person charged with crime is desired. It is our opinion that after the sheriff has arrested a person and such person is then tried and committed to prison, that the sheriff's duty ends.

Construction of Prison Unit under Chapter 257, Section 3, Public Laws 1935; Availability of Funds Therefor

4 November, 1935.

Section 3, of Chapter 257, Public Laws 1935, amends Section 13 of Chapter 172, Public Laws of 1933, by substituting therefor the following:

> That the State Highway and Public Works Commission may provide within the bounds of the Central Prison at Raleigh, or elsewhere in the State, suitable quarters for women prisoners, and arrange for work suitable to their capacity; and the several courts of the State may assign women convicted of offenses, whether felonies or misdemeanors, to such quarters so provided. No woman prisoner, however, shall be assigned to work under the supervision of the State Highway and Public Works Commission whose term of imprisonment is less than six months, or who is under eighteen years of age. No male person shall be assigned to labor under the supervision of the State Highway and Public Works Commission whose term of imprisonment as fixed by the judgment of the court is less than thirty days.

The question submitted to me is as to the availability of funds for the construction of the building of "suitable quarters for women prisoners" under the above act.

It will be noted that the act does not require the State Highway and Public Works Commission to build such quarters, but merely authorizes it to do so; and in giving this authority no appropriation is made to carry out the construction. I have heretofore ruled that this act is not mandatory upon the State Highway and Public Works Commission, and it follows that the Contingency and Emergency Fund is not available for this purpose, even if it were sufficient. The only suggested source from which the money to pay for construction might come is, therefore, the general revenue of the State Highway and Public Works Commission allotted to that body under the Appropriations Act, or other pertinent laws; and this comes down to a question as to whether or not the expenses of such construction may be available from funds allotted to upkeep of the Prison System out of current appropriations to the State Highway and Public Works Commission.

The law places on the State Highway and Public Works Commission the positive and unavoidable duty of the safekeeping of all persons convicted of crime and legally committed to its custody. It cannot refuse to receive any person so properly committed. The duty of safekeeping implies many essential things: An adequate place of confinement; food and clothing; medical and surgical care, hospitalization; and the many things which humanity decrees should be done in behalf of men and women whom the State has taken into its physical possession, and who can, therefore, do nothing for themselves. There must be physical equipment on a large scale to accomplish these purposes. Of first importance in this respect must be adequate buildings, or "quarters," for the confinement of prisoners. I am convinced that if the Highway and Public Works Commission has under its control, for expenditure, any funds for use in behalf of the State's Prison, not specifically tagged for other purposes—that is not completely budgeted in a way that excludes such application—it has the authority, under the law, to use it for such construction.

Maintenance of the State Prison System is not necessarily confined to the upkeep of its already existing properties, or provision made for subsistence of prison inmates, or support of merely one or more of the functions of the Prison Department.

The State Highway and Public Works Department, including the Prison Division, is one of the largest institutions in this country. In the maintenance of the Prison System itself there will be required improvements and constructions not provided for by separate appropriation, if the purposes of the system are served and the responsibilities of the Administrative Board met. Whether or not a particular expenditure for construction may be made as a matter of maintenance must be left to the sound discretion of the Administrative Board, such discretion to be exercised in the light of the duties placed upon it by law. I do not think any legal line could be drawn in advance between permissive and non-permissive objects of expenditure without invading the administrative authority and functions of such a board.

Down to the time that the State Prison Department and State Highway Department were consolidated, direct appropriations were made to the State Prison System, both for construction and for ordinary maintenance other than construction. There was no other way, as the funds realized from prison operations were inadequate for either purpose and became more conspicuously inadequate as the heterogeneous prison population rapidly increased. An appropriation, totaling $1,687,000.00, was made in 1931 to the State's Prison covering appropriate items of maintenance of the system. Upon consolidation of the Highway Department and Prison Department under the State Highway and Public Works Commission (Chapter 172, Public Laws 1933), or in contemplation of such action, no appropriation whatever was made to the Prison Department, under the Appropriations Act of 1933 (Chapter 282, Public Laws 1933), although the State's Prison is mentioned under Division V of paragraph 1, subsection 12, showing that it was not entirely forgotten.

The State Prison System does not receive any further direct appropriation after consolidation, as it is not mentioned in the 1935 Appropriations Act at all, and we are bound to conclude that the enormous sums necessary for the maintenance of that system are not only expected to be paid out of the fund theretofore known as the "Highway Fund," but that provision for it is tied up in the appropriation to the State Highway and Public Works Commission; either we have to assume that the State intended to quit the prison business, or that it was the legislative intent to support it out of the appropriations made under Division XII of the Appropriations Act to to which we have referred.

The State Highway and Public Works Commission has an exceedingly important work to perform in relation to the construction, maintenance and management of our vast Highway System, and the expenditure of the enormous sums collected in connection therewith, but at the same time the proper maintenance of an adequate Prison System is more vitally connected with the very existence of society than the more modern question of highways, and the Legislature did not ignore it.

Perhaps by a bookkeeping system commendable enough for internal checks, the Prison System may be made to appear practically self-supporting after the merger. If so, the same result might have been reached through coöperation of the independent departments; consolidation meant more. I do not think it necessary to justify all expenditure made in behalf of the prison upkeep under the appropriation to which I have referred, and which is really to the State Highway and Public Works Commission, as having a definite quid pro quo relation to highway construction. The duties of the State Highway and Public Works Commission toward the Prison System was not affected by the condition that convict labor upon the highways is either profitable or unprofitable. The question of availability of such convict labor, and the propriety (as old as civilization) of employing it in highway construction and upkeep, was a sufficient reason for such consolidation. At that time the prison was notoriously not self-supporting, and this was known to every member of the Legislature. The law-making body, we must assume, knew the relation which under the proposed consolidation must obtain between the activities and necessities of the prison and highway construction and upkeep, whether near or remote, and

definitely place the burden of the upkeep of the Prison Department upon the latter, or rather upon the funds which by common consent and statutory definition had been devoted to its upkeep.

I understand that this view of the matter is confirmed by administration practice. Regardless of what bookkeeping may show, or any attempt by that method to justify allotments for prison upkeep from the general highway appropriation, it is true that the State Prison System is maintained out of the appropriations made to the State Highway and Public Works Commission under Division XII of the current Appropriations Act. The allotment from this appropriation to the prison for its maintenance is not in any way budgeted by law so that so much of it must be used for this purpose and so much for that; and I am, therefore, of the opinion that the construction of a place of confinement, with necessary equipment for the care of prisoners, for making them useful and to some extent self-supporting, is just as legitimate an object of expenditure out of this fund as any other item or object of maintenance in such allotment.

I think that within the permission given by the statute first above quoted, the State Highway and Public Works Commission may, if it sees fit, inaugurate the policy suggested in the statute, by the construction of "woman's quarters" in the way directed, and pay for it out of such allotment. It follows, I think, that if the cost of such construction should consume so much of the appropriation as to make it necessary, the Governor may enlarge the appropriation as authorized by section 3 of the Appropriations Act of 1935, out of excess highway funds above the appropriation in the statute.

It seems to me that if the reasoning I have suggested is not correct, we are driven to the conclusion that it was the legislative intent to support the prison system out of the general fund theretofore known as the Highway Fund, not specifically appropriated under Division XII, a conclusion which I do not care to adopt.

Federal Social Security Act

7 November, 1935.

I have had on my table for some time copy of the Federal Social Security Act and analysis. I have read the act very carefully and examined the analysis and data in connection therewith, and I am of the opinion that there will be no advantage to the State in immediate legislative action to meet the requirements of the Social Security Act which would justify a calling of the Legislature at this time.

In my opinion, the two most important features of the act relate to unemployment compensation and to old age benefits.

As to unemployment compensation, it seems to me that Chapter 492, Public Laws 1935, enacted in anticipation of the passing of the Social Security Act, should be sufficient to take care of the situation when the Federal Government is ready to make the grants under the Social Security Act. I have heretofore written you as to this particular item; and beg to say that Major A. L. Fletcher, of the Department of Labor, has laid before me

a set of rules and regulations under a resolution of his department, which it seems to me will be adequate as meeting the demands of the federal statute in that respect. However, I advised Major Fletcher that before his department would have authority to establish such rules and regulations, or make any set-up under the chapter I have referred to, the Department of Labor would have to be designated as the proper authority to do so by the Governor, and by the Council of State. The Act, as you know, provides that a commission may be established for that purpose, or that a Department of State may be designated.

As to Federal old age benefits, there is now no State legislation adequate to meet Federal requirements.

Title I of the Federal Act referred to provides for grants to states for old age assistance, such grants depending upon the existence of State plans for that purpose. There is no State legislation whatever under which the requirements of the Federal statute in that respect may be made. Should a Federal appropriation make funds available to the States under the Federal grants referred to, which I understand will probably be done when Congress meets, the State would not be in position to share.

Whether or not that matter would be of sufficient importance to demand legislative action before the next regular session of the General Assembly would then have to be considered.

At present, however, I think that the State is in position to receive all the grants of money under the Federal Social Security Act now available.

Parole of Juvenile Delinquents from Correctional Institutions

4 January, 1936.

Where a juvenile delinquent has been committed by a Juvenile Court to a correctional institution created under the State law, the jurisdiction of that court is at an end; C. S. Section 5039. Such a person would be subject to parole by the Governor under the 1935 Act, but such a parole would operate differently from a parole granted where the subject of the parole has been convicted of crime and has been given a sentence. In the latter case a person who has not served out his full length of time but has been granted a parole may, of course, upon breach of the conditions of the parole, be returned for the service of the unexpired term. In the case of a juvenile delinquent, the parole operates as an intermission of the custody merely, and when the paroled person reaches the age of twenty-one years it would not then be proper to return such a person to custody.

While the foregoing is generally the case, it does not apply to those paroled from all correctional institutions; because the laws have not been carefully correlated with regard to this subject.

For instance, it is proper for a court before whom a woman has been brought, charged with certain crimes, to commit such defendant to a correctional institution possibly created before the laws creating our juvenile courts. In fact, they may be admitted to such an institution in a number

of ways, and the subject of custody is not uniform. See Chapter 121, Consolidated Statutes, and particularly Article II.

There appears to be some slight conflict in the law regarding the period of detention of such persons. Section 7338 recognizes that the person may be committed to such an institution for a definite term and in such a case it is my opinion that a person who has been paroled may be returned to such an institution for the unexpired term of the commitment; in fact, that is the provision of the statute. Under Section 7334, however, the total period of commitment shall not exceed three years.

There is a provision in C. S. 7334 reading as follows:

> Provided, that when any girl under twenty-one years of age shall have been committed to the institution the trustees shall have the sole right and authority to keep, restrain and control her until she is twenty-one years old, or until such time as they shall deem proper for her discharge under such proper and humane rules and regulations as may be adopted by the trustees.

Trying to reconcile all the statutes on the subject, I am inclined to believe that the custody of the institution over a woman committed to it for the causes named in C. S. 7333 is not necessarily terminated when such woman arrives at the age of twenty-one years, but that the provision operates as an extension of the time during which such a person may be detained beyond the limitation of three years; and should such a person be paroled during a term, it would be legal to return her for the unexpired portion of any definite term set by the court, in accordance with C. S. 7338, notwithstanding the fact that she may have meantime arrived at the age of twenty-one years. In the particular case, however, of a woman who had already been detained beyond the three-year limit, and who had been paroled before reaching the age of twenty-one years, and has attained her majority meanwhile, I am of the opinion that she could not be returned.

It will be necessary then in applying this law to ascertain the manner in which the inmate was admitted to the institution, the institution itself from which the parole was granted, and whether or not the commitment was by a Juvenile Court or otherwise, before it can be definitely stated whether the paroled person may be returned for service of an unexpired term after reaching the age of twenty-one years during the parole period.

Chapter 445, Public Laws 1935, Entitled "An Act to Authorize the Issuance of Refunding Bonds of the State"

15 February, 1936.

I am advised by you that a question has arisen under Chapter 445, Public Laws 1935, entitled "An Act to authorize the issuance of refunding bonds of the State," as to whether or not the State might, under the terms of said act, exchange bonds issued for refunding purposes for outstanding bonds of the State which are thereby intended to be refunded. It has been suggested, as I understand it, under section 5 of the act the State may not exchange refunding bonds for the bonds refunded and that under the terms

of the act the State is required to sell the bonds issued under Chapter 445, Public Laws 1935, and with the proceeds of such sale only is it permitted to take up and purchase bonds which are to be refunded in this operation.

The entire purpose of the act was to authorize the issuance of refunding bonds to take up outstanding bonds of the State, "when such refunding may be accomplished at a saving to the State of North Carolina by securing a lower rate of interest than the interest rate on the bonds to be refunded."

Provision is made in section 3 for the date, interest rate and maturities of the bonds as may be fixed by the Governor and Council of State within the limitations stated.

In section 4 the form of the bonds and provision for registration is provided.

In section 5 provision is made for the sale of the bonds.

The entire purpose of this act was to enable the State to refund its outstanding bonds with other bonds, to be issued in the discretion of the Governor and Council of State, provided in such an operation a lower interest rate is obtained. The use of the word "sale," as contained in section 5, is not entitled to receive the limited and narrow construction which would inhibit the State from doing the thing which was contemplated by the act, i.e., the substitution of the refunding bonds bearing a lower rate of interest for the outstanding bonds bearing a higher rate of interest. The word "sale" does not necessarily imply that money shall be paid for the consideration of the transaction. A sale of property valued in dollars for property valued in dollars, which in effect results in an exchange, is notwithstanding, a sale in the broader sense which this act contemplates. The wide latitude given to the Governor and the Council of State in section 5, as to the manner in which the sale of the bonds may be made, is indicative of the broader construction which, I think, the word "sale" is entitled to have, as employed in this Act.

It occurs to me that under Chapter 445, Acts of 1935, the transaction could be handled as an actual sale. Having made a prior agreement with the holders of the bonds for which the bonds are to be exchanged, the Treasurer could agree to buy from the holder of these bonds from the special fund provided in Section 6 of the Act. At the same time, the holders of the bonds would agree to buy from the State the refunding bonds at the price which is fixed as a basis for the exchange. This would avoid any possible question as to full compliance with the statute.

RURAL REHABILITATION CORPORATION; STATUS AS A STATE AGENCY; RELATION TO FISCAL CONTROL ACTS; BUDGETARY CONTROL AND SUPERVISION AND STATE AUDITING LAWS

24 June, 1936.

The North Carolina Rural Rehabilitation Corporation was organized as a non-profit corporation by the members of the Commission of the North Carolina Emergency Relief Administration and under the laws of this

State. By Section 1st of Chapter 314, of the Public Laws of 1935, it was "recognized and designated as an agency of the State of North Carolina and of the North Carolina Emergency Relief Administration, and its successor, within the powers and limitations of its charter, for the carrying out" of the objects and purposes declared in the act, which was "to serve as a social and financial instrumentality in assisting to rehabilitate individuals and families," etc. Under Section 2 of this Act, the corporation was "authorized to accept and receive loans, grants, and other assistance from the United States Government, departments and/or agencies" for distribution or expenditure for the purposes named in its charter; and it also was "to receive like financial and other aid when extended by the State of North Carolina, or any of its departments, political subdivisions or agencies," etc.

Obviously the corporation would not be under budgetary control by the State, nor would its expenditures be subject to the various acts which have been enacted with respect to the custody and the expenditure of State funds by State officials, officers and employees and by State boards, departments and institutions, unless such laws are made to apply by the above quoted language of Chapter 314, Public Laws 1935, recognizing the corporation as a State agency.

Some examination relating to the status of the Rural Rehabilitation Corporation was made by this Department recently when a demand was made upon it to turn over its assets to the Resettlement Administration, a Federal Authority created by presidential edict.

At that time I only considered the Rural Rehabilitation Corporation as a corporation under the laws of the State, with certain duties and responsibilities, and amongst them the right of the State to its residual assets.

I pointed out in the substance that the corporation was of permanent character and did not have that flexibility and casualness which might adapt it to the Federal program, and concluded that it had no right to abandon its trust and turn over its assets to an authority established by presidential edict which had no legal entity as a corporation in this State.

I think the views expressed there were finally accepted in the compromise made of the demand of the Federal Government.

However, I have examined this opinion and do not find that it touched upon the subject of your inquiry, namely, the status of the Rural Rehabilitation Corporation as a State agency and as subject to the State Fiscal Control Laws.

As I understand it, the corporation has never received any grant of money or other aid from the State of North Carolina. It has received only grants from the Federal Government, and the money so received has been expended as a trust fund under rules and regulations prescribed by the United States Government, and under supervision from that source.

Here it will be noted that the Rural Rehabilitation Corporation is made an agency not merely of the State but also of the Emergency Relief Administration. It is understood that the grants to the Rural Rehabilitation Corporation have come through that source, and while in a sense the Emergency Relief Administration is itself a sort of State agency, it is

only such an agency for the administration of a Federal Trust Fund, to be expended in this State for relief in connection with such projects and in such manner as may meet Federal requirements and strictly under Federal administration and control, both as to expenditures and as to accounting.

I think the fact that this corporation has never been entrusted with any money directly contributed by the State of North Carolina, but has been set up for the purpose of administering a Federal Fund in accordance with the rules and regulations of the United States Government, and has in fact so administered this trust fund, is sufficient to exempt it from the State Fiscal Control Laws.

It may be said here, however, that when this corporation has concluded its trust by the application of the Federal Funds in hand, or the funds arising in the course of its handling of the Federal grants, the State has a direct interest in the residual funds and property. I do not think in the protection and enforcement of this right it would be competent for the State at any time to bring the administration of affairs by the Rural Rehabilitation Corporation under the control of the State's Fiscal Laws, so long as it continues to function under the supervision of the Federal Government.

STATE EMPLOYEES; FULL TIME EMPLOYMENT

15 February, 1935.

In reply to your letter, based upon that of Mr. Etheridge, a copy of which you sent me, I will say that I can find no general law of the court, mentioned by Mr. Prevost, requiring that all State employees shall give their full time to the positions held. There are such laws applicable to certain positions. However that may be, even in cases not controlled in that respect by positive prohibitory statute, there is no question but that the full time of an employee may be required as a matter of contract, and I should say that if such requirement is made in the office of the Department of Conservation and Development, Mr. Panton would have no right either to engage in private practice of his profession, or to hold himself out to the public as so engaged.

I do not know whether "Harrison D. Panton and Company, Consulting Engineers," is a corporation, a firm, or just a trade name, and this might alter the situation to some extent. I will say, however, that when in the contract with the State, whether written or oral, it is contemplated that Mr. Panton shall give his entire time to the duties of his office, this would entirely preclude Mr. Panton himself from the practice of his profession, either individually or in connection with any concern, corporate or otherwise.

Of course, no person has the right to use a State-owned automobile, at State expense, for his private business.

MORGANTON STATE HOSPITAL; DEVISE OF J. P. HUDER

15 April, 1935.

Mr. Ewbank's letter advises that Mr. J. P. Huder, recently deceased, made a devise to the Morganton Hospital, in consideration of services rendered and care given his insane daughter at that institution. The devise is the one-sixth interest in Mr. Huder's estate which would have been the interest and share of his insane daughter. The question has arisen as to whether or not this would be classed as receipts of the institution which must be expended before the appropriations are used, or rather in exoneration of appropriations, or whether it is a gift standing on its own footing and having no relation to the subject of appropriations.

In my judgment this devise would not be classified as receipts of the institution. It is not a payment to the institution at all, but a devise. It may be more or less than the amount due the institution. If the institution is authorized to accept a gift of this sort, and in my opinion it is, it must stand on an independent basis, and while, of course, it cannot be used in the General Fund of the State, or in fact cannot be subjected to any use except that of the devisee—the Morganton Hospital—the specific use to which it may be put by such institution apparently not having been named in the Will, it might be devoted to any legitimate purpose of such institution. Of course, the acceptance of the devise on the conditions named in the Will would, nevertheless, discharge the indebtedness in behalf of the patient.

CHEROKEE INDIAN NORMAL SCHOOL; CONTINGENCY AND EMERGENCY FUND

9 October, 1935.

You make inquiry as to whether or not funds to provide custodial facilities, at the Cherokee Indian Normal School of Robeson County, necessary for the instruction of deaf, dumb or blind Indian children of said County and surrounding Counties may properly be supplied from the contingency and emergency fund.

There is contained in Chapter 435, Public Laws of 1935, Section 5846 (i) C. S. (Michie's N. C. Code, 1935) a mandatory provision requiring the trustees of such institution to "employ some person trained in the teaching of the deaf, dumb and blind, and to provide a department in said school in which said deaf, dumb and/or blind Indian children . . . may be taught."

Manifestly, it was not the intention of the legislature to require that such instruction be given these children in their respective homes. The language of the Statute is "a department in said school." Furthermore it would be physically impossible for these afflicted children to go to and fro every day between their several homes and the school. And, scattered far and wide, as they naturally will be found, it would be neither practical nor economical to transport them daily from home to school and return.

Therefore, in order that the mandate of the law may be carried out, it

becomes necessary for the Board not only to see that instruction is available, but also to provide quarters and subsistence, to the end that the children may be taken in the custody and care of the institution during the scholastic year.

For example, the only requirement of Section 3, Article 9, Constitution of North Carolina, is that County Commissioners shall make provision for the maintenance of the public schools at least six months in every year. But, under this Section, by legislative direction, the commissioners are required to provide buildings and equipment necessary for the maintenance of the six months school term.

By analogy the Board of Trustees of the institution hereinbefore referred to, by the provisions of the act concerning which inquiry is made, are required not only to see that instruction is available, but also to provide such additional facilities as are necessary to insure that the objective of the legislation is accomplished and that the requirements of the act are substantially complied with.

Therefore, no appropriation covering these expenditures having been provided, either in the act itself or in the general appropriation act, it is thought that the contingency and emergency fund is properly chargeable with this item, provided it be determined by the Council of State that the number of eligible students is sufficient to warrant the establishment of this service.

State Highway Patrol; Installation of Radio System; Funds Available

4 March, 1936.

Section 6 of Chapter 324 Public Laws 1935, *authorizes* and *directs* the Commissioner of Revenue, through the Division of Highway Safety, to set up and maintain a State Radio System, so that contact may be maintained with the State Highway Patrol and other officers of the State in the enforcement of traffic laws and prevention of the criminal use of the highways. The second paragraph of this section makes a provision in case it should be found that the appropriation provided for the "Department" is not adequate to take care of the entire cost of the radio service after providing for the administration of the other provisions of the Act. That provision is that "the State Highway and Public Works Commission, upon the order of the Director of the Budget, and approved by the Advisory Budget Commission, shall make available such additional sum as the said Budget Commission may find to be necessary to make the installation and operation of such radio service possible;" the sum thus provided is made a valid charge against the appropriations item of Betterments for State and County Roads.

Turning now to the appropriations item referred to, we find that the Legislature, under Division XII of Chapter 306, Public Laws 1935, Section 5, (Appropriations Act) provided for "Betterments State and County Roads $2,000,000.00 for each biennium 1935-36, 1936-37."

There is a further provision that transfers may be made "to and/or from

Titles XII-3, 4 and 5, under authorization by the Director of the Budget." No item, however, may be reduced more than 15%. There is a further provision as follows:

> Provided, in the event the receipts and/or increments to the Highway Fund shall be more than the appropriations herein made, such excess may be made available by the Director of the Budget for expenditure either in the current or next succeeding year under Titles XII 4 and 5.

I think these references complete the picture; and your inquiry relates to the question as to what extent a discretion rests with the Director of the Budget with respect to approval of the additional amounts necessary to install and maintain the radio service provided for in the above mentioned Act, which it seems exceeds all expectation and will probably amount to $150,000 for installation, with a possible depreciation of $60,000 over a period of fifteen years.

The Director of the Budget has "found as a fact that there is not sufficient moneys in the appropriation provided for the Department to pay for either the installation or maintenance of such a radio system and that the construction and maintenance of such a system will require the allocation of funds appropriated to the State Highway and Public Works Commission appropriaed under the Item of 'Betterments for State and County Roads.'" It is further asked whether or not the Advisory Budget Commission must exercise its approval to such a transfer arbitrarily, or whether or not the said Advisory Budget Commission has discretionary power to approve or disapprove the transfer of such moneys to provide for the erection and maintenance of such a radio system.

If we were only considering the Appropriations Act, and the provisions thereof above cited, it is apparent that the transfer of funds between Items 4 and 5, or the making available of other funds in case the receipts and/or increments to the Highway funds should be greater than the Appropriations, is intended to be within the discretion of the Director of The Budget.

However, we must consider such modification as may be made by Section 6 of Chapter 324, relating to the installation of the radio upon such provisions of the Appropriations Act, and the discretion which may be exercised thereunder.

It is clear that Section 6 not only authorizes but directs the installation of the radio system "as soon as practicable." Further, the requirement is, in my judgment, positive that the State Highway and Public Works Commission, upon the order of the Director of The Budget, and approved by the Advisory Budget Commission, shall make available such additional sum as the said Budget Commission may find to be necessary to make installation and operation of such radio service possible.

In so far as the State Highway and Public Works Commission is concerned, there is the mandatory requirement that they should make available out of funds in its possession, or out of such funds as may be allocated for that purpose, by the approval of the Director of The Budget and the Advisory Budget Commission under the provisions of the cited sections of the Appropriations Act; there does not seem to me any mandatory pro-

vision that the Advisory Budget Commission should approve of this transfer of funds, nor does there seem to be any mandatory provision that the Director of the Budget shall make them available either under Section 3 of the Appropriations Act by transfer of funds to the Betterments for State and County Roads or by the appropriation or allocation of funds out of the surplus receipts and increments to the Highway Fund.

I think that this matter is still left within the discretion of the Advisory Budget Commission in so far as an approval of the order of the Director of The Budget is concerned, and in so far as the Director of The Budget himself is concerned, in making such order.

While I would not say that the act of the Advisory Commission in approving the order of the Director of the Budget might be exercised arbitrarily, I do thing that that discretion is directed to the availability of the fund and not the advisability of the installation of the radio system. I think also that the discretion of the Director of The Budget, wherever it may be exercised with relation to the installation of the radio system, is also directed to the availability of the funds and not the advisability or practicability of the installation of the system from another point of view.

In other words, I think that both the Advisory Commission and the Director of The Budget must look to the same principle to control them in the exercise of the discretion which I think they have—to-wit, the availability of the funds in consideration of all the circumstances involved, and more particularly in consideration of the fact that apparently the total cost of installing and operating the system appears to be vastly larger than that contemplated under the statute.

GRANTS UNDER FEDERAL SOCIAL SECURITY ACT; CUSTODY, CONTROL AND DISTRIBUTION

25 March, 1936.

Federal grants in aid under the Social Security Act are made to the State in aid of activities undertaken by the State. Massachusetts v. Mellon, 262 U. S., 447.

The theory on which such grants are sustained as constitutional will appear from the cited case, and in brief that theory is that the Federal Government has the right to grant to the State, out of the Federal Treasury, such sums as the Congress may deem advisable to assist the State in carrying on such activities as are designated in the Act of Congress making the grant.

From this it will be perfectly clear that the grant of such Federal funds is to the State itself, and while the Federal Government may, and usually does, impose conditions as to its distribution in the State, and may with the acquiescence of State authorities even go to the extent of establishing a Federal agency within the State which might cooperate with the State in that respect, nevertheless, the usual type of grant in aid is direct to the State, to be distributed by such State agency as is acceptable to the

State authorities and approved or designated by such authorities.

Under the Social Security Act such grants in aid have been made. They are to the State itself and, generally speaking, the Federal Government has not in any of them attempted to set up any Federal agency of distribution within the State.

That is true of the Federal grant used in connection with the activities of the State Health Department, in which instance the Governor has designated the State Health Department as the proper State agency for the handling of such fund.

While it would be perfectly competent, in my opinion, for the State authorities to permit the handling of the Federal portion of such money in such way as might be agreed upon, nevertheless, it is undoubtedly true that as the Federal grant is to the State, it is within the control of the Budget authorities of the State and subject to strict budgetary supervision and handling, under the terms of the Budget Act, should that authority deem it advisable to so handle. An examination of the Federal Social Security Act will show that the grant in aid in question is strictly of that type which is made directly to the State.

CHAPTER 422, PUBLIC LAWS OF 1935; TEXTBOOK PURCHASE AND RENTAL COMMISSION; APPROPRIATION

30 June, 1936.

Replying to your letter of June 29, 1936, on above subject, I will say that in my opinion Section 6(1) of Chapter 422, Public Laws of 1935, carries a direct appropriation of $1,500,000 out of the public revenues of the State for the purpose of carrying out the provisions of this Chapter.

Subdivision (2) of this Chapter provides for the issue of $1,500,000 for the purpose of providing a fund out of which the said fund may be made.

You inquire whether the appropriation carried in Subdivision (1) may be set up as other general fund appropriations, and the causes and purposes to carry out the provisions of this Chapter.

Considering the whole Chapter and the relation between Subdivisions (1) and (2) of Section 6, I am of the opinion that this appropriation may be so set up and expenditure made out of it as suggested.

However, this is only upon condition that the revenues are wholly sufficient to provide for the appropriations set up in the regular Appropriations Act, and that the above named sum, or any part thereof, remains as a clear surplus after these appropriations have been served.

You further inquire as to what course may be adopted as to the issue of the bonds provided for in Subdivision (2). In my opinion, it is intended by the act that only $1,500,000 should be expended under its authority. That means that to the extent that the expenditure is made from the general public revenues as suggested above, this must be considered in lieu of and in substitution for any sum raised by issue of short term notes, and the statute would serve as authority for the issue only of that amount of short term notes as would supplement the expenditure from the above fund so that the total expenditure should not exceed $1,500,000.

OPINIONS TO SECRETARY OF STATE

FOREIGN CORPORATIONS; DOMESTICATION

20 July, 1935.

We think you are entirely correct in ruling that foreign corporations which make it a practice to come into this State and exhibit samples of their products at a furniture show and after the closing of these shows, sell their samples to the local retailers, are, under our statute, doing business in this State and they should be required to domesticate.

CHEROKEE LAND AND DEVELOPMENT COMPANY; AND MOUNTAIN LAND COMPANY

13 January, 1936.

You advise in your communication of January 7, that the charters of the Cherokee Land and Development Company and the Mountain Land Company were cancelled by the Secretary of State for failure to pay franchise taxes; that subsequently the directors of these companies, acting as trustees, distributed all the assets to the shareholders, thus accomplishing complete dissolution; that thereafter all delinquent taxes were paid, and the Secretary of State has certified that the charters of these companies may now be reinstated. However, you state that the companies wish to remain dissolved and in connection with this statement of facts you make certain inquiries. After careful consideration of the matters about which you ask, I wish to state that the opinion of this department relative to your questions is as follows:

1. It is my belief that it is not obligatory upon these corporations to pay the restoration fee of $10.00 provided for under C. S. 7880 (160) and then proceed formally to dissolve under C. S. 1182. Once the charters are dissolved the corporations cease to constitute corporate bodies and I can find no language under C. S. 7880 (160) which makes it mandatory upon the members to become a corporation again upon payment of taxes, unless they so desire.

2. It seems to me that the directors of these corporations, acting as trustees under C. S. 1193 and 1194, were warranted in treating the involuntary dissolutions of the companies as final, so as to permit the valid distribution of corporate assets pertaining to said charter cancellations. Such seems to have been the intention of the legislature as expressed in both of the Sections cited, especially Section 1194: "on the dissolution in any manner of a corporation . . . the directors are trustees thereof with

full powers to settle the affairs . . . and . . . divide any surplus money and other property among the shareholders."

3. The lien which existed in favor of the State upon the assets of these companies was obviously extinguished by the payment of the full amount required by the Commissioner of Revenue as payment in full of all delinquent taxes, fees and penalties.

4. It is apparent from a review of C. S. 1194 that the directors were clothed with the power to act as trustees for the purpose of distributing the corporate assets without first being restored to charter and corporate rights.

5. The answer to the fifth question has been incorporated in the treatment of the four questions above, to the effect that a restoration to corporate powers and rights under C. S. 7880 (160) was not necessary to a valid distribution of assets, free from any lien that might have accrued in favor of the State by reason of unpaid franchise taxes.

Use of Great Seal of State

18 June, 1936.

The Great Seal of State is provided for use by the Executive, that is, the Governor, upon pardons, proclamations and documents issued from that office. Its use otherwise may be justified or ordered by statute, but such use other than that I have named ought to have authority of such statute.

While I do not think that it was intended that the Great Seal of State should be used upon any certificate issued from the office of the Secretary of State as attesting any official act of the Secretary of State, since a separate seal is provided for his official use, nevertheless, as there is no prohibitory regulation of which I am aware, I should say that long custom might make such use permissible.

It is sometimes necessary to modify the custom, and the practice here, in order to conform to the laws of another jurisdiction which specifically provide the manner in which documents, acts and authorities may be authenticated in such jurisdictions.

In that event only would I consider it appropriate to use the Great Seal of State on a certificate of this kind.

I understand, of course, that there are certain documents upon which, by law, the Great Seal of State must be fixed, but I do not understand that under the laws of this State the Great Seal is appropriate upon a certificate as to the official character and authority of a Notary Public.

As a practical matter, as I have stated above, when it is necessary to authenticate a document or other matter in the manner prescribed by a foreign jurisdiction, and where that requires the Great Seal of State, there would be no impropriety in attaching it, particularly as that has apparently been a custom of long standing,

OPINIONS TO AUDITOR

Salaries and Fees, State Librarian

5 April, 1935.

You ask us to examine C. S. 3876, which relates to the salary of the State Librarian and other emoluments for services performed, and Chapter 282, Public Laws of 1933, which reduced salaries of certain State officials, and give an opinion concerning the same.

Section 6 of Chapter 282, Public Laws of 1933, fixes the salary of the State Librarian. C. S. 3876 fixes the salary of the State Librarian to $2,500 per annum. Section 6, Chapter 282, Public Laws of 1933, reduces this salary to $1,800. There is no other limitation in Chapter 282 which would reduce the other allowances made to the State Librarian under C. S. 3876. This Section of the Consolidated Statutes allows, in addition to the salary therein fixed, an additional $250.00 per annum as custodian of the document library and in addition thereto, the sum of $1.00 per day during sessions of the General Assembly for keeping the document library open.

It is the opinion of this office that the State Librarian should receive the salary of $1,800.00 per annum and in addition thereto, the allowances contained in C. S. 3876.

Compensation and Allowances under Sections 6 and 7 Current Appropriations Act

27 September, 1935.

Section 7 of Chapter 306, Public Laws 1935, relates to allowances made under Sections 1, 2 and 3 of the Act, and the language used is practically identical with Section 8 of Chapter 282, Public Laws 1933—the Appropriations Act of that year. It need only be considered here as bearing on Section 6 on account of the closing phrase of Section 7—"for transportation using personally owned automobiles, five cents, ($.05) per mile of travel"—which is the same as that used in Section 8 of the Appropriations Act of 1933.

However, when we come to consider Section 6 we find this paragraph:

> All other boards and commissions, including those governing the institutions, but not including such as its members are now serving without compensation, three dollars and fifty cents ($3.50) per day and five cents ($.05) per mile of travel going and returning and necessary travel expenses.

Here it will be noted that the five cents per mile is not at all conditioned upon the use of a personally owned car.

My interpretation of this paragraph of Section 6, controlled to some extent by the uniform interpretation of similar laws respecting mileage, is as follows:

(a) Members of boards and commissions to which this paragraph applies are entitled to $3.50 per day and five cents per mile of travel going and returning from the place of meeting, and this five cents per mile is not conditioned upon the actual fare paid or charge for the transportation, and must be paid without diminution whether the member uses a personally owned car or otherwise, and no matter whether the actual fare paid by him for transportation was less or more.

(b) Necessary travel expenses would include those incidentals which it is customary for the traveler to take care of, and such as are imposed upon him by reason of the travel other than such ordinary expenses as he would have to meet at home. A part of such traveling expenses, of course, would be hotel charges, meals, subsistence and customary charges for usual service performed for him, as for example, so-called tips or gratuities to porters and waiters within the reasonable limit of custom in such cases.

OPINIONS TO STATE TREASURER

THRIFT SOCIETY; DEPOSITS; TREASURER'S BOND

14 September, 1934.

Examining the Act incorporating the North Carolina Thrift Society, Chapter 385, Public Laws 1933, and its companion Act, Chapter 481, Public Laws 1933, I find that in Section 5 it is provided:

> The State Treasurer shall be the Treasurer and depository of the funds of the Society.

Section 8 provides:

> The funds in the Treasurer's hands may be deposited by him to his credit as State Treasurer and Treasurer of the Society in banks upon like terms and secured in like manner as other State deposits.

Since my conference with Mr. Williamson on this subject, I have tried to make a more thorough study of the matters involved. I have come to the conclusion that the North Carolina State Thrift Society was intended to be an incorporation of such a nature that its funds might be protected under the general laws applicable to State Funds. The fact that it has been incorporated by the Legislature, which under the amendment to the Constitution, Article II, Section 29, can no longer incorporate private corporations, but only municipal corporations, brings up the question as to whether or not this corporation is really a municipal corporation, or whether the Act incorporating it is invalid as an attempt to create a private corporation. It is difficult for me to see what governmental function this corporation may exercise, but it is clear if it is a municipal corporation, under the auspices of the State, and created for the purpose of exercising a State function, the funds must be deposited by the Treasurer in the same manner and with the same protection that State funds are deposited; and further that the official bond of the Treasurer might be liable for any loss occurring in this fund by reason of the negligence of the Treasurer, or the non-performance of positive duty.

In matters of this kind the court very often reads "may" into "must," and I am inclined to think that this is the proper significance of section 8; that is to say, when the Treasurer deposits such funds in banks, he must do it in like terms, and secure them in like manner as deposits of State money.

A strict construction of Section 8, however, would seem to indicate that the account should be in the name of "State Treasurer and Treasurer of the Society." Therefore, I do not think that such funds would be protected by the usual form of depository bonds protecting State funds. To include them it would be necessary either to make such coverage clear in the language employed in the bond, or take separate bond or security covering these deposits.

Frankly, I think it very doubtful whether the court would regard the organization or corporation a municipal corporation, and of the type which now the Legislature may incorporate, if the courts should so hold the Act creating it would be invalid, and it would not be necessary to consider further the inquiries you have made. Moreover, I do not think that a private corporation, which constitutes the Treasurer of the State its own Treasurer, can thereby have its fund secured either by the official bond of the Treasurer, or the depository bonds procured by him for the protection of State funds. However, we must consider the fact prima facie constitutional, and for that reason I think it is very necessary that the Treasurer comply with the above mentioned rules in making the deposit.

LOST, STOLEN OR DESTROYED BONDS; RE-ISSUE

10 July, 1935.

I am of the opinion that the State Treasurer has no duties whatever with respect to the issue of new bonds by a county, city, or political subdivision of the State, under Chapter 292 Public Laws 1935. Section 1st of that chapter might, indeed, have been relieved of any ambiguity by a more precise expression, but I think the insertion of a comma after "Council of State" in the third line, will make the meaning clear. There is plenty of precedent in court opinions for doing this, and it is the absence of this comma which casts any doubt which may exist on the meaning of the law. If we should take the view that the Treasurer of the State had anything to do with the issue of these bonds in the counties and other subdivisions of the State, we should be forced to the conclusion that bonds issued by the State itself would have to have the approval of the Governing Boards of the several counties, cities and political subdivisions of the State, and that bonds issued by these political subdivisions in turn would have to have the approval of the Council of State, which I think is absurd.

I call your attention to the use of the plural "are" in the fourth line of this section, clearly indicating that the issue of these bonds in the one instance is to be by the State Treasurer and in the other by the proper officers in the counties; the action of the Treasurer being with the consent and approval of the Governor and Council of State, and the action of the other officers being with the consent and approval of the Governing Boards of the political subdivisions.

INTERPRETATION OF CHAPTER 397 PUBLIC LAWS 1935; TAXES DUE BY COUNTIES

15 August, 1935.

You request an interpretation of the above-entitled Act, with especial reference as to whether or not the same applies to balance of taxes due by the several counties of the State as of the date of ratification of said Act,

or to the total amount of taxes levied in the several counties under the provisions of section 492, Chapter 427, Public Laws 1931.

While it is true that the language used in section 1 of said Act is not entirely clear in this respect, in my opinion, when construed as a whole the Act must be held to apply only to "the remainder due the State under the provisions of said Act" at the time of the ratification of the Act of 1935. Your attention is directed to the language in section 3 of said Act, as follows: "—the amount so due the State of North Carolina at the time of the ratification of this Act."

In view of this interpretation, the Treasurer in making settlement with a county under the provisions of the 1935 Act, would follow this procedure:

From the total amount levied by the county for the years 1931 and 1932 under authority of section 492, Chapter 427, Public Laws 1931, based upon the abstract of listed taxables in such county for the year 1930, should first be deducted the total amount paid by such county to the State on account of said taxes so levied prior to the ratification of the 1935 Act. From the balance remaining due and unpaid on account of such levies in the years 1931 and 1932, should be deducted "actual insolvence, errors and over-charges." Also, a further reduction of 3% of the amount still remaining due should be allowed, this reduction representing collection charges, releases and taxpayers' adjustments. In computing the balance due by such county, no penalty shall be included on the sums remaining unpaid on the date of ratification of the 1935 Act. Furthermore, the county will be allowed the discount provided in section 3 of said Act.

NATIONAL BANK IN LIQUIDATION; LIABILITY FOR INTEREST ON SECURED CLAIM

4 September, 1935.

Replying to your inquiry of August 29, you are advised that the Treasurer may dispose of the collateral held as security for his deposit and apply the proceeds thereof to payment of the amount due the State by the bank at the time the receiver was appointed. In my opinion, he is not entitled to interest accruing on the deposit after appointment of the receiver, unless there are sufficient assets in the hands of the receiver to pay all claims of the same class, including interest.

However, any interest accruing on the collateral held, even though the same has accrued after appointment of the receiver, may be applied on the claim over and above the amount of principal and interest due at the time of the appointment of the receiver.

It is understood that this ruling is given in connection with the liquidation of a national bank.

OPINIONS TO SUPERINTENDENT PUBLIC INSTRUCTION

SCHOOL LAW; POWER TO SUSPEND PUPILS

5 December, 1934.

You submit to me a letter . . . and ask for my opinion on the facts therein set forth. It states that a girl within the school age, who gave birth to an illegitimate child in the late spring or early summer, persists in attending the public schools. Upon that bare statement of fact he inquires whether the principal of the school has the authority to suspend this person from attending school.

III C. S. 5563, from Section 166 of the School Code, is as follows:

> Sec. 166. Power to suspend or dismiss pupils. A teacher in a school having no principal, or the principal of a school, shall have authority to suspend any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. But every suspension for cause shall be reported at once to the attendance officer, who shall investigate the cause and shall deal with the offender in accordance with rules governing the attendance of children in school.

It seems to me that the immoral or disreputable conduct therein referred to must have a relation to the proper government of the school, or of such nature as to be a menace to the other pupils and proper school discipline. The fact that one of school age has given birth to an illegitimate child, while not a pupil in such school, does not necessarily bring her within the terms of the statute. To so hold would mean that no girl who had ever been guilty of such a misstep could again attend the public schools. Other facts might be pertinent in reaching a proper conclusion.

SCHOOL LAW; TEACHERS' SALARIES; PAYMENT

15 December, 1934.

In your letter of December 14, received this morning, you submit to me the following question:

> Does the law provide for the payment of teachers' salaries for a period of less than a school month of twenty teaching days?

A part of Section 15 of the School Machinery Act of 1933 is as follows:

> Sec. 15. That a school month shall consist of four weeks and not less than twenty teaching days, and salary warrants for the payment of all State teachers and principals shall be issued each month to such persons as are entitled to same.

Section 55 of the School Code, III C.X. 5463, also has applicability here. I quote:

> The county board of education shall not authorize the payment of the salary of any teacher or school official for a shorter term than one month, unless he or she is providentially hindered from completing the term.

It is quite apparent from these statutes that the law does not provide for the payment of teachers' salaries for a less period than the school month of twenty teaching days. Whatever may be your desire, to make these payments for two weeks or any other period less than a month, the statute as enacted by the General Assembly controls.

It also appears that payment of these salaries by the month has been the uniform administrative practice, in accordance with these statutes.

SCHOOL LAW; BUILDINGS AND FACILITIES

18 February, 1935.

I reply to your letter, based upon inquiry of Mr. R. L. Patton, on the above subject.

I note there is the necessity for providing high school facilities for about 200 children in Eastern Burke. The Rutherford College property is available and is favorably considered by the Board of Education of Burke County. There is a question as to whether this property may be purchased or rented.

I note that Mr. Patton writes you as follows:

> We have understood that an order from the Board of Education to the County Commissioners, declaring that a certain building is necessary for the maintenance of the six months school term, is virtually an order for them to put up the money to carry the project through. If this be true, we would like to know. If it remains with the County Commissioners to locate high schools wherever they want to, then my Board does not want to make any order at all.

The matter is not quite this simple. Heretofore, under Collie v. Commissioners, 145 N. C., 170, and similar cases, it was understood that when the Board of Education declared the necessity for a building, under C. S. 5467, et seq., it became the duty of the county commissioners to provide the funds for such buildings. As a matter of fact, Article IX, Section 3, of the North Carolina Constitution, makes it a misdemeanor on their part not to do so.

However, in the case of Hemric v. Commissioners of Yadkin County, 206 N. C. 845, the court seems to have held this provision of the Constitution subordinated to the Municipal Finance Act, which provides that when a sufficient number of people demand it in a petition, any proposition for the issue of bonds for such a purpose must be submitted to an election by the qualified voters of the county.

In my judgment, there is now no public agency charged with the duty

of furnishing school facilities of this kind, either erecting school buildings or leasing those already erected, except the county commissioners. I certainly do not think, however, that the county commissioners have anything to do with the location of public school buildings.

Answering specifically Mr. Patton's question number 2, as you will probably understand from the foregoing, it is my opinion that any lease for the purpose of furnishing a building for the use of the schools must be made by the county commissioners.

SCHOOL LAW; ELECTION OF TEACHERS; APPOINTMENT OF COMMITTEEMEN

7 May, 1935.

I beg to answer your inquiries as follows:

1. A school committee appointed under the provisions of the 1933 Machinery Act would, in my judgment, have power to elect teachers for the next school year, if the time for the election of such teachers came before the appointment of their successors. I do not think that it was intended as a policy of the law that they should do so, but apparently this situation has not been taken care of. There should be some legislation in this respect.

2. The terms of the committeemen appointed under the provisions of the 1933 School Act are for two years, but the committees appointed would hold over until their successors were appointed.

SCHOOL LAW; ELECTION OF TEACHERS; APPROVAL OF SUPERINTENDENT

25 May, 1935.

In my opinion the approval of the superintendent of the election of a teacher by the School Committee is essential, in fact, a condition precedent to the action of the Board of Education in making the contract with the elected teacher. It has been the holding of this Department that the action of the Board of Education in making a contract with the teacher is largely ministerial, and that it depends for its validity upon such approval. In my opinion the Board of Education has no power to make a contract with a teacher whose election by the Committee has not had the approval of the superintendent.

The Board of Education might pass a resolution pledging themselves to follow the approval or disapproval of the superintendent in all questions pertaining to election of teachers and principals. However, it seems to me that such action would be nugatory, as they could not do otherwise under the law.

SCHOOL MACHINERY ACT; ELECTION FOR SUPPLEMENTS

24 June, 1935.

A question has arisen as to whether or not, under section 14 of the School Machinery Act of 1935, it is mandatory upon the County Commis-

sioners to call an election for local supplement to State Budget allotments when request is made by the County Board of Education.

No doubt, the view that the calling of such an election is within the discretion of the County Commissioners arises from the wording of the first part of this section, which provides:

> The County Board of Education in any county administrative unit and the school governing board in any city administrative unit with the approval of the tax levying authorities in said county or city administrative unit, and the State School Commission, in order to operate the schools of a higher standard than that provided by State support, but in no event to provide for a term or more than one hundred eighty days, may supplement any object or item of school expenditure.

However, in a letter of the Attorney General dated July 8, 1933, the following occurs as an interpretation of paragraph 17 of the School Machinery Act of 1933, which is almost identical in wording:

> "I think it mandatory upon the proper tax leving authorities to call the election, upon request from the appropriate board of education or trustees."

Perhaps a controlling thought in the interpretation of this Act, in the way indicated, is that the ascertainment of the will of the electors is at least made mandatory by the express wording of the proviso.

This interpretation of the statute was made after thoughtful consideration and review, and must be adhered to in the present instance.

You are advised, therefore, that the statute must be construed as mandatory upon the County Commissioners to call the election upon proper request of the Board of Education.

Act Regulating Business Schools and Colleges

July 17, 1935.

In my opinion, Chapter 255, Public Laws of 1935, designed to regulate commercial schools and colleges and requires assurance as to their responsibility was not intended to apply to established general schools and colleges having a commercial course in the curriculum.

I do not think either that there is anything in this law which would make it apply to "home study courses" and "correspondence courses" conducted within the state by such institutions.

School Machinery Act; Per Capita Distribution of Capital Outlay Funds

16 September, 1935.

The letter written to you upon the above subject, I fear, must be withdrawn. It was based upon an inadvertence and apparent confusion between the subject of fixed charges and capital outlay. While the statute itself in its wording would seem to support such a ruling, nevertheless, I

am of the opinion that under the whole School Machinery Act taken together it is not correct to say that county-wide funds for capital outlay must be distributed to the different school districts per capita.

Any fund raised in the county for capital outlay, that is, for instance for repair of school buildings, for building new buildings, and for equipment for buildings, is necessarily a county-wide fund. The School Machinery Act of 1933 and the School Machinery Act of 1935 have completely discharged every agency for raising funds for capital outlay of this kind except the counties themselves; and these derive that authority and take that burden by virtue of Article IX, Section 3 of the Constitution, implemented by such other statutory legislation as is pertinent to the subject. It must be obvious that where the county has raised a fund, say of $25,000 or $30,000, to build a school building in one district, it is not obligated either to distribute that amongst all the districts of the county per capita, or to raise a like fund so as to make the expenditure conform to per capita distribution.

If the City Administrative Unit, a district, or a County Administrative Unit needs capital outlay, it is the duty of the county to take the particular needs of the locality into consideration and raise the funds for that purpose.

The county-wide funds raised from dog tax, forfeitures, etc., are specifically allocated to the districts on a per capita basis for maintenance of plant and fixed charges.

In order that the matter may be immediately corrected, we are sending to Mr. Martin a copy of this letter.

SCHOOL LAW: ADVANCE PAYMENT OF COUNTY LOANS; INTEREST

19 September, 1935.

Inquiry is made as to whether or not funds repaid in advance by one county could be reloaned to another county with the repayment and interest rate to conform with the maturity of the special building fund bonds authorized by Chapter 199, Public Laws of 1927, thereby saving the county repaying the same any further interest charges on such bonds as they might have borrowed from the State by virtue of this Act.

It is to be noted that under section 2 the first installment of the loan may be paid "on or before the fifteenth day of December" after the date of the loan, while subsequent installments are to be paid "one each year, on the fifteenth day of December of each subsequent year until all shall have been paid." From this language, it is our opinion that a county must pay the installments yearly and cannot anticipate payments. Certainly such an interpretation is in accord with the purpose of the Act. As stated above, that purpose is to provide low interest rates for the counties. The State gains nothing directly. It would seem to be placing an undue burden upon it if it had to bear the interest on the bonds when the counties were paying no interest to it.

PRIVATE TUTELAGE; PRIVILEGE OF PARENT TO TEACH CHILD AT HOME

9 November, 1935.

The compulsory school laws require that where a child of school age, and within the age of compulsory attendance, does not attend one of the schools of the public school system, it must be shown that the child is attending some school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session. The school, if not a public school, must be approved as to teachers and curriculum by the County Superintendent of Public Instruction or the State Board of Education. Failure to comply with this law is a misdemeanor.

There does not seem to be any provision whereby a parent might undertake the tutelage of his or her own son and thereby become exempt from the application of the compulsory school law.

Perhaps it might be wise for the Legislature to relax the rigidity of this law in some degree; but it has not done so.

SCHOOL LAW; DEBTS OF COUNTIES TO LITERARY AND BUILDING FUND; OBLIGATIONS OF DISTRICTS; METHOD OF FUNDING DEFAULTED OBLIGATIONS OF COUNTY TO ABOVE FUND; CHAPTER 399, PUBLIC LAWS 1935

2 January, 1936.

The County of Halifax is indebted to the Literary and Building Fund in the sum of about $55,000.00. This indebtedness has come about through loans made to Scotland Neck Graded School District, a special charter district, under the laws authorizing counties to borrow from these funds and lend to school districts for building purposes.

In so far as the county and these funds are concerned, the indebtedness is solely that of the county. It is sought now to fund this indebtedness under authority of Chapter 399, Public Laws 1935.

Mr. Akers seems to think that the School Machinery Act of 1933 complicates the question somewhat. As a matter of fact, it has nothing to do with it. The Act of 1933 abolished school districts as maintenance districts, but left them existant for debt service. That is a matter, however, between the county and the district. In this particular case the funding of this indebtedness may be done by the county without reference to the fact that Scotland Neck Graded School District was abolished by the Act of 1933 and that territory included in the county unit.

The notes given by the county for loans to the Literary and Building Fund are present outstanding obligations of the county itself and, therefore, the liability of Halifax County will not be altered or increased by funding the notes.

SCHOOL LAW; MEMBERS COUNTY BOARD OF EDUCATION; ABSENCE

22 January, 1936.

The position of a member of the County Board of Education is considered an office under the North Carolina law, and while permanent change of residence, which would prevent the duties of that office being performed, would no doubt vacate it, nevertheless, when as in the particular instance the absence is temporary and it is not the intention of the person to relinquish his residence in the State, but on the contrary, continues to exercise the rights of citizenship there, as for example, voting and occasionally returns to the county in which his duties are performed, I am clearly of the opinion that such an absence does not vacate the office, but that the person still has the right and power to function as a member of the County Board of Education.

SCHOOL LAW; PURCHASE OF PUBLIC SCHOOL SUPPLIES IN ROBESON COUNTY

16 March, 1936.

After a careful consideration of this matter, I wish to state that in my opinion the control of purchases and materials for the public schools of Robeson County is in the hands of Mr. A. S. Brower, Director of Purchase and Contract, rather than in the hands of either the County Manager or the Superintendent. So far as I have been able to discover, the School Machinery Act—Chapter 455, Public Laws 1935—and the public school laws generally do not confer authority for making purchases for schools upon the Superintendent. The Robeson County Manager Act, Chapter 127 Public-Local Laws 1929, authorizes the County Manager to purchase supplies for the departments of the county government. But, even if it ever was intended that this Act should authorize the County Manager to buy school supplies, I think that by the creation of the Division of Purchase and Contract, Chapter 261 Public Laws 1931, the authority to purchase public school supplies was vested in the Director of that Division. Section 2(a) of that Act provides that the Director shall have power "to canvass all sources of supply, and to contract for the purchase of all supplies, materials, and equipment required by the State Government for any of its departments, institutions, or agencies, under competitive bidding in the manner hereinafter provided for."

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

SCHOOL LAW; VACANCIES ON BOARD OF EDUCATION

24 April, 1936.

You have inquired with regard to the method of filling a vacancy which occurs upon the County Board of Education, which vacancy occurs by reason of the resignation of one or more members. The law relating to such vacancy is set forth in C. S. 5408, which, in some respects, amended the 1923 law (Section 16, Chapter 136).

(1) Under this law, a vacancy in the membership of the Board of Education caused by such resignation must be filled "by the action of the County Executive Committee of the political party of the member causing such vacancy," the term of such appointed member to last until the meeting of the next regular session of the General Assembly, "and then for the residue of the unexpired term of that body."

I think this answers the question as to the manner of filling the vacancy fully. The rest of the section is rather confusing, but it does not affect this manner of appointment at all but it will be seen that it does affect the appointment to be made thereafter by the General Assembly.

If the vacancy which is to be filled by the General Assembly shall have occurred before the primary or convention held in the county, then nominations for such vacancies shall be made by the primary and shall be filled by the Legislature from such successful nominees in the primary, whether such nominees should be the person appointed as above or other persons. This does not, however, require that the vacancy should be left open until such primary, or that the vacancy presently existing on the Board should be filled by those successful in such primary.

In order to be effective, however, a vacancy filled as I have mentioned above must be made within thirty days from its occurrence.

(2) The time at which a resignation shall be effective depends upon the form of the resignation itself and the manner in which it is treated by the Board of Education. A member of the Board of Education has the right to resign and cannot be prevented from so doing by delayed action on the part of the Board of Education. If the resignation itself sets a date or time at which it shall become effective, it doubtless would be effective at that time. If the resignation itself is susceptible of the meaning that it relates to the acceptance by the Board of Education, it would not be complete until such acceptance. A simple resignation should be acted upon at the first convenience of the Board, all things being equal.

(3) Any person may file for nomination for the appointment by the General Assembly, just as they might for the beginning of an original term. However, it is to be noted that under this law they could not interfere with the appointment above made to fill the vacancy, and it would only mean that they were candidates or nominees for the unexpired term to be appointed by the Legislature.

SCHOOL MACHINERY ACT; ELECTION OF PRINCIPAL, TEACHER, AND OTHER EMPLOYEES BY GOVERNING BOARD, CITY ADMINISTRATIVE UNIT

8 June, 1936.

In your letter of June 8th you ask the following question:

> Can the Raleigh City School Board elect a principal, teacher, or other necessary employees except on the recommendation of the city superintendent?

For the purpose of certainty in my answer, I should like, with your permission, to resolve your question into this:

> Can the Raleigh City School Board elect as principal, teacher, or other necessary employee, a person other than the one recommended by the City Superintendent?

The last paragraph of Section 6 of the School Machinery Act—Chapter 455, Public Laws 1935—reads as follows:

> At its first regular meeting in April, or as soon thereafter as practicable, the board of trustees, or other governing board of a city administrative unit, shall elect principals, teachers, and other necessary employees of the schools within said unit on the recommendation of the city superintendent.

In my opinion, this does not necessarily confine the choice of the governing body of the city administrative unit to the person recommended by the city superintendent, but, on the contrary, if that body is not satisfied with the person so recommended, it has the power to select another.

I call your attention to the use of the word "recommendation" in this section. The word "recommend," as defined by Webster, means:

> To commend to the favorable notice of another; to commit to another's care, confidence, or acceptance, with favoring representations; to put in a favorable light before any one; etc.

After a careful study of the Act, I am convinced that this word was used advisedly by the law-making body, and the School Machinery Act intended that in the selection of a principal or teacher, the trustees or governing body should have the benefit of the sound judgment of the city superintendent, and of such investigation as he might make. In view of the fact that the Act clearly expects such superintendent to recommend some one to the position, the use of the word implies that the action of the body to whom such recommendation is made is not expected to be bound thereby, but that such selection is favored or advised by the person or officer who recommends it.

It may be suggested that inasmuch as the board selects or elects "on the recommendation" of the superintendent, that the action of the board is confined to the person so recommended.

In this connection, I do not find that the word "recommend" has ever been used as a synonym for the word "nominate." We are familiar with the principle of nomination being made by the Governor to the Senate, or by the President to the Senate, in which case, of course, the action of the body to whom the nomination is given is confined to the person so nominated. In that case, it becomes a matter of approval, rather than

actual selection. The word "nominate" in this sense has come to be a word of precision and well understood, with the connotation I have given it, in legislative acts.

In determining the legislative intent, we must keep in mind that the Legislature had the opportunity to express its intent in appropriate language and so that no ambiguity should attend such expression. If it had been intended that the governing body had no power to name any person other than that presented to them by the superintendent, this could very easily have been clearly expressed. In the election of teachers by district committees, we find the following:

> The said district committee shall select the teachers and principals for the schools of the district, *subject to the approval of the county superintendent and the county boards of education.*

This clearly indicates that the Legislature understood how to express its intent and how to make the division of authority suit its purpose.

I have made this letter rather full, because I wanted you to understand that I have given the matter the thought and consideration which it deserved. I conclude that the trustees, or governing body, of the city administrative unit may go beyond the recommendation of the city superintendent and elect some satisfactory person not so recommended.

SCHOOL LAW; SECTION 15, SCHOOL MACHINERY ACT, RELATING TO DISTRIBUTION OF COUNTY-WIDE SCHOOL FUNDS

22 June, 1936.

In my opinion, where a debt service fund distributed by the county to a City Administrative Unit, if distributed on a per capita basis, would exceed the debt service requirements of the particular unit, only that amount representing the debt service requirement should be allocated to such unit.

It is difficult to reconcile all the provisions of the 1935 School Machinery Act. It is also difficult to define with accuracy what is intended to be included in "all county-wide school funds," but I feel quite sure that where a county fund is especially intended for debt service, it would be repugnant to the theory of which the entire Act purports to deal with debt service if an excessive amount should be allocated to the district and either be accumulated there or applied to purposes not intended by law.

OPINIONS TO ADJUTANT GENERAL

INSURANCE AND BONDING; LOSS OF FEDERAL PROPERTY

10 July, 1934.

You state that the General Assembly appropriated a certain sum of money under Item No. 209, insurance and bonding, to pay to the Federal Government, to cover loss of Federal property for which the State is accountable; that over a year ago the bonding company gave notice of cancellation of the bond covering such losses as might occur because of alleged excessive claims, but since that time there has been no bond. You further state that there is a balance under Item No. 209 which was appropriated to pay the premium on such bond, in the sum of $930.95, and that your Department desires to use a part of this sum to reimburse the Federal Government for losses sustained during the past year. We realize the fine common sense reasoning of the suggestion outlined in your letter that a part of this money be used to pay the Federal Government direct out of the funds appropriated by the General Assembly to pay the premium on the bond, but we regret to say that we are of the opinion that the wording of the statute would prohibit the use of this money in this way.

MUNICIPAL TAXATION AND LOAN, ARMORY BUILDING

2 August, 1934.

Replying to yours of July 31st, and incidentally to the letter of Mr. L. H. Barbour, Durham, N. C., addressed to you, I understand from the latter letter that the City of Durham desires to erect an adequate armory for Company "D," 120th Infantry, provided it is legal to float bonds for the erection of the building.

The question addressed to me is as to the legality of the issuing of such bonds without a vote of the people.

In my opinion, this cannot be done, under Section 7, Article VII, of the State Constitution. There is no difficulty in pronouncing the building a "public building" under the authority of Adams v. Durham, 189 N. C., 232, 126 S. E., 611, 612, and cases there cited—that is a building for a public purpose—but the difficulty is in pronouncing it a necessary purpose. I do not think this can be done under this same decision, or under the case of Nash v. Monroe, 198 N. C., 306, and 200 N. C. 729. That case related to the building of a hospital, and most assuredly if a hospital could not be considered a necessary public expense an armory would not be.

MEMBERS OF A GENERAL COURTS-MARTIAL; PAYMENT FOR SERVICE; C. S. 6865

22 November, 1934.

In your letter of November 21, you state that certain officers of the National Guard recently served as members of a Court-Martial at Fayetteville in the trial of a Captain, against whom charges had been preferred. You ask my opinion as to amount to be paid these officers for that service.

The controlling statute is 6865. The applicable part of that section states that "officers when on duty in connection with examining boards, efficiency boards, advisory boards, general or special courts-martial and courts of inquiry, shall be allowed actual expenses and four dollars per diem for such duty."

It is quite clear to my mind, then, that these officers, serving as members of that Court-Martial, are entitled to actual expenses and four dollars per day while so engaged.

OPINIONS TO AGRICULTURAL DEPARTMENT

RE: S. B. 597, KNOWN AS THE WINE BILL

27 May, 1935.

I have not answered your inquiry on the above matter because of your absence and the understanding that your letter should be answered upon your return to the State.

Your letter makes pertinent inquiries as to the adoption of rules and regulations governing the growing, manufacture, and sale of wine, under the authority given you in the Act to make such rules and regulations, with the approval of the Governor.

Attached to your letter are certain inquiries of Garrett and Company, Inc., of Brooklyn, N. Y., relating to the transportation into this State, and sale herein, of wines manufactured outside of the State from native grapes and berries.

The Act is intended to legalize the manufacture and sale, under restrictions, of light domestic wines made from native grapes, fruits and berries, having the full alcoholic content produced by the natural fermentation, under rules and regulations prescribed by the Commissioner of Agriculture and approved by the Governor. It provides that the Board of County Commissioners in any county may "prohibit the sale of wines in said county."

After extending a restricted privilege of making such wines from native grapes, fruits and berries to the persons growing such crops "for the use of his or their family and guests," the law proceeds in Section 2 to permit any grower of such crops to manufacture such wines and sell the same to any person, firm or corporation in the State "engaged either as wholesaler or retailer of food products" in original packages, and not for consumption on the premises "except in hotels and bona fide restaurants engaged in selling food and serving meals;" and then by further enlargement of the privilege in Section 3 makes it legal for "any person, firm, or corporation authorized to do business in the State" to make wines from fruits, grapes, and berries, grown within the State, to the full strength of natural fermentation, which wines are to be "classified and recognized as food and distributed as such."

Section 4 deals with the authority of the Commissioner of Agriculture to "promulgate and publish such rules and regulations of such wineries as may be established," which rules and regulations shall have the force and effect of laws after they have been approved by the Governor.

Section 5 provides for the filing with the Clerk of the Court of each county "an application" by any producer of wine who desires to sell his product at retail. There is no discretion given the Clerk or anyone else to deny such application, provided the sale of wine is not prohibited in that county.

Section 6 provides "that the Board of County Commissioners of any county shall have the right to prohibit the sale of wines in said county."

Section 7 relates to the duties of the Commissioner of Agriculture to disseminate information with regard to the cultivation of crops of fruits, grapes and berries from which wine may be made and the making of light domestic wines therefrom.

Section 7½ applies the Act to the manufacture, sale, or transportation of fruit ciders.

It may be best to call attention here to Section 9, which is as follows:

> If any section of this act should be deemed unconstitutional, such unconstitutionality shall not affect other sections of this act.

It will be noted from the above that in so far as the retail sale of wine is concerned, the Act does not directly confer upon merchants dealing in food products and hotels the right to sell at retail, although it confers upon them the right to purchase. The right to sell at retail is directly given to the producer by Section 7. I assume that the Bill was drafted with the understanding that the merchant and hotel keeper would have such right by implication; and the provision that wine is to be dealt with as a food product strengthens that implication. Whether this rationalization is sound or not, and whether the retail sale of wines by the merchants and hotel keepers mentioned is legalized by the Act, may not be settled until judicially determined by the courts.

Upon the foregoing situation you inquire about your duties in making and promulgating rules and regulations under Sections 3 and 4 of the Act; and you suggest that some expenditures must necessarily be made in the enforcement of these rules and regulations. The Act does not appropriate any money for this purpose.

Under the conditions laid down in the Act, I feel that your duty has been discharged when you have made and promulgated the proper rules and these have been approved by the Governor. I do not think that you are so concerned with the enforcement of these rules that it would be incumbent on your Department to incur expenses in connection therewith. The Act itself makes an infraction of these regulations a violation of law; enforcement, therefore, is peculiarly the province of the local officers and the criminal courts. I do not understand Section 3 as requiring a permit from the Commissioner of Agriculture or the Governor to engage in the manufacture and sale of wines.

Replying further to your inquiry based upon the letter of Garrett and Company, I have to say that in my opinion the Act does not contemplate or permit the importation into this State of wines manufactured in other States prior to the ratification of this Act, although they may have been made from fruits, grapes, or berries grown in North Carolina. In my opinion, Section 3 of the Act must be read in connection with the other sections, and I do not understand that it is consistent with the Act, and with the regulatory authority contained in its provisions, that such wines manufactured outside of the State, may be transported into the State and sold therein either at wholesale or retail. The same ruling applies to partially dehydrated products made from juices expressed in this State,

which have been carried out of the State for further manufacture of wines elsewhere.

There are two observations to be made with regard to the Act which, perhaps, do not strictly concern your duties under the Act, but which I will discuss because of persistent inquiry.

The Act provides that the Board of County Commissioners of any county may prohibit the sale of wine in that county. A serious constitutional question arises as to the delegation of such power to the County Commissioners; that is, as it may be suggested, power to suspend or repeal the law as applied to such county. If we were dealing with ordinary trade, such a power would be clearly unconstitutional; but, as we are dealing with the subject which has always been considered a matter of police regulation—that is, the manufacture and sale of an intoxicating liquor—perhaps a different rule would apply. Similar powers delegated to local governing boards have been upheld in some jurisdictions and in others have been declared unconstitutional, either as an unauthorized delegation of legislative authority, or as being discriminative or conferring indemnities or immunities upon certain classes. I think the better opinion is that in this State such a delegation of authority would be upheld.

It will be observed that the Act permits the manufacture, use, transportation and sale of wines in this State only when they are manufactured from native grapes, fruits or berries. Under the Turlington Act such manufacture, use, transportation and sale of wine of full fermented strength was, at the time of the enactment of this law, and now is, except for its provisions, unlawful. The question arises as to whether or not the Legislature may constitutionally enact a law which permits the sale of wines made from native grapes, fruits or berries, only and thus discriminates against wines manufactured from grapes, fruits, or berries, grown outside the State, inasmuch as the existing law—the Turlington Act —would, in that event, prohibit the manufacture and sale of wines made from fruits, grapes, and berries not grown in North Carolina. Since the police power in the State is not invoked generally with regard to the manufacture and sale of wines, and since, therefore, such manufacture and traffic is not considered a matter of police regulation or prohibition, it might be pertinently asked whether or not the classification could be sustained as against the Interstate Commerce Clause and the Fourteenth Amendment of the Federal Constitution, as wines made from fruits, berries and grapes not grown in the State would be no more deleterious to the health and welfare of the citizens than the native product. No one, however, has an inherent or constitutional right to engage in the manufacture or sale of intoxicating liquors which may not be taken away by statute, and, therefore, it is doubtful whether anyone would be in a position to attack the law for this discrimination. If my opinion, if such unconstitutional discrimination is found by the courts, the result would be visited upon the Act we are considering, rather than upon the Turlington Act, as the present Act would be more immediately responsible for the unconstitutionality and discrimination.

It is the settled policy of this Department not to declare a law unconstitutional unless it is so plainly so as to involve some unnecessary expenditure or inconvenience to a State Department or agency, which

might be avoided by such pronouncement. That is not involved in this case, and beyond what I have said here, it may not be proper for me to express a further opinion.

I note that Section 9 is intended to take care of constitutional objections by the usual provision, above recited.

However, if the Act should be declared unconstitutional in the respects referred to, it would be a matter of speculation as to how much of it would still be in force.

ANIMAL INDUSTRY; EMERGENCY IMPORTATION OF CATTLE

2 July, 1934.

Through Mrs. Thomas O'Berry, the announcement has been made that the United States Government is prepared to ship into North Carolina, from the drought affected territory of the Middle West, from 50,000 to 75,000 head of beef cattle, to be finally slaughtered, prepared, and distributed for relief, under the direction of the Welfare Department. I understand also that the United States Government will bear all the expenses of shipping the cattle, caring for them here, and the preparation and final distribution of the product in relief work; and will, if permitted to do so, bear the expenses of tuberculin tests, and such other tests as may be necessary to insure the health of the cattle.

C. S. 4895 (j) provides as follows:

> Whenever a county board shall coöperate with the state and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian.

Under the power to make rules and regulations covering the subject, the State Board of Agriculture has adopted a regulation which is substantially the statute in force, as follows:

> AMENDMENT TO SECTION 4, REGULATION 4, LIVESTOCK SANITARY LAWS AND REGULATIONS OF JULY 6, 1923, ADOPTED BY THE BOARD OF AGRICULTURE, JULY 2, 1930.
>
> Amend Section 4, regulation 4, livestock Sanitary Laws and Regulations so as to read as follows:
>
> Sec. 4. All cattle except for immediate slaughter transported, or otherwise brought into this State, must be accompanied by a satisfactory certificate of health and tuberculin test chart issued by a qualified veterinarian who has been approved by the Chief of the U. S. Bureau of Animal Industry and the State Veterinarian of the State of origin. Tuberculin tests shall be applied in accordance with the regulations of the U. S. Department of Agriculture covering interstate shipments of cattle. If cattle are shipped, a copy of the tuberculin test chart and health certificate must be attached to the waybill and accompany shipment to destination. If the cattle are not shipped, a copy of the tuberculin test chart and health certificate must accompany the cattle to destination. No certificate shall be considered satisfactory unless the animals are properly identified on same. Adopted.

On account of the emergency existing in the drought-stricken area, and the necessity for the immediate removal of cattle therefrom on account of the scarcity of water and grass, it will be impossible to apply the tuberculin tests before shipment, and in the states of origin. The only alternative, if the State sees fit to accept the offer of the United States Government, is to permit the shipment of the cattle into the State of North Carolina, maintain them there under quarantine, and apply the tuberculin tests here, destroying such cattle as are found to be unhealthy and liable to produce infection.

The language of the statute and of the regulation above referred to, will be noted: "all cattle *except for immediate slaughter.*"

Obviously, it will be practically impossible to slaughter 50,000 or 75,000 head of cattle either immediately upon their arrival, or within the ten day period provided by the Federal regulations. In fact, it is clear that the cattle shipped from these territories will be in no condition for slaughter at the time, but must be kept on pasturage and provided for until they shall be in condition for slaughter. This will take a considerable period of time, and the question here arises as to whether this should be considered as intended for "immediate slaughter."

In fact, a situation has arisen here which was not contemplated in the law. The section we have quoted, I think, was intended to be made applicable to the ordinary commerce in, and transportation of, cattle.

The purpose of the statute and of the regulation, of course, was to protect the cattle already in the State from infection. It is my understanding that the State of North Carolina has built up a high standard in this respect; and efficient methods provided by the Agriculture Department, and a wise administration, has been efficient in producing results that ought to be respected and sustained. On the other hand, an emergency exists by reason of which relief might be given to two great sections of the country, and existing necessities met in both territories in a very practical and common sense way, if the proposed transportation of the cattle can be done under the law.

Referring again to the purpose of the law, which is to protect the cattle of the State from infection, or the communication of disease to them, it seems to me that we may take a practical view of the law which would not deprive the act of its efficiency and defeat its purpose. I think a construction of the law whereby the State of North Carolina might itself carry out the necessary inspection immediately upon the shipment of the cattle intc the State, is permissible, inasmuch as we are considering a situation of emergency where that inspection at the point of origin is impossible, the expense to be borne by the Federal Government, as suggested.

SUBSIDIARY COOPERATIVE ASSOCIATIONS UNDER 350 PUBLIC LAWS OF 1933

23 July, 1934.

You refer to Subsection (b) of Section 12 of Chapter 87, Public Laws of 1921, which provides that a public director must be appointed for an

organization incorporated under the above law, and inquire if the provisions of Chapter 350, Public Laws of 1933, which is an amendment to the above Act and provides for subsidiary corporations to be organized thereunder, make it necessary for public directors to be named on the Board of Directors of such subsidiary corporations which would be organized thereunder. We do not think so.

There appears to be nothing in this amendment which would require such a public director to be named on the Board of Directors. The public director named for the parent organization, we think, would be a sufficient compliance with the law.

REGULATION OF SALE AND DISTRIBUTION OF ADULTERATED CREAM OR BUTTER

17 September, 1934.

From your bureau I have information that the United States Department of Agriculture is attempting to eradicate a condition which prevails in the sale of cream and creamery butter. Investigation has shown great abuse in this regard, and a great deal of cream and creamery products, unfit for consumption and containing much filth and objectionable matter, is being put upon the market.

I understand that dealers in these products are willing to coöperate here to the end that cream and cream products shall be made safe and fit for consumption. I am asked to what extent your Department is empowered to coöperate with the Federal Department of Agriculture, and in a general way to state what your powers may be with regard to making rules and regulations enforceable under the law, regulating the sale and use of such products.

Under the Pure Food and Drug Act, I think it is your duty to coöperate as far as possible.

In this connection the power of the State Board of Agriculture to adopt rules and regulations was much extended by Chapter 550 Public Laws of 1933, conferring the power upon the Department of Agriculture to make and promulgate rules and regulations relating to the inspection and control of the purchase and sale of milk and other dairy products in this State, to make and establish definitions, and to make other rules pertaining to the subject. Construing this law with the powers given elsewhere in Chapter 84, relating to the Department of Agriculture, and with the penalties pronounced in the law for the violation of the Pure Food and Drug Act—C. S. 4768—and other laws relating to the subject, I am of the opinion that the Department of Agriculture may make enforceable rules and regulations, which will practically adopt and maintain the standards set by the United States Department of Agriculture in the respects named, and which they are now attempting to enforce; and I will state further that in my opinion it is proper for this State, through its Department of Agriculture, to coöperate, as far as may be, to bring about such a condition in the industry as will promote the establishment of a higher grade product, and consequent safety to the health of the consumer.

Farmers Associations; Merger

23 January, 1935.

You state that the Brasstown Farmers Association and the Mountain Valley Creamery Association called together representatives of both organizations for the purpose of setting up a third organization which would, upon its organization, carry on the functions of the first associations named.

We do not think that the organization of this third company would be a merger of the other two associations, but that such an action would be the creation of a new association. Such transaction would, however, be within the law. This organization could also, in our opinion, be consummated without reference to any par value of stock.

Licensing of Farmers Cooperative Exchanges

28 February, 1935.

Replying to your inquiry of February 25, in regard to above entitled matter, it is my opinion that such an organization will be required to take out the regular seed dealer's license.

Rabies Act

3 April, 1935.

At your request I have examined the recent Act upon above subject, with reference to the necessary financing in order to carry out the provisions thereof. Answering your inquiry upon this point specifically, I am of the opinion that resort may not be had to the Contingency and Emergency Fund for that purpose.

Re: Wine Laws

5 June, 1935.

You have referred to me the inquiry of The Taylor Wine Company, relating to the constitutionality of the recent wine law. The question relates to one point only: Is the Wine Act unconstitutional because it permits the manufacture and sale of wine in this State only from native grown fruits, grapes or berries.

In the letter recently written to you on this subejct, I answered directly all the questions raised, for your guidance in performance of your duties as to the establishment of rules and regulations. I did not directly pass upon the constitutionality of the Wine Act in respect to the

point raised in this inquiry because, as stated in my letter, my opinion in this respect would not be official but merely advisory; it affects rights of private persons and corporations proposing to engage in that business which the courts alone are competent to decide.

However, I did recognize some relation which the question might have to your duties in promulgating rules and regulations, and particularly with regard to the duty which rests upon you, under the statute, to promulgate information as to the cultivation of crops from which wines may be made, and the making of light domestic wines.

In my opinion, such rules and regulations and such information should bear no relation to the question of suggested unconstitutionality in this Act; in other words, they should be confined strictly to the view that domestic wines made from native grown crops, and none other, are permitted to be manufactured or sold within the State, and should not go beyond such rules and regulations as are proper in this restricted view.

In my former letter to you, I called your attention to the fact that it is the policy of this Department never to declare a State law unconstitutional unless it was obviously so and such action might be necessary to save the State, or one of its departments, from useless expense and inconvenience.

Even the courts do not declare a statute unconstitutional except upon reasons which are cogent and convincing and beyond doubt. I am inclined to think that the Legislature might make the distinction and classification which it clearly attempted to do in this Act.

The responsibility for such a policy rests with the Legislature and not with me or you. Therefore, I advise that it is your duty to observe the law, as written, in making any such rules and regulations as in your judgment may be pertinent to the matter.

INSPECTION OF PLACES WHERE SOFT DRINKS ARE MANUFACTURED UNDER CHAPTER 372, PUBLIC LAWS OF 1935

9 October, 1935.

I understand from your letter of October 9th that the Burlington Mill Co., of Burlington, N. C., a large manufacurer of cotton goods, has upon the premises a commissary and cafe. In the cafe this concern bottles in small bottles various soft drinks or beverages, including tomato juice, grape juice, grapefruit juice and orangeade, which drinks are sold in the commissary and cafe, not to the general public but only upon the mill property. You inquire whether or not under this statement of fact the premises are liable to inspection under Chapter 372, Public Laws 1935, and further liable for the inspection fee provided under this statute.

The positive language used in Section 1st of this Act is capable of only one interpretation and that is that the premises are liable to the inspection and that the company which operates it is liable to the inspection fee.

Acts of this character are intended for the protection of those to whom the soft drinks are sold, and the fact that such sale is limited to a small portion of the public, or a restricted class, does not affect the matter.

In my opinion if the company undertakes the bottling and sale of soft drinks, it falls squarely within the provisions of the Act.

Fertilizer Tags, TVA

25 October, 1935.

I have still before me the letter of Mr. S. B. Clement to you, relating to above subject, which I herewith return. I now confirm by letter the advice that I gave to you before, that the fertilizer shipped by the Tennessee Valley Authority was subject to be tagged just as any other fertilizers. The fact that the TVA is a governmental agency does not, in my opinion, affect the matter, because the requirement that the fertilizers be tagged is for the protection of the users and, perhaps, not primarily for the purpose of getting revenue for the State. It, therefore, comes under the police power of the State, and in that sense is not an imposition of an unconstitutional tax upon an agency of the Federal Government.

Inspection of Fertilizers; Tagging

30 October, 1935.

We are in receipt of a letter from Mr. R. W. Shoffner, Assistant District Agent of Coöperative Extension Work, Shelby, N. C., dated October 28, in which he states that the fertilizer which was to be used in western North Carolina and furnished to the farmers there was purely for demonstration purposes, and that it was to be given to them free of charge by the TVA; that the real purpose of this demonstration work was to experiment in the preservation of the soil in that part of the State, it being very much depleted in phosphate and humus.

A program was set up under the direction of the North Carolina Extension Service and the Agricultural Division of the TVA. In these counties, committees were elected by the people to select from the applications submitted by the farmers suitable farms for a complete agricultural demonstration, this being a soil erosion program promulgated as above described in which the farmers were asked to practice methods of farming which would conserve the soil by using grasses and legumes. If these agreements were met by the farmers and approved by the committee and the County Agent within these counties, then the TVA was asked to and did agree to supply triple super-phosphate for demonstration purposes to be applied only on grasses and legumes or crops to check soil erosion.

The only cost to the farmer is the freight and no guaranteed analysis is furnished at all. He takes only the phosphate as a gift for demonstration purposes.

From the above, this office is of the opinion that no inspection tags and charges incident to the same are required.

BAKERIES AND BAKING; INSPECTION FEE

22 November, 1935.

Section 9, Chapter 173, Public Laws of 1921, states that operators of bakeries "furnishing bakery products to the public" shall pay an inspection fee of ten dollars during the month of May each year. It is my opinion that if the Kent Bakeries Corporation did not begin furnishing bakery products to the public until June, it would not be liable for the preceding year's fee due in May.

This is true even though the baking equipment was in use before May. The Receiver of the defunct company would be liable for this fee.

PUBLIC HEALTH; BAKERIES; INSPECTION

8 January, 1936.

You are advised that one who operates a sandwich shop and delicatessen but who also manufactures bakery products and sells them across the counter to the general public, is subject to inspection required of bakeries, notwithstanding the fact that the manufacture and sale of such bakery products constitutes only a portion of the entire business conducted at the same stand.

STATE WAREHOUSES; LIABILITY OF MANAGERS

22 April, 1936.

I note that certain persons—Alvana Hedgepeth and others—were made plaintiffs in a suit brought by W. H. Dameron & Company, in which a judgment was rendered on the 7th day of January, 1935. My present information is that this suit was a foreclosure suit under a mortgage upon certain lands. I have not the advantage of seeing the judgment which was rendered in the suit, to see whether or not it covered crops raised upon the land, but, whether in this judgment or another, there seems to have been a judgment on the 7th day of January, 1935, for the delivery of 2500 pounds of lint cotton grown on the lands of Alvana Hedgepeth and others.

Before the rendition of this judgment Alvana Hedgepeth, and the other defendants named, or some of them, had placed the cotton in the Warrenton Bonded Warehouse and had received negotiable certificates representing the cotton and the title thereto, which negotiable certificates had been duly transferred to the Commodity Credit Corporation to secure loans from it.

I am further informed that under the execution issued the 15th day of April, the Sheriff of Warren County levied upon the cotton in the hands of the Manager of the Bonded Warehouse upon which these certificates had been issued, took the same into his possession, and removed the cotton.

You ask me what are your duties with regard to the matter.

Of course, the State is interested in transactions of this character in so far as may be necessary to preserve the integrity of the system and to enforce the State Warehouse laws. There is a fund for the protection

of negotiable certificates issued upon cotton stored in a warehouse, which certificates carry with them the title to the cotton itself. Before issuing such a certificate, it is the duty of the Manager of the Bonded Warehouse to require of those who deliver the cotton and get the certificates a statement, as required by C. S. Section 4929 (a) and following, to the effect that there is no lien upon the cotton so stored. In my opinion, the duty of the Manager of the Bonded Warehouse does not end with the acceptance of such a simple statement to him, but he certainly owes some duty to examine into the matter to see if the representations are true.

In this particular instance, however, there would be no omission of duty on his part in that respect, as the record itself did not show any specific lien upon the cotton in question, and if there was any lien upon it, it came about by reason of the lien upon the land itself and the foreclosure proceeding.

It is clear, however, that mere obtaining of a default judgment against Alvana Hedgepeth and others would not settle the controversy or convey to W. H. Dameron & Company any right or title to the property which at that time had been transferred to another, and they could only recover the cotton out of the hands of the Manager of the Bonded Warehouse and from the people who held the certificates by virtue of some lien which was prior to the certificate, and then only to the extent that such lien existed.

There are a number of matters connected with the proceedings which I would have to know before passing upon the rights of these persons. However, this much is clear to me: It is the duty of the Manager of the Bonded Warehouse, and of those who claim the title to the property under the certificates, to assert themselves at this time and to defend their title and right to the possession of the property. Unless this is done, they have no right whatever to resort to any relief from the State out of the insurance fund provided for the protection of the negotiable certificates, and they should be so notified.

As a matter of fact, as it now stands, the bond of the Manager of the Warehouse Company must be looked to in case this cotton is finally recovered by Dameron & Company. Under the decisions of the Court in Northcutt v. Warehouse Company, 206 N. C., 842, and Lacy v. Hartford Accident Company, 193 N. C., 179, this bond must be resorted to first any way.

I think that you should notify all of these gentlemen that the State stands ready to assist in any way that it can to straighten this matter out, but, further insist that it is a local fight between those who are entitled to the property, and that they should be diligent at this time in asserting their rights.

I am quite sure that not only you but the other officers of the State, including this Department, will be very glad to consult with the attorneys for the Commodity Company, or the Manager of the Bonded Warehouse Company, and be of such assistance as we can.

In this connection, I may say, and of course it is well known to the attorneys for the Bonded Warehouse Company, the Sheriff cannot summarily settle, at his own will, the title to property which he is seizing under execution. If he makes a mistake about this, his bond as sheriff is liable for it. It would have been necessary for him to relieve himself of such liability by demanding an indemnity bond.

OPINIONS TO UTILITIES COMMISSIONER

MUNICIPALITIES; FURNISHING POWER AND LIGHT TO CITIZENS; JURISDICTION OF UTILITIES COMMISSION

12 July, 1935.

In reply to your letter of July 9, 1935, relating to inquiry of Mr. J. H. Scott, of Carthage, N. C., in which he seeks information as to the proper procedure to be undertaken to allow the town to furnish electric current to its individual citizens; and referring especially to the question in your letter as to the effect of Section 1035, C. S., read in connection with Section 1037 (e), (Chapter 445 Public Laws 1931), I must say that I do not think the manufacture and sale of electric current by a municipal corporation is placed in any way within the jurisdiction, supervision or control of the Utilities Commission by C. S. 1035, nor do I think that C. S. 1037 (e) has the effect of altering this situation in any way.

I think the town has the right to manufacture and sell its current to its own citizens without reference to either permission of the Utilities Commission or regulation by it.

FRANCHISE TAX ON ELECTRIC POWER AND LIGHT COMPANIES BY MUNICIPALITIES; SECTION 213, SUBSECTION 5, REVENUE ACT OF 1935.

1 May, 1936.

I agree with the view expressed in your letter under Section 203, Subsection 5, Revenue Act of 1935, quoted in the letter from Mr. Hardison. The express prohibition therein contained would prevent any city or town from imposing a greater privilege or license tax upon such companies than that which was imposed at the date of the enactment of this law. The general power of the town to levy taxes upon trades, professions and franchises, given by C. S. 2677 is restricted by this law. The fact that they previously levied no tax whatever would not now permit them to levy a tax in the face of this prohibition.

OPINIONS TO THE INSURANCE COMMISSIONER

FRANCHISE TAX, SECTION 208 REVENUE ACT; PREMIUMS ON ANNUITY CONTRACTS

22 August, 1935.

In determining the amount of franchise tax due by the insurance companies under the provisions of section 208 of the Revenue Act of 1933, you are not permitted to include, as a part of the "gross premium receipts," premiums on pure annuity contracts. While this question has not been presented to our Court of last resort, similar statutes have been construed in a number of jurisdictions, and the overwhelming weight of authority seems to be to the effect that a contract of pure annuity is not insurance.

On the other hand, if there is included in the contract of annuity a death benefit feature, premium on such contract should be included.

Premiums on annuity contracts having been specifically included in section 209 of the Revenue Act of 1935, all such premiums collected after June 1, 1935, will be included in computing the amount of franchise tax due.

I am returning herewith correspondence had between your office and certain insurance companies.

CHAPTER 168 PUBLIC LAWS 1935

29 August, 1935.

In my opinion, the provisions of Chapter 168 Public Laws 1935 do not prohibit a Notary Public who is in the regular employment of a Building and Loan Association, from taking the acknowledgment of the grantor or grantors in an instrument of conveyance in which the Trustee of such Building and Loan Association is the grantee.

An examination of this Act will disclose that it relates only to those instances wherein proof of the execution of an instrument of conveyance is made upon the oath and examination of the subscribing witness to such instrument. It has no application to a case wherein proof of the execution of the instrument is made by the grantor in the instrument.

The Act does invalidate registration of an instrument of conveyance if the execution of the same was proven upon the oath and examination of a subscribing witness if such subscribing witness is the grantee, or the agent or servant of the grantee, in such instrument.

Authority of Building and Loan Associations to Make Loans Which Are Eligible for Federal Insurance

2 December, 1935.

A representative of the Federal Housing Administration came to see me a short while ago to get my opinion upon the extent to which Chapter 71, Public Laws 1935, gives authority to Building and Loan Associations (a) to make loans eligible for insurance under the Federal Housing Act, and (b) to make direct reduction loans of this character.

I would have had no hesitation whatever in holding that Chapter 71, Public Laws 1935, did not by the use of the words "other financial institutions," occurring in the first and third sections, have any reference to Building and Loan Associations, as they are certainly not "other financial institutions" *ejusdem generis* with the kinds of financial institutions mentioned; in other words, I would have had no hesitation in finding that they could not be classed with "commercial and industrial banks, trust companies and insurance companies," all of which are so radically different in their organization as to form a class very remote from a building and loan association.

However, we must read this chapter in connection with the amendment thereof made by Chapter 378 Public Laws 1935, which amends this Act, then known as Senate Bill 140, by adding a provision to the third section that makes it impossible to come to any other conclusion but that building and loan associations are intended to be included, however unwise such legislation might be considered.

This amendment provides that "all loans made by building and loan associations shall be secured in conformity with the requirements of Section 5182, Consolidated Statutes."

This section provides that no loans shall be made to anyone not a shareholder therein, nor to a shareholder for an amount greater than the par value of the shares held by such shareholder. It then takes up the question of security. This security must consist in part of a "transfer and pledge" *of the shares by reason of which he became entitled to obtain such loan* "as collateral security for the payment of the loan."

Here again, on account of the nature of the security compelled to be taken, I would conclude that a building and loan association is not authorized by Chapter 71 to make a loan to non-members, the provision of C. S. 5182 being repugnant to Section 5 of Chapter 71; except for the fact that this section would undoubtedly be in part repealed by the later enactment of Section 5 of Chapter 71, which releases the financial institutions affected by the Act from the necessity of following any statute prescribing the "nature, amount or form of security required, or requiring security at all, upon which loans or investments may be made." There are other provisions in Section 5 which clearly might be applicable to building and loan associations. The provision which the amending chapter (378-1935) appends to both sectons 3 and 5, however—and note particularly its application to Section 5—it seems to me forms an exception from the general application of Section 5 and makes it clear that notwithstanding the so-called enabling act (71-1935), building and loan associations are still re-

quired to accept only the security mentioned in this section, a part of which is the stock of the shareholder; and it, therefore, precludes a loan to any save a shareholder.

This being true, we have imported into the base of such loans Section 5180, which, in my opinion, would prevent the making of direct reduction loans by a building and loan association, inasmuch as the character of security absolutely required to be taken by C. S. 5182 is controlled by the provisions of C. S. 5180, and becomes so thoroughly incorporated with Section 5182 as to be incapable of separate consideration.

I note from the memorandum of the Federal Housing Administration on my table that a conference with yourself, Mr. LaRoque and the Attorney General was expected, or at least thought desirable.

For that reason, I am withholding communication with the Federal Authorities until after a conference with you.

I shall be glad to have an expression from you as to your wishes on the subject.

OPINIONS TO THE COMMISSIONER OF LABOR

Child Labor Laws

22 August, 1934.

It is true that C. S. 5032 provides that "no child under the age of 14 shall be employed or permitted to work in or about, or in connection with . . . places of amusement." It further provides: "except in cases and under regulations prescribed by the commission herein created."

We think this exception would permit you to promulgate regulations safeguarding children between the ages of twelve and fourteen, who serve as caddies on golf courses and work in and about caddy houses.

We think that your observation and opinion that golf as played by the average individual is mainly exercise—physical, mental and spiritual—is correct. However, we have no legal authority for this interpretation.

We think you would have the power, under the exception in the above section, to permit boys between the ages of twelve and fourteen, under proper regulations, to be employed as caddies on golf courses.

Labor Laws; Laundries

12 March, 1935.

You inquire if, under C. S. 6554, a week's work for women is limited to 55 hours in laundries.

This section provides in part as follows:

> Not more than fifty-five hours shall constitute a week's work for women over sixteen in any factory, manufacturing establishment, mill of the State, and no woman over sixteen employed in any of the above-named places shall be worked exceeding eleven hours in any one day or fifty-five hours in any one week * * *.

We do not think the wording of this statute sufficiently broad to cover work done by women in a laundry.

Neither does an examination of C. S. 6554(a), in our opinion, sufficiently cover the situation so as to include women who work in laundries.

Boiler Inspection; Setting up Service; Financing Initial Service

4 June, 1935.

I have very carefully read the act concerning boiler inspection, H. B. 496, and your letter in reference thereto. You call attention to the fact that while fees for inspection are charged in order to maintain the serv-

ice no appropriation is made for payment of salary and travel expenses and no fund created for the payment of these items in beginning the service.

In my judgment, this situation would not warrant resort to the Contingency and Emergency Fund. I note that the bill provides for $500 to come out of the Contingency and Emergency Fund to pay for printing. This somewhat confirms my opinion that this fund would not be liable to any other resort.

Apparently it was intended that the entire expenses should be paid out of inspection fees. It seems to me quite possible that the Chief Inspector might select such a territory as would result in the collection, almost immediately, of a sufficient amount to pay salary and expenses, as the work may be begun in this way. It does not seem unreasonable that the inspector should finance himself for at least the first month of his employment.

At any rate, I feel quite sure that, under the law, no other fund is available to finance the inspection service.

I am herewith returning the act to you.

CHILD LABOR, SALE OF MERCHANDISE BY MINORS UNDER 14

20 September, 1935.

It is not unlawful, in my opinion, for a party to sell, either for cash, credit, or upon consignment, merchandise to a child under the age of 14, which said merchandise is to be in turn sold by said minor in his own behalf and for his own profit. I do not consider this as being an employment of such minor by the person making such sale. Nor is it permitting the child to sell on the part of such party within the meaning of the Statute.

LABOR REGULATIONS; WORKING HOURS OF WOMEN OVER SIXTEEN; C. S. 6554

26 February, 1936.

You state that several mills in the Piedmont Section have taken the position that it is no violation of the above statute to permit women over sixteen years old to work to exceed the limitation of hours set out in the said statute, if such work is done voluntarily on their part, and you inquire of this office for an interpretation of the statute in this regard.

There is no question in our minds but that the intention of the Legislature was to absolutely prohibit women from working more than fifty-five hours per week and eleven hours in any one day. Any other construction of this statute would, in our opinion, break down and destroy the purpose for which this law was passed.

OPINIONS TO COMMISSIONER OF REVENUE

SECTION 153, CURRENT REVENUE ACT—AUTOMOBILE ACCESSORIES DEALERS

9 July, 1934.

You state that Kress' Stores sell automobile accessories in their various stores over the State and inquire if they would be subject to a privilege tax under the above section for engaging in this kind of business.

Section 153 reads in part as follows:

> Every person, firm or corporation engaged in the business of servicing . . . or engaged in the business of retail selling and/or delivering of any tires, tools, batteries, electrical equipment, automotive accessories . . . .

The tax levied by this section is graduated in cities and towns according to the population.

It is the opinion of this office that this company would be subject to the tax under the section above quoted.

ESTATE OF ELIZABETH M. T. GILMOUR; INHERITANCE TAX

11 July, 1934.

You submit to this office request for an opinion with respect to liability for inheritance tax of the estate of Mrs. Elizabeth M. T. Gilmour.

On April 23, 1923, Mrs. Gilmour, residing at Wilmington in this State, entered into a trust agreement with the Guaranty Trust Company of New York by which she conveyed to such Trust Company, as Trustee, certain bonds, notes and securities, the condition of the trust being that the Trustee should handle and collect the income from such securities and "shall pay the same, when and as collected, unto the party of the first part for and during the term of her natural life.

"After the death of the party of the first part, the Trustee shall pay the income to her husband, Abram David Pollock Gilmour, for and during the term of his natural life.

"After the death of said husband, Abram David Pollock Gilmour, the Trustee shall make final distribution of the principal of the trust funds, dividing it equally, share and share alike, among the children of the party of the first part, namely, Monroe Taylor Gilmour, Matthew Pollock Gilmour and Elizabeth Roberta Gilmour, or their surviving lawful issue, the descendants, however, of any child who may be then dead leaving lawful issue surviving at that time to take collectively their parent's share."

Sale and reinvestment of the property comprising the trust fund could be made only by the Trustee on written directions from Mrs. Gilmour.

In the eleventh paragraph Mrs. Gilmour retained the right to modify, alter or revoke the instrument in the month of July 1928, or in the month of July in any year subsequent to the year 1928. On April 6, 1927, she modified the instrument so as to substitute the year 1935 for the year 1928, as the latter date appeared in article eleven.

Mrs. Gilmour died December 21, 1932. Payment of inheritance tax by the estate is contested.

Section 1.3 of Chapter 427, Public Laws of 1931, (The Revenue Act of 1931), subjects to the inheritance tax property transferred "by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death." A substantially similar provision is found in the Revenue Act of 1933, and Revenue Acts preceding the Act of 1931.

The contention is advanced that the property included within this trust fund is not subject to our inheritance tax, upon the theory that the trust estate was not created, and the property transferred in contemplation of death, and further, that the trust was created more than three years preceding death. The provision with respect to transfers in contemplation of death has no significance here since the applicable part of the statute is that which declares such transfer taxable when "intended to take effect in possession or enjoyment at or after such death."

The case of Blodgett v. Guaranty Company, 114 Conn., 207, 158 Atlantic, 245, would seem to be determinative of the question you present. The Connecticut statute there construed is practically identical with that of ours quoted above. The trusts there under consideration were similar, if not identical, in tenor and meaning, with that of Mrs. Gilmour. The Court held the estate subject to the inheritance tax. And that conclusion was sustained by the Supreme Court of the United States in Guaranty Trust Company v. Blodgett, 287 U. S., 509, 77 L. Ed. 462.

I am of opinion that the property here under consideration is subject to the imposition of the inheritance tax.

SOFT DRINKS; CONSTRUCTION OF SECTION 134, CURRENT REVENUE ACT. (ORANGE JUICE—MILK)

25 July, 1934.

You state that there are several dairies in the State which mix orange juice with milk, which is a pulp orange drink, bottle it and distribute it to retail merchants in milk bottles. You inquire if such dairies would be liable for tax under Section 134 of the current Revenue Act.

Section 134 reads in part as follows:

> Every person, firm, corporation, or association manufacturing, producing, bottling and/or distributing in bottles or other closed containers soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices or imitations thereof, carbonated, or malted beverages and like preparations, commonly known as soft

drinks, shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of doing business in the State and shall pay for such license the following base tax for each place of business: . . .

We think that such a preparation should be classed as a "soft drink," and that the persons engaged in the preparation of such a mixture would be subject to pay the privilege tax imposed by the above Section.

VETERAN'S INHERITANCE TAX; EXEMPTION

1 August, 1934.

I have read yours of July 27th, and letter of Hon. Hubert E. Olive, regarding liability for inheritance tax on funds of a deceased veteran paid to him as administrator.

In my opinion, the Federal Act does not exempt this estate from taxation; but I cannot avoid the conclusion that under Section 7880.2 (d) it was the intention of the Legislature to create an exemption. Whether the Legislature was under the impression that it was exempt under the Federal Law, I do not know, but it does not seem to me that it is a material matter whether the money is paid to the heirs at law by the government directly or mediately through an administrator. I should be glad to talk with you further about the matter if you have any views to the contrary.

INCOME TAX—CHAS. A. PENN ESTATE—1932

1 August, 1934.

I understand from your letter and accompanying file that Chas. A. Penn died October 22, 1931. During the year following his death the executors of his estate received $432,350.68, a bonus allowed to Mr. Penn by the American Tobacco Company as additional compensation for services as an officer of the Company, this bonus being based on the earnings of the American Tobacco Company for the calendar year 1931.

In the exchanges between representatives of the estate and the Revenue Department, I find that it had been proposed to tax this $432,350.68 as income of the estate for the year 1932. It was further suggested by Mr. Beddingfield that if the amount were included in the corpus of the estate and subjected to the inheritance tax, that the demand for income tax would be cancelled. Now the question arises as to whether or not the item may be taxed under the inheritance tax law, and also as income.

I find a suggestion in the correspondence that if it is not taxed as income of the estate, then it should be taxed as the income of Mr. Penn, as it was in effect a part of the salary which he received for the year 1931.

My opinion is that the item could not be taxed either as income of the estate or as income of Mr. Penn.

As to the estate, the money does not represent any accretion or receipt in the nature of income. It appears to be paid to the executors as an item due the decedent and would, therefore, in my judgment, be merely an additional asset belonging to the corpus of the estate.

As to charging it as income of Mr. Penn, it seems clear to me that the language employed in Section 313 of the Revenue Act of 1931 is not sufficient to reach this item, although it may be a part of the salary earned during the year 1931, because of the fact that it was not and could not be received during that year, on account of the manner in which it was allowed.

I think that when the inheritance tax has been paid upon the item, that it would be best to cancel the demand for income in accordance with the Department's letter of date July 30, 1933, which is in the file I am returning.

FRANCHISE TAXATION; PAST DUE TAXES

3 August, 1934.

Your letter of August 1 received.

You inquire first, "How many years back can the Department go in the assessment of franchise taxes found to be due, either tax that has never been paid, or additional tax?" There is no Statute of Limitations running against the State in the collection of its taxes. Not conceding, however, that there is a Statute of Limitations against the State, it has been the ruling of this Department that the State should not attempt to go back beyond a period of three years in the collection or assessment of taxes.

You inquire further is a corporation whose charter is on the active list with the Secretary of State due franchise tax. The answer is yes.

In answer to your third question, we would state that it is not a question as to how a corporation reports itself, but is a question of the legal rights and privileges which exist under the charter of such corporation.

AUTOMOBILE DEALERS, LICENSE FOR EACH PLACE OF BUSINESS

8 August, 1934.

You state that the Thomas C. Hunt Motors, a corporation engaged in the sale of automobiles at Greensboro, has paid a State license tax as a dealer in that place. You further state that in Wilmington the company has a resident salesman; that at his filling station in Wilmington he has a large sign erected over his service station advertising the sales and service of Packard and Hupmobile automobiles; that this salesman operates his car under demonstrating tags issued to the Thomas C. Hunt Motors of Greensboro. He carries no stock of automobiles at his service station, but he solicits customers for the Thomas C. Hunt Motors, and in

the event of a sale, it is consummated at the Greensboro office of the company.

We think that such activities would make either the salesman or the Thomas C. Hunt Motors subject to the tax prescribed under Section 100, Subsection (a), of the current Revenue Act, which provides:

> (a) If the business made taxable or the privilege to be exercised under this article or schedule is carried on at two or more separate places, a separate State license for each place or location of such business shall be required.

It is immaterial as to who should pay this tax, but it is our opinion that an additional license should be purchased.

MOUNTAIN RETREAT ASSOCIATIONS; TAXATION; EXEMPTIONS

9 August, 1934.

You state that the Mountain Retreat Association is a corporation organized and operated by the Presbyterian Church; that it operates several hotels on its property in the western part of the State, and you inquire if it should pay a privilege tax for the operation of such hotels.

It is true that the Statute exempts the property actually owned by corporations such as this from ad valorem taxation, but when such a corporation exercises functions other than those which are religious in nature, it should pay a privilege tax for engaging in such activities.

This is to advise, therefore, that we are of the opinion that this corporation would be subject to pay the privilege tax for operating its hotels.

GASOLINE TAX; EXEMPTIONS; FEDERAL EMERGENCY RELIEF ADMINISTRATION

21 August, 1934.

You inquire if the Federal Emergency Relief Administration would be considered a federal agency eligible to buy petroleum products less all State Tax.

The letter from the Tax Representative quotes a ruling from the Bureau of Internal Revenue to the effect that when funds are granted by the Federal Emergency Relief Administration to states, counties, and municipalities, that such funds become the funds of the local government and not funds of the United States.

In view of this ruling, we are of the opinion that the purchase of such gasoline by counties and municipalities should not be exempt from the gasoline tax.

TAXATION; ATTACHMENT AND GARNISHMENT

24 August, 1934.

You inquire if Consolidated Statutes, 8004, which Section of the Statutes provides for attachment of salaries of taxpayers, applies to State taxes as well as county taxes. The answer is yes.

This Section reads in part as follows:

> If any poll tax *or other tax* shall not be paid within sixty days after the same shall be demandable, it shall be the duty of the sheriff, if he can find no property of the person liable sufficient to satisfy the same, to attach any debt or other property incapable of manual delivery, due or belonging to the person liable, or that may become due before the expiration of the calendar year, and the person owing such debt or having such property in possession shall be liable for such tax."

The Statute then sets forth the form of the affidavit and notice to the taxpayer.

FRANCHISE TAX; STANDARD OIL COMPANY OF NEW JERSEY, 1934

8 September, 1934.

I acknowledge receipt of yours of September 7th, enclosing letter of Hon. James H. Pou, Counsel for the Standard Oil Co., with an inquiry as to whether or not in my opinion the franchise tax in this case is properly assessed.

I understand that the total capital stock, surplus, and undivided profits of this corporation amounted to $334,664,491.06; but of this the company claiming that a substantial portion of that capital was invested in stocks of subsidiary corporations not doing business and owning no property in North Carolina, and miscellaneous stocks, bonds, etc., not within the jurisdiction of the State, to the amount of $80,764,076.17, deducted this from the basis of tax measurement, leaving the amount of such aggregate to capital stock, surplus, and undivided profits, with which it claims North Carolina is concerned as a tax basis, as $253,900,414.89. To this was applied the formula set out in section 311, resulting in an allocation to this State of $11,212,115.37 as the tax base, as against $14,778,617.00 as the tax base claimed by the Department after restoring upwards of $80,000,000 above mentioned, and resulted in a total tax of $16,818.17 as against $22,167.92, as computed by the Department of Revenue on the corrected return.

There is no question raised here except the propriety of taking the $80,764,076.17 out of the tax basis, or rather the legality of its inclusion therein.

Mr. Pou's letter very clearly states the issue, and I fully appreciate the argument advanced. However, it does not seem to me that the factual situation relating to the investment of the eighty odd million dollars is sufficient to justify or require the elimination of that capital from the basis of allocation and taxation in arriving at the franchise tax under the statute.

There is no question in my mind but that the statute has been applied in accordance with its express terms; the question, that I feel must be decided is whether or not the application of the statute, under the circumstances stated by Mr. Pou in its incidence upon this taxpayer, produces

an unconstitutional result by including capital invested as described in Mr. Pou's letter.

It has been the policy of the State to preserve equality in the assessment of the franchise tax, and avoid discrimination between domestic and foreign corporations. As to domestic corporations, the measure of the tax has to do with the capital employed in the business—Revenue Act 210—and it is sought to apply the same measure to foreign corporations, by reaching capital fairly allocable to this State.

When a foreign corporation domesticates in this State, it is charged a fee based upon its capital stock, and no part of its capital is tagged, or could be tagged as its North Carolina capital. It is, therefore, necessary to apply some formula to ascertain what part of its capital may be reasonably considered assignable to its North Carolina business. The formula incorporated into this section 211 by reference to section 311—a formula which has been approved as reasonable as meeting the more exacting requirements of income tax assessments—does not, it is true, take into consideration the manner in which the capital of this company is invested in other states, because the tax levied is both in form and substance a franchise tax and not a property tax, and the thing considered is the capital and not the manner of its investment. In this sense it cannot be said that such capital, for purposes of prorating and allocation, has no relation to the North Carolina business of the corporation.

The fiction applied to fix the situs of intangibles for property tax, *mobilis sequuntur personam* does not apply to a franchise tax, based upon a reasonable allocation to the State of a portion of the entire capital employed in the business as a whole, and the presence in the capital assets of intangibles of the description mentioned by Mr. Pou. If the contrary were true it must be obvious that the State must discard any consideration of capital stock at all in assessing the franchise tax on foreign corporations doing business in this State, and resort to a more arbitrary method, because no part of its intangible capita assets are within the jurisdiction of the State on such a theory, except such as might be fixed by the elusive principle of "business situs," and its tangible property might be ridiculously small as compared with the business activities of the corporation and the extent of the use of the franchise. In fact, such would be the case with the corporation involved.

I think the item in question properly included in the base for the application of the formula and the assessment of the tax.

FRANCHISE TAX; ORDINARY BUSINESS CORPORATIONS

11 September, 1934.

You submit to me several questions with respect to imposition of franchise tax on ordinary business corporations. The conclusions I have reached are as follows:

1. By Section 210 of the Revenue Act of 1927, it is provided that in determining the value of issued and outstanding capital stock, surplus

and undivided profits for the purpose of the franchise tax, it should "in no case less than the par value of the stock of such corporation, issued and outstanding." That phrase was removed from the Revenue Act of 1929 and does not appear in the Revenue Acts of 1931 and 1933.

2. Section 210 of the Revenue Act provides that this franchise tax "in no case shall be less than the assessed value of the property" of such corporation. Corporate excess is property. I think, then, that corporate excess should be included in arriving at the amount of this assessed value of the property of the corporation.

3. The primary method of determining the amount of capital, surplus and undivided profits is by setting gross assets against all liabilities, including capital stock. In the application of this rule it is permissible to accrue such actual liabilities as taxes of all kinds, insurance, etc., as are allowed in income tax practice. Surplus and undivided profits should not be diminished by theoretical reserves as distinct from actual liabilities. Unrealized or unearned profits from installment sales should be treated as a part of the corporation's gross assets in determining surplus and undivided profits, subject to reasonable deductions for anticipated uncollectibles.

4. The amount of borrowed capital should be determined by including indebtedness of a permanent character used or invested in the assets of the corporation.

INHERITANCE TAX, TENCH C. COXE, BUNCOMBE COUNTY, N. C.

13 September, 1934.

Tench C. Coxe paid to the State of North Carolina inheritance taxes amounting to $111,566.72, the last installment of which—$17,672.85—was paid June 28, 1928. None of this tax was paid under protest, and no demand for refund has been made, and no suit or proceeding for that purpose instituted; and there was no appeal from the action of the Commissioner in assessing the tax, and never at any time an application for a revision.

Under all of the statutes relating to refund, and specifying the proceeding to be adopted by the taxpayer, that is to say, Section 464, Chapter 345, Public Laws 1929, Section 510, Chapter 427, Public Laws 1931, and Section 510, Chapter 445, Public Laws 1933, it is required as a condition precedent to an action or proceeding of this sort that the taxpayers pay the tax under protest, make demand for return within thirty days from the payment, and if the payment is not made within ninety days he is permitted to bring suit therefor. This is held to be mandatory and indispensable in this State. Bunn v. Commissioner of Revenue, 199 N. C., 557. Such a suit must be begun within three years, or the general statute of limitations—C. S. 441—will apply thereto.

Under Section 340, Chapter 345, Public Laws 1929, Section 340, Chapter 427, Public Laws 1931, and Section 340, Chapter 445, Public Laws 1933, the taxpayer may apply to the Commissioner of Revenue for the revision of the tax assessed against him at any time within three years

from the time of the filing of the return, or from the date of the notice of assessment of additional tax. This has not been done, and this statute is, therefore, not applicable. Section 26, Chapter 445, Public Laws 1933, however, deals with the determination of the amount or value of taxable estates as fixed, assessed, and determined by the Federal Government. Such value as determined by the Federal Government must be made in the report from the Executor or Administrator, if fixed before such report is made; and if the assessment of the estate by the Federal Government has been made after the filing of the report, the Executor or Administrator must, within thirty days after receipt of the notice of final determination by the Federal Government, make report of the amount so fixed to the Commissioner of Revenue of this State.

In case the amount determined by the Federal Government exceeds the amount found by the State, the Commissioner of Revenue is required to fix the value of the estate at that figure, unless the Executor or Administrator shall, within thirty days after notice, show cause why it should not be done. If the amount determined by the Federal Government is less than that fixed by the State, the Executor or Administrator may, within thirty days after filing his return of such amount to the State Commissioner, file a petition to have the amount fixed by the State reduced. In either event the Commissioner must proceed to determine from such evidence as may be brought to his attention, or he may acquire, the correct value of the estate, and he shall re-assess the taxes and notify the Executor or Administrator of such fact. If upon such finding there has been an overpayment of tax, it must be returned within sixty days after final determination of the value of the estate.

It may be contended in this case that the cited statute justifies or requires a report to be made by the Executor or Administrator upon the final determination by the federal authorities of the value of the estate, even though this is done as the result of litigation. At least there is argument on both sides of this question, and it is really a matter for the courts. Obviously, however, the statute is not mandatory requiring the Commissioner of this State to observe the reduction made upon federal re-assessment; Realty Co. v. Maxwell, 204 N. C., 123; and I can but say that in this case such reduction will be resisted, and will not be allowed, unless forced by court action. I do not consider such reduction probable.

AUCTIONEERS, TAXATION; SECTION 111, CURRENT REVENUE ACT

18 September, 1934.

You state that the Moon Davis Auctioneering Company came to Murphy and put on a sale of real estate. The receipts from the sale of the property were not satisfactory to the owner so he did not confirm the sale; prior to this time, however, the Deputy Commissioner had collected from the auction company the sum of $50.00, that being the tax levied under Section 111 of the current Revenue Act.

The taxpayer has asked for a refund, stating that there actually having been no sale, no tax should have been collected. We do not think the

refund should be allowed. Section 111 prescribes a tax for the privilege of engaging in the business of conducting auction sales of real estate and the payment of this tax is a prerequisite to the right of the taxpayer to engage in such business.

We think it immaterial that no profit was made or even that the sale was not consummated, and it is our opinion that the refund should not be made.

TAXATION—LICENCE, INSTALLMENT PAPER DEALERS; LOAN AGENCIES OR BROKERS

18 September, 1934.

You state that the Industrial Finance Company, Standard Credit Company, Hall and Company, and Crowe and Company, loan agencies of Charlotte, have paid the license tax under Section 148, which levies a tax on installment paper dealers, and claim that they should not be taxed under Section 152 which levies a tax on loan agencies for the reason that they lend money only upon automobiles offered as collateral security.

Section 152 places a tax on persons, firms or corporations engaged in the regular business of making loans or lending money, and accepting liens on, or contracts of assignment of, salaries or wages, or any part thereof, or other security or evidences of debt for repayment of such loans in installment payments or otherwise.

We think that it is immaterial as to what class of personal property the loan is secured by. We think a distinction can be drawn between a finance company which finances the purchase of automobiles exclusively and handles no other paper of any nature. We think that companies of this character would be taxable under Section 148 instead of Section 152. We think that Section 148 was passed in order to levy a tax on installment paper dealers engaged in the financing of the purchase of automobiles, and it was not the intention of the Legislature to tax loan companies under this Section, it being very evident by the passage of Section 152 that loan companies of the nature and character therein described should be assessed a larger tax.

TAX ON MOTOR FUELS AND LUBRICANTS; REFINING COMPANY BULK PLANTS

18 September, 1934.

You state that the 1927 Revenue Act, Section 153 (c), levied a tax on wholesale dealers and among other things, motor fuels and lubricants; that, beginning with the Revenue Act of 1929 and subsequent acts up to the present, the words "fuels and lubricants" were dropped from the subsection, and that the tax was placed on "accessories, parts, tires, tools or other automotive equipment or supplies."

You inquire if this language could be construed to mean specifically

fuels and lubricants. We do not think so. There must have been a direct intention of the Legislature to exclude motor fuels and lubricants. In fact, we think this is borne out by the enactment in the 1933 Revenue Act of Section 137, which places a tax on motor fuels and lubricants. Subsection (f) of this Section, however, provides that no license or privilege tax, other than the tax permitted in this Section, shall be levied or collected for the privilege of engaging in the business named therein on a taxpayer who has paid the inspection fees and charges provided for under Article 14 of Chapter 84 of the Consolidated Statutes of 1919 and amendments thereto, except license taxes levied in Section 153 of this Article.

We are also of the opinion that these refining company bulk plants would not be taxable under the chain store section of the Revenue Act, the specific exemption of 137 (f) being the reason therefor.

STREET RAILWAYS; PUBLIC SERVICE COMPANIES; AUTOMOBILE BUSSES

18 September, 1934.

You inquire if automobile busses operated by public service companies in lieu of street cars and/or as street cars are liable for tax under Section 203, current Revenue Act, or the tax levied under Chapter 375, Public Laws 1933. You further inquire if busses operated in lieu of and/or as street cars by electricity supplied through trolley lines from a central generating plant and commonly known as trackless trolleys are subject to the tax levied under Section 203 or under Chapter 375, above referred to.

We think the tax should be levied only under Section 203. The only authority that we can find in point and which, in itself, is not exactly in point, is that of Light Company vs. Iseley, 203 N. C., 811-824. Mr. Justice Connor, speaking for the court in this case and quoting Russell vs. Kentucky Utilities Company, 231 Ky., 820, says in part:

> The purpose and object of the franchise involved in this case was to provide for the rapid and convenient transportation of the public. That was the basic right granted. The motive power or method of propulsion of the vehicle is subordinate or subsidiary. It is but the means of making the franchise effective. Is the substitution of cars running on rubber tires, free from limitations of steel rails and trolley wires, and propelled by internal combustion engines, in place of cars with metal wheels without tires, on fixed rails, and propelled by electric motors supplied with power through overhead wires, such a radical departure from the purposes and objects and terms of the original franchise as to preclude the change? If buses be used for the transportation of passengers, there is no additional servitude on the streets or obstructions to the free and safe use of the streets by other vehicles. On the contrary, the streets are relieved of trolly poles and wires and the imbedded rails, more or less dangerous. It can hardly be said that the operation of the busses is more dangerous or obstructive than the operation of electric street cars on the thoroughfares. The problem is one of distinction between the essence in which the permanent value lies—the use of streets for transportation of passengers for hire—and the incidents of that franchisal right which are subject to change by agreement, viz., the facilities to be used.

We think his quotation in this case is very apt here. It is clear to us that it was not the intention of the Legislature to levy two separate and distinct taxes on public utilities operating street cars and/or passenger busses on the streets of the municipalities in the State, and if the charter of such company and its contract with such municipality permits the operation of street cars and/or motor busses, we think that the proper tax would lie under Section 203, which is the franchise tax assessment, and that no tax should be levied under Chapter 375.

INCOME TAX, GREENSBORO NEWS; REVENUE ACT, SECTIONS 317, AND 322

18 September, 1934.

The Greensboro News Co. filed its income tax report for the calendar year 1933, in which it listed as non-taxable income $53,095.00 dividends from the Record Co., a domestic corporation. This amount was included in the allowable deductions and subtracted from gross income. The full amount of deductions coming under the various subsections of section 322 was taken, disregarding the prorate feature of subsection 1 of section 322, which resulted in the computation of the total tax due of $381.65.

Regarding the dividends from the Record Co. as "income not taxed" by the Revenue Act, the Department corrected the return and prorated the deductions, exclusive of the dividend deduction, in the proportion of the taxed income to the income not taxed, finding non-taxed income to be .095 of the total. This resulted in the assessment of additional taxes in the sum of $2,840.25, and with interest of $42.60 added, made a total of $2,882.85. The taxpayer protests the payment of the additional tax, and the matter has been referred to us.

I think the better construction of the statute, that is comparing all parts of section 322 with section 317, is that by the expression "income not taxed under this act," the intention of the law-making body was to refer to the definition of gross income contained in section 317; and more particularly to refer to the exclusions listed under subsection 2 of that section.

There is no legal obstacle in the way of taxing dividends from domestic corporations as income. Such dividends are, in fact, taxed by this statute, *pro tanto*—that is to the extent that the corporation itself does not pay tax upon the income from which the dividend is derived. The policy of the State is to refrain from taxing the income in the hands of the corporation, and the same income in the hands of the stockholder at the same time, although this is permissible under the law; therefore, under subsection 5 of section 322 when only part of the income of a corporation is assessed, only a corresponding part of the dividends received therefrom may be deducted. It seems to me, therefore, that it was deliberately intended by the Act to deal which such dividends solely as a matter of deduction, rather than to exclude them from the taxable basis, with the purpose to leave the dividends as a taxable subject to be dealt with later by the statute, as circumstances require; and while in a sense it may follow, and in many cases does follow, that the dividends are not actually taxed

because of an exempting quality, generally speaking they are taxable. The method of arriving at the result—the *modus procedendi*—and the way the statute is built up, leads me strongly to the conclusion that the purpose and meaning of the first paragraph of section 322 is to refer to the items of income excluded from the definition of gross income by the second paragraph of section 317. In that view, it will be improper to prorate deductions, and I conclude that the additional tax assessed against this taxpayer should be cancelled and discharged.

INHERITANCE TAX; GOVERNMENT WAR-RISK INSURANCE

22 September, 1934.

You state that Luby Carter, a World War veteran, came to his death during the war, leaving war-risk insurance in the amount of $10,000 payable to his father, Henry Carter; that Henry Carter lived until some time in March, 1934, and that there is a balance due on the $10,000 policy to the estate of Henry Carter in the sum of $2,881.00. You inquire if this $2,881.00 would be subject to inheritance tax upon distribution to the heirs of Henry Carter, father of the deceased. We think so.

This property vested in Henry Carter prior to his death and upon distribution to his heirs at law would, in our opinion, be taxable as in any other case, and such would not be considered as a tax on government funds.

INCOME TAX RESIDENT TRUSTEE OF NON-RESIDENT BENEFICIARY; MRS. MARY W. CHACHERE

28 September, 1934.

Under a former construction of the Revenue Act, it appears that some income tax was charged against Mrs. Mary W. Chachere, a resident of Kentucky, coming into the hands of the Wachovia Bank and Trust Company, a resident trustee. It is my understanding that the result of our conference upon the construction of this statute would relieve the nonresident beneficiary, who probably pays income tax in her own state, from any charge in this respect under our present income tax law. It has apparently been the policy of the State not to tax the resident trustee with respect to income received by such trustee for a foreign beneficiary, and I do not understand that the present law has that effect. I think, therefore, that any imposition of tax on Mrs. Chachere in this respect would not be sustained.

SECTION 109, CURRENT REVENUE ACT, PROFESSIONAL TAX

8 October, 1934.

You state that your division has had numerous protests from various county and city health officers over the State concerning the requirement

of the Department that they pay a professional tax under Section 109 of the current Revenue Act.

They deny liability for this tax for the reasons that their work does not involve the practice of medicine; that all of their medical work is performed by their assistants; that the function of these various health officers is primarily directory, which service could be handled by a layman who has had experience in public work; that these health officers are never called in for consultation; that they never examine or prescribe for a patient, but that the actual practice of medicine is performed by other directors of their staff. You inquire if such a class of work would make such health officers liable for the professional tax. This office has formerly ruled that in cases where the law requires such health officer to be a doctor, that such officers would be subject to the payment of the professional tax.

Income Tax Chatham Manufacturing Co.

10 October, 1934.

The Chatham Manufacturing Co. purchased a certificate of a certain number of units in "Selected Industries Incorporated," a Delaware corporation, under the terms and conditions named in the certificate, a photostatic copy of which has been handed to me.

The Chatham Manufacturing Co. has sought to deduct from the basis of taxation dividends received from the Selected Industries Incorporated, upon the theory that it was a return to them of capital stock invested in the concern, and that it was not really income.

I do not think that this contention is good. In my opinion the certificate, which I have examined, is in substance just like any other stock certificate in an incorporation. Certainly, the Chatham Manufacturing Co. cannot lay claim to any specific part of the securities which this corporation has bought with its general capital; and I see no provision in the contract or certificate of stock whereby any part of the contribution made by the Chatham Manufacturing Co. to the capital stock may be returned to it in the manner suggested.

I do not think the State, upon a question of income taxation, is permitted to go into the question of whether or not a foreign corporation declaring a dividend pays that dividend out of stock or out of an earned surplus or profit.

In my opinion this taxpayer is not entitled to the deduction, and the ruling of the Department in that respect is approved.

Bynum Printing Co. Income Tax

17 October, 1934.

The Bynum Printing Co. owes certain officers $18,000.00 past due salary, on accounts accumulated from 1921 to 1929. It is proposed that these officers surrender the accounts against the company as "a contribution to

the surplus of the company." We are asked by you whether or not this transaction would subject the Bynum Printing Co. to liability for income tax upon the amount thus added to the surplus.

Certainly, if the transaction is to be viewed according to the analysis contained in the fourth paragraph of the letter, the addition to the surplus would be a proper subject upon which to compute income tax, as it would be equivalent to a transaction where "these stockholders had opened a savings account in some local bank and accumulated this $18,000.00, $100.00 at a time, and during the current year paid it in to the corporation to increase its surplus." In other words, such a cash addition to the surplus received during the current year would be subject to income tax.

AGRICULTURAL FAIRS; EXEMPTION OF TAX, WAYNE COUNTY

23 October, 1934.

From an examination of the file, we do not think that a fair could be operated tax free any where in the State except and unless the operators of the fair comply with the law which would exempt them. An examination of the file in this connection with regard to the fair operated in Wayne County under the supervision of W. C. Denmark as Secretary and Manager discloses that Wayne County itself has been operating a fair since 1916; that since 1922 the fair has been operated from year to year under the supervision of the said Denmark.

It further discloses that this fair is strictly an Agricultural Fair as defined by the Statute; that during the past several years it has not made any money, or a comparatively small amount; that the persons who had the operation of the fair in charge for the past year allowed Mr. Denmark as compensation for his services in connection with the operation of the fair all the profits which might or might not have been made.

It also discloses that a State representative has called on Mr. Denmark to pay a State tax for the operation of this fair.

From a very thorough examination of the file in this case, we are of the opinion that the fair was staged in good faith and for the benefit of the public generally in Wayne County and even though the law was perhaps not strictly complied with with regard to its operation, we think the tax should not be levied.

SECTION 133, CURRENT REVENUE ACT, MERCHANDISE BROKERS

13 November, 1934.

Deputy Commissioner J. C. Reid has asked us to supplement and amplify an opinion of this office of date October 16, 1933. He states that it is clear to him that a broker taking orders for goods to be shipped from a point outside the State direct to the purchaser and not coming to rest in the hands of such broker is not liable for the tax.

However, he inquires if a broker would be liable for the tax under this

Section where goods are shipped from a point within this State to another point within this State, though not actually coming to rest in the hands of the broker. We think so. In a case of this kind there is no inter-state commerce and the fact that the goods actually did not come to rest in the hands of the broker would not exempt him from the tax as no inter-state commerce question is involved.

The reason for the statement in the opinion above referred to to the effect that the tax should be collected where the goods come to rest in the hands of the broker from a point outside of the State is that at the time it came to a rest in the hands of a broker, its inter-state character ended.

This same ruling would, of course, apply to cotton brokers as is specifically set out in the Act.

Franchise Taxation; Allocation of Funds

17 November, 1934.

You state that a real estate company some few years ago acquired real estate at a comparatively high price; that as the value of this real estate increased, they increased the value of same on their books and issued stock in the company commensurate therewith. At a later date as a result of the depression, an appraisal was made which showed the value of this real estate had been considerably reduced, and instead of inventorying this property at the current market price or cost price, that they set up a reserve for shrinkage of value in a separate account.

You inquire if this reserve so set up should be considered as a part of the surplus and undivided profits for franchise tax purposes.

We think so. Before such a company could take credit for such a shrinkage of value in real estate, such accounts should actually be charged off the books. It, therefore, appears that the account in question represents an allocation of the surplus account; such an account does not represent indebtedness of the corporation and is, in fact, invested in the assets as shown by the books and records. As a matter of fact, it is our opinion that this allocation is a part of the capital of the corporation and not part of its indebtedness.

Contractors and Construction Companies; Bidder's Tax, Section 122, Current Revenue Act

19 November, 1934.

You state that a construction company has contracted to construct a tower for radio stations at a cost which would exceed $10,000. You further state that you have assessed this company a bidder's tax of $100.00 and a project tax of $100.00 under the provisions of Section 122. You also state that this company is protesting the payment of this $100.00 fee, stating that they are only liable for the fees in the lower brackets, to wit, $50.00, for each tax, for the reason that the materials purchased by them

for the construction of this tower are purchased out of the State, and that the assessment of such a tax would be a burden on interstate commerce for this reason.

The statute specifically states that where a person, firm or corporation, for a fixed price, fee or wage, offers to construct within the State any such building or similar project, "the cost of which exceeds the sum of $10,000," shall pay a certain specified tax. We think it is immaterial as to where the materials are furnished or purchased. The entire construction of this project is in the State of North Carolina, and the mere fact that materials are purchased out of the State would not enter into the controversy as to the amount of tax to be charged, and would in no way place such a burden on interstate commerce as to violate the commerce clause of the Constitution.

REVENUE ACT; INCOME TAX, MASSACHUSETTS INVESTORS TRUST; TAXABILITY OF DIVIDENDS

21 November, 1934.

Upon reading the "Agreement and Declaration of Trust," under which the Massachusetts Investors Trust is set up, I note that shareholders in the Trust placed their capital therewith under an agreement which is Article 8, whereby under certain conditions the capital so placed, or parts thereof, may be returned to the *cestuis que trustent*. When the dividends paid under this Trust constitutes solely capital return, such dividends are not subject to the income tax.

I note from the letter of the Massachusetts Distributors, Inc., that losses have been incurred, and the capital of the Trust has been very much impaired. Because of this fact, and in pursuance of the agreement, portions of capital have been returned to investors or shareholders. It is further stated, however, that it is not the intention of the authorities handling the Trust to pay any more dividends at present, or until this impairment of stock shall be remedied out of earnings.

Without analyzing the situation at length, I must say that a serious question arises as to the taxability of dividends paid to shareholders under such an arrangement. Obviously, if the trustee could continue to pay dividends under the circumstances, calling them return of capital, it might be possible not only to replenish the capital to its original amount, but to add immensely thereto. Earnings might be put in at the top of the barrel, and return of capital taken out from the spigot.

In this situation I have to advise that the particular transaction must be looked into and analyzed, and considered for what it really is. If the "dividends" actually paid to the shareholders are in reality return of capital, they are not taxable under our law.

INCOME TAX EXEMPTIONS

28 November, 1934.

We do not think Mr. Robinson's claim of exemption is tenable. It has never been held that the compensation received from the government by

an attorney at law, free to accept other clients, and which compensation is only a part of his income derived from the general practice of law, is immune from taxation by operation of the Federal Constitution, which prevents the State from taxing a federal agency. See cases cited in Metcalf v. Mitchell and Eddy, 269 U. S., 514. It is clear also that under the statement made by Mr. Robinson's letter that he was an independent contractor for this service. Casement v. Brown, 148 U. S., 615, 622; Metcalf v. Mitchell, supra. We regret that we are unable to advise cancellation of the assessment.

SCHEDULE TAXES; W. AND S. MOTOR COMPANY, CHARLOTTE

19 January, 1935.

The above named company has taken up with you an interpretation of Section 404 of Chapter 445, Public Laws of 1933—the current Revenue Act—and you have asked for a construction of the term "new article" contained in sub-section 11 of this section. The section reads as follows:

> Section 404.11. When in the sale of a new article a second-hand or used article is taken in part payment, the sale of the new article shall be reported at the full gross sales price. The resale of second-hand or used articles, taken in part payment in the sale of new articles, or the resale of articles repossessed by the vendor, may be excluded from gross sales taxable under this act if separate record is kept of all such transactions in such manner as may be prescribed or approved by the Commissioner of Revenue.

It is pointed out that an obvious discrimination would exist as between persons and concerns who deal, partly at least, in newly manufactured articles and those whose stock-in-trade consists entirely of second-hand or used articles, if this term is interpreted strictly to mean an article of new manufacture, as it would result in the collection of a greater amount of tax from the latter business for the enjoyment of a precisely similar privilege.

If we take the term "new article" in its strictest interpretation, that is to say a newly made article, and attempt to apply it to trade and sales generally, and to persons engaged therein, it seems to me that we will have to go somewhat astray from the probable intention of the law; and, I think, will be forced to admit that such an interpretation of the tax would probably cause a distinction which it would be difficult to sustain, and a classification without sufficient reason.

"When reasonable doubt exists, we understand that the taxing law must be interpreted somewhat liberally in favor of the taxpayer, and certainly so as to avoid discrimination. For this reason, it is my opinion that a fair construction of the statute in question would necessitate that this term was meant to cover articles which were new in the sense that they were the original stock-in-trade of the seller. Where, as in this case, the taxpayer is engaged entirely in the sale of second-hand articles, such person or concern should have the benefit of sub-section 11 just as if the said stock-in-trade consisted of newly manufactured articles.

REFUNDS; INTER-STATE COMMERCE; SALES TAX

31 January, 1935.

You state that the North Carolina Equipment Company, a local corporation, is agent for different kinds or classes of manufacturers located in other states but this company sells the products of these factories to North Carolina purchasers; that the factories charge and bill this company with the cost of equipment and the goods are shipped direct to the purchasers from the factory; that these goods do not pass through the warehouse store of this company nor come to rest at any time in this State until they reach the destination of the purchaser. You inquire if this class of goods would be exempt from the sales tax.

We are of the opinion that sales tax should not be charged in cases of this kind as it would be a burden on inter-state commerce, and, therefore, unconstitutional.

AD VALOREM TAXATION

5 February, 1935.

Your letter of January 31 received.

You attach a letter from the Branch Banking & Trust Company of Wilson wherein it is stated that a husband died leaving a $10,000 life insurance policy payable to his wife as beneficiary. The beneficiary received the check but before cashing it or depositing it, returned it to the insurance company under a guaranteed income plan, by which the company agreed to pay the widow earnings on this investment each year with the guaranteed minimum of 3 per cent. She has no right to withdraw this money, but at her death it is to be paid to her two children. The widow is a resident of Wilson County. An inquiry is made to us as to whether or not she is required to report this fund as personal property for ad valorem taxation in Wilson County.

We do not think so. Personal property is taxable at its situs. She has no control whatsoever over this fund except that she receives an income therefrom for her life. She would, of course, have to pay tax on the income received from this fund.

INCOME TAX; TAX ON INCOME EARNED WHEN TAXPAYER WAS A RESIDENT OF ANOTHER STATE

6 February, 1935.

The question arises as to the taxability of the income of an individual who has been a resident of this State for only a part of the calendar year. The question is whether or not it is proper to demand of these taxpayers tax upon the net income received by them for the entire calendar year, during the larger part of which they were residents of another state.

There must be some justification for the tax. There must be some bene-

fit which the taxpayer received, or is supposed to have received, from it. As to the income tax, the justification might lie in the protection afforded the taxpayer by the laws of the State, which protect their persons, their receipt and enjoyment of the income. Enjoyment of the privilege of residence in the State, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility of sharing the cost of government. Lawrence v. State Tax Commission, 286 U. S., 276, 76 L. ed., 1102; Maguire v. Treffrey, 253 U. S. 12, 64 L. ed., 739; Fidelity and C. Trust Company v. Louisville, 245 U. S., 54, 62 L. ed., 145.

There is nothing better settled in the law than the principle that a State cannot tax property or subject beyond its jurisdiction. No State may tax anything not within her jurisdiction without violating the Fourteenth Amendment. In the same line: Farmers Loan and Trust Co., v. Minnesota, 280 U. S., 204, 74 L. ed., 371; Union Refrigerator Transit Company v. Ky., 199 U. S., 194; Safe Deposit and Trust Company v. Virginia, 280 U. S., 83, 74 L. ed., 180.

In these cases the taxpayers owe nothing to the State of North Carolina for any protection which it might have afforded them, a greater part of the income for the year was earned in another state, received in another state, and at that time they resided in another state, and had all of the protection of the law which was afforded them from that state, and not from North Carolina. It seems to me that the charge upon these taxpayers, because of income received by them under such circumstances, contravenes the principles of the decision set out above, as well as every other principle of law. Section 300 of the Revenue Act imposes a tax upon the net income of residents of North Carolina, received during the calendar year. It assumes, or must be held to assume, that the taxpayer was a resident of this State throughout the calendar year. It is silent upon this subject, of course, but to give the act any other construction would make it unconstitutional and violative of the Fourteenth Amendment of the Constitution.

We must, therefore, put a construction upon the statute which would make it consistent with the Constitution. Farmers Loan and Trust Company v. Minnesota, supra., Union Refrigerator Transit Company v. Ky., supra., Safe Deposit and Trust Company v. Virginia, supra. Fairly considered, then, the statute must mean that the tax is imposed upon the net income of the taxpayer during that part of the calendar year during which the taxpayer was a resident of this State and received the income herein.

It seems to me that the case of Kennedy v. Commissioners of Corporation and Taxation, 256 Mass., 426, 152 N. E. Rp., 747, is completely applicable to this case, and is sound. I, therefore, conclude that these taxpayers are not liable for any tax on income received by them in another state and before they became residents of this State.

Franchise Tax—Liability of Receivers

9 February, 1935.

The question raised is as to the liability of a receiver, operating the property of a corporation as a going concern, for the franchise tax.

I have always been of the opinion that a receiver, who continues to operate and exercise the rights of a corporation under an order of Court that it should be operated as a going concern, is liable for the franchise tax. This, however, is not made clear by our statute and must rest upon the final opinion of the Court.

INHERITANCE TAX; TRUSTS

12 February, 1935.

You state that there was a trust created by a resident of Georgia prior to his death wherein the wife of the decedent was to be paid the income from this trust during her life, and after her death, it was to be paid to her children, or the trust to terminate, depending upon the age of the children at her death; that the decedent was accidentally killed and at the time of his death, was a resident of this State, and his wife and children were, at the time of his death, and are now, also residents of this State.

You further state that this trust was set up by the purchase of life and accident insurance and was of the value of approximately $50,000. The policies were issued while the insured was a resident of Georgia and were in the possession of the corporate trustee in Georgia at the time of the accidental death of the insured. The proceeds of these policies have been collected by the trustee in Georgia, and have not, at any time, been in this State.

You inquire as to whether this State has jurisdiction for the purpose of collecting inheritance tax on this trust. We think so. In Trust Company vs. Doughton, 187 N. C., 263-269, it was held that the personal property of the decedent, whatever its character and wherever located, is subject to an inheritance tax in the state in which its owner was a resident at the time of his death. (Bullen vs. Wisconsin, 240 U. S., 625.) Chief Justice Stacy says in part: "This position is upheld upon the principle that the situs of personal property, for the purpose of taxation, is said to be in the State where the owner resides and has his domicile. *Mobila sequuntur personam.* Gallup's Appeal, 76 Conn., 617; In re Swift, 137 N. Y., 77; People vs. Union Trust Co., 255 Ill., 168; McCurdy vs. McCurdy, 197 Mass., 248; In re Hartman, 70 N. J. Eq., 664."

We think that under authority of the above case, and the opinion and cases cited therein, that the trust set up by the deceased in Georgia is subject to the inheritance tax in this State.

ASSESSMENT OF CORPORATE EXCESS; MACHINERY ACT, SECTION 603, SUBSECTION (2).

14 February, 1935.

You inquire if the value of the amount of capital stock of a foreign corporation, which is held by a domestic corporation for ninety days just prior to and on the first day of April by such domestic corporation, is a

proper deduction in determining the amount of corporate excess of said domestic corporation under the meaning of Section 603, Subsection (2), Machinery Act of 1933.

We think the deductions referred to in this Section were primarily placed there in order to protect domestic corporations and to prevent a duplicate taxation of their stock. We think this same protection should be afforded domestic corporations which own stock in foreign corporations in an amount proportionate to the amount of tax paid by such foreign corporations, if any. In other words, if the foreign corporation has paid the tax on its stock in this State after domestication, we think that the amount of such stock should be deducted in the return of the domestic corporation made to the State Board of Assessment.

Sales Tax Liability; Inter-state Commerce

21 February, 1935.

You state that there is a merchant who, during certain seasons of the year, sells his merchandise to purchasers who then and there instruct that this merchandise be shipped to them, the purchasers, at a point outside of the State, and you inquire if this class of business would be subject to sales tax.

We think so. We think that in instances of this kind the transaction is complete in this State in so far as the purchase is concerned and collection of a sales tax would not be in violation of the inter-state clause of the Constitution.

Your other inquiry is as to the sales tax liability for the purchase of an automobile in this State by a resident of Tennessee, the car being delivered by the North Carolina dealer to the purchaser in Tennessee.

In this case, the fact that the automobile was delivered by the North Carolina dealer to the purchaser in Tennessee would be a transaction such as would put a burden on inter-state commerce, the delivery of the article being an integrant part of the transaction.

Sales Tax; Inter-state Commerce

21 March, 1935.

You state that a Mrs. Kimball obtains orders from persons in this State for goods and forwards these orders to the Mutual Fabric Company, a foreign corporation; that the company, as a matter of convenience, places the orders in one package separately marked with the customer's name and sends this package containing all the orders to Mrs. Kimball for delivery to the customers who have already purchased the articles, and you inquire if such transaction would make Mrs. Kimball liable for the three per cent sales tax.

We think this statement of facts is on all fours with the statement of

facts in the case of Caldwell vs. North Carolina, 187 U. S., 622. In this case the United States Court held that the fact that the articles were not shipped separately to each individual purchaser meant only that the company used this method of shipping the goods directly to their agent, there to be separated and delivered by such agent to the purchaser, and was only a matter of convenience for both parties, and that such a transaction was inter-state commerce; that a tax placed thereon would be placing a burden on same in violation of the Federal Constitution.

CHAIN STORE TAX; LIABILITY OF BEER AND ICE CREAM DISTRIBUTORS

28 March, 1935.

We have your inquiry of March 27, with enclosure of a letter from the Southern Dairies of date March 25, objecting and protesting the assessment of the chain store tax levied under Section 162 of the Revenue Act.

The dairy company objects to the assessment and payment of such tax first, for the reason that they do not operate a chain store in the ordinary sense of the word; that their business consists of, fundamentally, the processing of milk and milk products and the manufacture of allied frozen confections, and second, that they should not be assessed this tax for they are specifically taxed under Section 161 as manufacturers and distributors of ice cream.

These contentions are without merit and the tax should be assessed and collected. It is true that this company processes milk and milk products and manufactures ice cream and allied frozen confections, but it is also true that they maintain and operate "two or more stores or establishments where goods, wares, and merchandise are offered for sale at wholesale or retail." The sale of such products from their established places of business would certainly, in our opinion, make this company liable for the chain store tax under Section 162.

The contention that this company should not be taxed under the chain store section for the reason it is taxed under another section of this act is also without merit. The courts have uniformly held that the Legislature has the power to double tax where there is a clear intention to do so. The mere fact that this concern was assessed a tax under Section 161 of the Revenue Act would be no defense to an assessment under Section 162, the chain store tax.

FRANCHISE TAX; VIRGINIA ELECTRIC AND POWER COMPANY; DEDUCTIONS

11 April, 1935.

The Virginia Electric and Power Company made its report for franchise tax for the fiscal year ending June 30, 1934, and for previous fiscal years back to 1932, under the Revenue Act, Section 203, showing therein gross receipts to the amount of $14,882,462.76, less deductions which leave a balance of $760,573.01 reported as taxable business done in North Carolina.

Amongst the deductions is an item of $10,936.20 claimed to represent current sold to the Virginia Public Service Company at Roanoke Rapids, N. C. This deduction was made by the taxpayer upon the assumption that the sale of this commodity to the Virginia Public Service Company came within the first paragraph of subsection 2 of Section 203 by reference including subdivision (c) of subsection 1 of Section 203.

It will be noted that subsection 2 permits the deduction of the receipts referred to in Section 203 (1) (c) required to be reported as follows:

> The total gross earnings from the commodities described in this section sold to any other person, firm or corporation engaged in selling such commodities to the public, and actually sold by such vendee to the public, together with the name of such vendee, with the amounts sold and the amount paid by each.

Subsection 2, however, does not permit of this deduction "where the sale of such commodities were made to any person, firm or corporation or municipality which is exempted by law from the payment of the tax herein imposed upon such commodities when sold or used by it."

Foreign corporations generally are taxed under current Revenue 211; the utilities corporations generally taxed under Section 203, but Section 213 has the following provision:

> The provisions of sections two hundred ten (210) and two hundred eleven (211) shall apply to railroads, electric light, power, street railway, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus and truck corporations to the extent, and only to the extent, that the franchise tax levied in sections two hundred ten (210) and two hundred eleven (211) exceed the franchise taxes levied in other sections of this act.

The only practical construction of the language used in Section 213 is that the provisions of Section 211 control when the application of that section would produce a greater amount of tax than the application of Section 203.

By this standard the Virginia Public Service Cmpany falls under the provisions of Section 211, and this section applying, the effect is to exempt the Virginia Public Service Company from the tax imposed in Section 203, and specifically from the tax referred to in subsection 2. This being true, the Virginia Electric and Power Company may not be permitted to deduct the receipt of sales of power to the Virginia Public Service Company as it has attempted to do in its report. You are advised, therefore, that such deduction should be eliminated and that the computation of the tax must proceed on that basis.

Vending Machines; Sec. 130

22 May, 1935.

The question arises as to whether or not certain legal vending machines come within the exception contained in Section 130, which levies a tax on slot machines. It is apparent from an examination of the contract submitted by the representatives of the vending machine company that

the company will sell the merchant, under a conditional sales agreement, a vending machine; that there is a division of the proceeds derived from the use of this machine between the merchant and the company. A certain percentage of the proceeds, which are allowed the merchant, are applied upon the purchase price of the machine until the same is fully paid for.

Contained in this contract is the further agreement between the merchant and the company which provides that after the machine has been paid for, the merchant shall receive in cash full 20 per cent of the total profit from sales, and that the seller company shall continue thereafter to have the exclusive right of providing merchandise to the purchaser and servicing the machine, and shall receive as his share of the total profits the remaining 80 per cent as compensation for merchandising and servicing. The exemption contained in the above section specifically exempts those machines "owned and operated by such merchant."

We think that the activities of the company seller or distributor as outlined above are a material part of the "operation" of such a machine, and that, therefore, such machines would not be exempt from the tax levied.

FRANCHISE TAXATION; UNIVERSITY CONSOLIDATED SERVICE PLANTS

5 June, 1935.

You state that the University Consolidated Service Plants of Chapel Hill is engaged in the business of selling and distributing electric power, water and coal to the University of North Carolina, the residents of Chapel Hill and various business establishments situated therein; that this plant is owned and operated by the University of North Carolina. You inquire if the fact that it is owned by the University of North Carolina would exempt it from liability of franchise taxation.

The University of North Carolina is an agency of the State owned and operated as such, and any activities that its charter would permit it to engage in would exempt it from any form of taxation not because it is specifically exempt from Section 203 of the Revenue Act which exempts municipal corporations from such tax, but the very fact that it is an agency of the State would be sufficient to exempt it from taxation.

INHERITANCE TAX; GIFTS

18 June, 1935.

You state that the decedent purchased a building lot in Winston-Salem and told his daughter, who was then living at Washington, D. C., and recently married, that he would give her the lot and build a residence thereon and also give her husband a position and put him in business if he would consent to move to Winston-Salem; that, before the residence was completed, the donor died suddenly and the Wachovia Bank and Trust

Company, acting as agent for the decedent prior to death, completed and paid for the erection of a home on the lot, and the daughter, according to the agreement, moved to Winston-Salem. You inquire if this was a gift made in contemplation of death and if it should be taxable under the inheritance tax laws.

We think that this was a gift made by a father to his daughter for the love and affection he had for her and her husband, and the desire to have them living near him the latter part of his life, and that the value of this property should not be taxable under the inheritance tax law.

We understand that an assessment was made by the Federal Government on this same question; that the payment was protested and upon being argued before the Board of Tax Appeals, it was held by the Board as non-taxable.

TAXATION: LICENSES ON TRUCKS USED ONLY ON FARM

20 June, 1935.

I have your letter of June 20.

You hand this office a letter from R. T. Poole of date June 19, and inquire of us whether or not Mr. Poole is liable for license tags on trucks operated as outlined in Mr. Poole's letter. This letter discloses that Mr. Poole has a large peach farm situated on State Highway No. 170 about 8 miles south of Candor in Montgomery County; that up until a few years ago, a highway extended approximately through the middle of this farm along the railroad right of way; that the State Highway Department desired at that time to move the highway westward extending in the same general direction through the middle of this farm because the highway at that time was too close to the railroad. Mr. Poole at this time, without any litigation concerned, donated a right of way for the purpose of constructing a new road at the desired location, and in doing so, he had to take up a large number of very valuable peach trees and made no charge to the State for this donation. The highway as now constructed is State Highway No. 170. Mr. Poole's orchard lies on both sides of this highway. His peach packing house is approximately in the middle of his orchard and in order to transport peaches from the trees on the west side of the road, it is necessary that the said highway be crossed at certain places and at other places it is necessary, in order to reach the packing house with his peaches, to use approximately 40 yards of Highway No. 170. All the roads which Mr. Poole desires to use with his trucks is wholly within the bounds of his farm.

During the time of the harvest of the peach crop, it is necessary for Mr. Poole to put on an additional number of trucks. These trucks are not used on the highway at any other time of the year and at this time only in the manner above specified. Recently, a State Automobile Inspector and Patrolman demanded that Mr. Poole pay a license tax on each of the trucks so used in crossing this highway, and you inquire if for this limited use of the highway, it will be necessary that this taxpayer purchase tags for each of these trucks.

It is the opinion of this office that the law does not contemplate the necessity of a license tag to be used on a truck or automobile when the same is used exclusively inside the limits of a farm; that is to say, we do not think it will be necessary for a taxpayer to purchase license tags for his trucks simply because in going from point to point entirely within the limits of his farm he would necessarily have to use a small portion of the highway or to cross the same. We are of the opinion that the operation of trucks in the manner outlined above does not violate the intent and spirit of the law which provides the purchase of license tags for automobiles which are used on the highways of the State.

FRANCHISE TAXATION; SECTION 210, SUBSECTION (2); LIABILITY OF TRUSTEE IN BANKRUPTCY FOR FRANCHISE TAX

25 June, 1935.

Section 65 of the Judicial Code (28 U.S.C.A., Section 4), provides for the payment of franchise tax by the receivers in the Federal Court who by order of the Court continue the operation of the business. This was in substantial accord with the holding of the United States Supreme Court before the enactment of this legislation in cases where the receivership contemplated the restoration of the property and franchise to the corporation. Michigan v. Michigan Trust Company, 286 U. S., 334-342, 76 L. ed. 1136. But there was some reason to believe that such a ruling of the Court had specific application to the situation mentioned, to-wit, where it was a so-called benevolent receivership not expected to end in liquidation.

The case of a trustee in bankruptcy operating the corporation as a "going concern" is not taken care of by the Federal statute mentioned, and I cannot find sufficient basis in the reason of the thing to sustain such a tax, inasmuch as the object of the bankruptcy proceeding is, of course, liquidation.

SECTION 133, CURRENT REVENUE ACT; MERCHANDISE BROKERS, SCHEDULE "B" LICENSE TAX

25 June, 1935.

From a statement of M. C. King Company protesting liability of license tax assessed under the above section of the Revenue Act, it is apparent that these people are cottonseed products brokers. They buy and sell cotton seed oil in the two Carolinas for their client outside of the State. These clients wire them a bid and they in turn go to crude mills in this State either by telephone or wire and negoiate a purchase and sale of this raw product between their client and the mills. They receive compensation for this kind of business in the form of commissions. You inquire as to their liability for tax under the above Section of the Revenue Act.

A broker is defined in Webster's International Dictionary as: "One who

transacts business for another; an agent employed to effect bargains and contracts as middleman or negotiator between other persons for a compensation called brokerage; he who takes no possession as broker of the subject matter of the negotiation; he generally contracts in the name of those who employ him and not his own."

In Richmond Mortgage and Loan Corporation vs. Rose, 142 Va., 342, 128 S. E., 604-605, it is said: "The term 'broker' is no longer limited but extends to almost every kind of business, to realty as well as personalty." In Gile vs. Tsutekawa, 109 Wash., 366, 187 P. 323, brokers are defined as: "Those who are engaged for others in the negotiation of contracts relative to property, with the custody of which they have no concern."

In Black's Law Dictionary, 3rd Ed., merchandise brokers are defined as "those who buy and sell goods and negotiate between buyer and seller but without having custody of the property."

In State vs. Oberle Inc., 140 So. (L.A.) 239, it was held that "any person who acts as a middleman or negotiates commercial transactions in behalf of clients is ordinarily deemed a broker within the meaning of a statute or ordinance imposing a license tax on brokers."

In Davis vs. Chipman, 210 Cal., 609, 293 P. 40-44, it was held that "a person dealing with another for sale of property is held to be a 'broker,' within the license statute defining broker as one who offers for sale."

The Section of the 1935 Revenue Act applicable to this case referred to above is as follows:

> (1) Every person, firm or corporation who or which engages in the business of buying and/or selling on commission any cotton, grain, provisions, *or other commodities*, either for actual, spot, or instant delivery, shall apply for and procure from the Commissioner of Revenue a specified license for the privilege of engaging in such business in this State.

Under the provisions of the State statute imposing such license and the authorities cited above, this office is of the opinion that the activities of this taxpayer come clearly within the meaning of this taxing statute and that the tax should be paid.

INHERITANCE TAX, BERTHA S. STERNBERGER ESTATE

28 June, 1935.

Attention Mr. C. D. Moore

As I understand the application for refund of inheritance taxes in the above-entitled matter, the inheritance tax due the State was computed and paid by the estate, without the deduction from the tax base of $87,519.29 taxes due and paid the Federal and State Governments, which deduction seems to have been omitted in the original computation of the tax. The claim for refund of $7,701.70 is based upon the claim that such deduction should have been made.

You cite 7979 (a) of the Consolidated Statutes, which reads as follows:

> Refund of taxes illegally collected and paid into state treasury. Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the state treasury in excess of the amount legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the Attorney General, and the treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: Provided, demand is made for the correction of such error or errors within two years from the time of such payment: Provided, further, that claims which have arisen within the five years next preceding December 19, 1921, shall be presented and made within two years from said date.

You will note that any correction or repayment of taxes under authority of this statute can be made only when the application is made within two years from the time of the payment of the taxes. This is not a statute of limitations, properly speaking, but under it the Commissioner of Revenue acquires jurisdiction to correct the matter at any time within a period of two years from the payment of the tax. After that time, his jurisdiction ceases.

You cite also Section 23 of the Revenue Act of 1935, which is the same in substance as the corresponding statute of the Revenue Act applicable to the above case. In this statute no time limit is provided; however, in my opinion, it has no application to the particular case, but applies only when the inheritance tax has been paid and contribution has been made by legatees for the purpose of satisfying some debt of the estate. I do not think this term "debt" is within the contemplation of the statute, nor do I think that State and Federal taxes may be properly designated within the meaning of this statute as "debt."

Therefore, the tax having been paid more than two years before this demand, in my opinion you are without jurisdiction in the matter.

Schedule "B" License Tax Exemptions

2 July, 1935.

You state that the Haywood County Hospital was built from funds obtained from the sale of Haywood County bonds. It is managed by a board of trustees elected by the voters of the county as other county officials are elected, and you inquire if because of the fact that the hospital was so constructed and so managed, would this exempt such hospital from paying the laundry stamp tax imposed by the Revenue Act.

It is our understanding that this hospital accepts charity patients and does not charge for hospitalization and services to those who are unable to pay, but that it does so accept and render treatment and hospitalization free to indigent residents of the county.

We do not think that this organization is such a political subdivision of the county or agency of the same as would exempt it from paying this tax.

SALES TAX; MERCHANDISE SHIPPED IN BULK; LIABILITY FOR SALES TAX

13 July, 1935.

From your letter and the information contained in the letter and brief of the attorneys for the Standard Coffee Company, it is apparent that this company sells everything on orders taken in advance by the agent or salesman for said company; that at the end of each week, he totals his orders in his books and requisitions his company in New Orleans just enough merchandise to fill such orders. At the time the order is taken, the merchandise is in another state. It is packed there and shipped to the salesman at a point in North Carolina. The salesman receives the goods and delivers them to the customers who have ordered them.

It has been held in the United States Court that the fact that the articles were not shipped separately to each individual purchaser meant only that the company used this method of shipping the goods directly to their agent, there to be separated and delivered by such agent to the purchaser, and that such action was only a matter of convenience for both parties; that such transaction was interstate commerce; that a tax placed thereon would be placing a burden on interstate commerce in violation of the Federal Constitution.

There are numerous decisions supporting this theory in the United States Court and other courts, among which is the North Carolina case of Caldwell vs. North Carolina, 187 U. S., 622.

SECTION 4, CHAPTER 311, PUBLIC LAWS 1935, WEIGHTS OF VEHICLES AND LOADS

24 July, 1935.

Answering letter addressed to this Department by Mr. Leland S. Harris, of date June 27, 1935, copy of which you no doubt have in your files, I will say that I do not agree with the interpretation put upon Section 4, Chapter 311, Public Laws 1935, relating to weights of vehicles and loads, as expressed in that letter.

There are several concurring limitations on gross weights allowable, to some of which it is not necessary to refer here. I do, however, particularly refer to subsection (i) of Section 36 (Section 4, page 371) referring to the total gross weight allowed for vehicles having three or more axles which is stated to be 40,000 pounds, and to subsections (c) and (d), relating to the allowable weight per axle (differing according to the type of tire used).

These sections are to be read together, and in fact subsection (i), where the 40,000 pounds gross weight is permissible, expressly states that "it is subject to the foregoing limitations." The limitations referred to are the limitations of gross weight on axles, and under no conditions must this exceed the limitations set forth, to-wit, in the one case 16,000 pounds, and in the other case 18,000 pounds.

The purpose of the law is to insure safety in the use of the highways, and it must be perfectly obvious to anyone if the whole 40,000 pounds—the gross weight permitted for a vehicle having three axles—should be so distributed as to fall on one axle, that the purpose of the law would be defeated.

FRANCHISE TAXATION; ALLOCATION OF SURPLUS; SECTION 210, REVENUE ACT OF 1935

26 July, 1935.

A taxpayer claims reduction in the taxable amount for what he alleges to be taxes accrued, but which have not been set up on the books and records of the corporation when he closed his books as of December 31, 1934. Inquiry is made as to whether or not the taxpayer should be allowed to deduct from the capital stock and surplus such accrued taxes when this amount has not been set up on his books at the close of the year.

Section 210 of the Revenue Act of 1935, Subsection (1), requires that every domestic corporation shall send a report to the Commissioner of Revenue of such information as may be required "as shown by the books and records of the corporation as at the close of its last calendar or fiscal year." Subsection (2) provides that "no reservation or allocation from surplus and undivided profits shall be allowed other than for definite and accrued legal liabilities."

In the case here involved, the corporation closed its books December 31, 1934. No liability was then entered on the books to show Federal income taxes, for the year 1934. Those Federal income taxes were payable for the year 1934 on or before March 15, 1935. The corporation claims a deduction for 1934 for Federal income taxes, whereas the Commissioner says the Federal income taxes did not accrue in 1934, and hence no deduction is allowable.

The Revenue Act does not define "accrued" in this situation so as to show just when the Federal income taxes may be said to have accrued. However, we are of the opinion that the corporation here is correct, that the Federal tax had accrued in 1934 and is deductible for that year. The fact that the liability did not appear on the books would be immaterial if the books did not in reality reflect the true state of the finances of the corporation. The important consideration is that the liability became fixed and must be taken account of before the income for 1934 can be determined.

United States vs. Anderson, 46 S. Ct. 131, 269 U. S., 422, is helpful here. In that case a Federal munitions tax for 1916 was *not assessable or payable until 1917*, yet the court held that in arriving at the income assessable for 1916, the munitions tax had to be *deducted as of 1916* and not as of 1917. It is true that in that case a "reserve" appeared on the books to care for the tax as of 1916, but the tax was not assessable or payable until 1917, and the court seems to place its decision on the ground that the "true income for 1916 could not be determined without deducting from its gross income for the year the total costs and expenses attributable to the production of the income during the year."

VALUE OF SHARES OF STOCK OF BANKS, SECTION 600 MACHINERY ACT

27 July, 1935.

Under Section 600 of the Machinery Act, the valuation of shares of stock of banks is ascertained by taking from the capital stock, surplus and undivided profits, added together, the assessed value of real and tangible property which the banking institution shall have listed for taxation in the county or counties wherein such real and tangible property is located, "together with an amount according to its proportion of tax value of any buildings and lands wholly or partially occupied by such banking associations, institutions, or trust companies, owned and listed for taxation by a North Carolina corporation, in which such banking associations or institutions own 99% of the capital stock." Machinery Act, Section 600, (2). In addition to this, there should be deducted from the items of surplus and undivided profits "an amount not exceeding 5% of the bills and notes receivable of such banking associations, institutions, or trust companies, to cover bad or insolvent debts, investments in North Carolina State Bonds, United States Government Bonds, Joint Stock Land Bank Bonds, and Federal Land Bank Bonds, at the actual cost of said bonds owned on and continuously for at least ninety days prior to the first day of April of the current year." The value of the shares of capital stock of the banking association is found by dividing the net amount so ascertained by the number of shares in such banking association.

The question presented here is as to the deduction from the assessed valuation of the property of the bank of "one-half of the notes and mortgages held by said bank for money loaned to buy, build, and repair homes."

Article V, Section 3 of the Constitution, exempts from taxation 50% of the value of notes and mortgages "given in good faith to build, repair or purchase a home," but only under the following conditions: (a) When the loan does not exceed $8,000.00; (b) when the notes and mortgages, or evidence of indebtedness, run for not less than one nor more than thirty-three years; and (c) when the holder of the note or notes resides in the county where the land lies and is listed for taxation.

Thus, you will see that the bank is not entitled to any credit or exemption upon such items unless it is resident in the county where the land lies.

If the above conditions are met, fifty per cent of such notes and mortgages as comply with the conditions would constitute tax exempt property, and would not, therefore, be in any proper sense listed for taxation, and do not constitute a proper item for deduction from capital stock, surplus, and undivided profits, under Section 600 (2), for arriving at the value of shares.

FRANCHISE TAX; ALLOCATION FROM SURPLUS

30 July, 1935.

Your letter of July 25 received. A reserve set up for incompleted contracts, which represents the difference between active contracts as on the

books of the contractor, and the expenditures to date of return, leaving a balance to complete the job, is not an "accrued legal liability," and should be included in the computation of franchise tax.

Neither should a reserve for depreciation on investments as described in your letter be deducted from the taxable amount.

HEALTH LAWS; SIGNING DEATH CERTIFICATES

31 July, 1935.

In my opinion, any physician licensed in the State of North Carolina may sign a medical certificate of death. The fact that privilege tax had not been paid would not disqualify one from performing this service.

A physician licensed in another state, but not in North Carolina, would have no authority to sign such certificate.

In my opinion, practitioners of the healing art, other than regular physicians—that is, chiropractors, osteopaths, etc.—have no authority to sign a death certificate.

PERMISSIBLE LOADS ON THREE-AXLE MOTOR VEHICLES, SECTION 36 MOTOR VEHICLE LAWS; DETERMINATION OF WEIGHT FOR PURPOSE OF LICENSING, SECTION 28, SUB-SECTION 4.

7 August, 1935.

It is pointed out that there may be some conflict between section 36 (i) and section 28 (4) inasmuch as it appears that the permissible gross weight of any vehicle or combination of vehicles, having three axles, cannot exceed 38,000 pounds, although that section provides that it shall not exceed 40,000 pounds. This apparently comes about from the fact that not any permissible distribution of weight of load and machine of more than 19,000 pounds can be assigned to either one of the axles bearing such load, making a total of 38,000 pounds instead of the permissible 40,000 pounds.

This latter conclusion can only be arrived at by assuming a certain type or combination of motor vehicles using three axles. It is obvious that if the center of suspension of the semi-trailer of the truck-tractor is forward of the rear axles of the truck-tractor—and in some types of motor vehicles it is far forward of this point—then the 40,000 pounds might well be distributed in accordance with the limitations of the first part of this section.

But whether this is true or not, there is really no conflict in the two sections. The section just now discussed was intended for the safe-use of the highways, and also intended that the weight should be so distributed on the tires as to prevent the destruction of the highway surface by unnecessary grinding and pounding. Section 28 (4) is merely a determination of weight for the purpose of licensing. That part which it is suggested is in conflict with section 36, reads as follows:

> Semi-trailers licensed for use in connection with a truck-tractor shall in no case be licensed for less gross weight capacity than the truck-tractor with which it is to be operated.

Acting under this, a three-axle motor vehicle having a truck-tractor weight of 20,000 pounds, must have the semi-trailer rated at least that much. This, of course, makes 40,000 pounds. However, you will notice that in this case the law merely states a minimum weight for taxation of the semi-trailer. The tax could be levied arbitrarily upon any assumed weight. Here, it simply means that the trailer must be taxed at a 20,000 pound weight, at least. If the actual weight were not more than 12,000 or 15,000 pounds, the tax would be the same. There can be no question of the actual weight here when the law assumes, as it has the right to assume, an arbitrary minimum of weight as fixing the license.

Sales Tax; Sales to Federal Agencies

16 August, 1935.

Your letter of August 16 received.

This office is of the opinion that a sales tax should be charged and collected by cafes and other such establishments for meals served to employees of the Federal Department even though the cost of such meals is paid by such Federal Department; that the Bulletin No. 248 enclosed in your letter relating to State sales tax, which rules that such Federal agencies should secure exemptions from the payment of sales tax to the various states upon the sales of personal property purchased for such Federal agency, has no application to a case of this kind. In fact, meals purchased for employees of such a Federal agency, even though the cost of such meal is paid by such agency, is, in the opinion of this office, not a sale of personal property within the meaning of the attached Bulletin nor is it in fact a sale of personal property to the Federal Government, but to an employee of the same.

Liability for Income Tax; Bertha Mineral Company, Foreign Corporation

19 August, 1935.

Your letter of August 16 received.

From information furnished by your Department, it is apparent that the above foreign corporation carries on no operations in this State; that they simply hold or own property which is not being used and has not been used for the past several years.

We are of the opinion that in view of these facts, this corporation should not be required to file a return and pay tax in accordance with Section 311 of the Revenue Act.

INHERITANCE TAX; ESTATES OF CLYDE E. PARKER AND LUBY CARTER; LIABILITY OF WAR RISK INSURANCE

23 August, 1935.

In both of the above cases, the question of liability of War Risk Insurance for inheritance tax purposes is raised. We find, after a very careful examination of the cases cited in the letter of Mr. House to your Department dated August 9, 1935, that they do not directly support the contention that War Risk Insurance is not subject to inheritance taxation. It is submitted, however, that the proceeds of War Risk Insurance cannot be taxed by the State or Federal Government before it has come into the hands of the insured, or his representative, as guardian, or into the hands of his heirs. Such seems to be the clear intention of the writers of the Federal Statute, to wit: "Insurance and maintenance payable under parts 2, 3, and 4 . . . shall be exempt from all taxation."

The case of Martin vs. Guilford County, 201 N. C., 63, supports the contention that War Risk Insurance is exempted from inheritance taxation by way of dicta only. The other cases cited have no application whatever.

However, it is suggested by you that whereas the proceeds from the insurance cannot be taxed, the North Carolina inheritance tax can be imposed because such is not a tax on the proceeds but is a tax on the right to receive said proceeds. Yet, if for that reason a State inheritance tax may be imposed, it seems that a Federal estate tax could also be imposed because the latter tax is on the right of the deceased to dispose of his estate at death. On the other hand, if both of these taxes can be imposed, one of the purposes of the Veteran's Act would be frustrated, to wit: the purpose of making provisions by such insurance for the heirs of the disabled veteran.

From the above, we are of the opinion that such insurance is exempt from inheritance taxation.

INHERITANCE TAX; JURISDICTION OF THE SUPERIOR COURT TO CONSTRUE A WILL

29 August, 1935.

Your letter of August 23 received.

Inquiry is made as to the power of a Superior Court Judge to construe a will without submitting the question as to whether or not there was a will to the jury.

From an examination of the complaint submitted by the Executors of the estate of C. H. Robinson, it is apparent that this is not a caveat to contest the validity of the will, but it is a bill brought to construe the will.

When such a proceeding is brought by the Executors or some other Trustees of an estate, except in cases where some fact must be decided, it is a matter for construction by the Court and the jury does not participate. Page on Wills, Vol. 2, p. 1408. Since there is no controversy in

the present case, the judgment rendered by the Judge in this case is merely advisory. Heptinstall v. Newsom, 146 N. C., 503. Such actions are brought for obtaining a construction of the will by Executors and Trustees against those entitled to the beneficial interests therein and are brought to protect the fiduciary in the discharge of his duty. Tyson v. Tyson, 100 N. C., 360; Tayloe v. Bond, 45 N. C., 5; Balsley v. Balsley, 116 N. C., 472.

From these authorities it is the opinion of this office that the Court had jurisdiction to enter a judgment without the intervention of a jury upon the complaint of the Executors in this case. Whether such judgment was in error is another question. No appeal having been taken, however, from the signing of the same, the question of error in the judgment does not arise.

Taxability of Bonds of Municipality

4 September, 1935.

You have submitted to us letter of Mr. W. Reid Martin, of R. S. Dickson & Company, relating to the taxability of bonds of municipalities and subdivisions of the State.

As to the taxability of bonds issued by municipalities and subdivisions of the State, there has always existed some doubt as to the constitutionality of the exemptions provided by the several Machinery Acts, and such exemption seems clearly contrary to the constitutional requirement that the Legislature shall provide laws taxing all property. See Constitution Article V, Section 3.

However, conceding the constitutionality of the Machinery Act, it evidently would not apply by its terms to bonds issued between March 19, 1929—when the Machinery Act of that biennium was ratified—and March 1, 1930—the time at which the Act, according to its own provisions, was put into effect.

License Taxes for Slot Machines

5 September, 1935.

Chapter 37 of the Public Laws of 1935 prohibits the use of certain slot machines, and Section 4 provides that neither the State nor any county or municipality may levy or collect taxes upon machines or devices, the operation of which is prohibited by that statute.

Subsection (c) of Section 130, Revenue Act, however, provides that in the levy and collection of taxes the Commissioner of Revenue may assume that the slot machine is one which may be legally operated.

It will be noted that the Revenue Act was ratified at a later date and, therefore, if there is any conflict between the two Acts, the Revenue Act controls.

But even if we read the two Acts in pari materia, in my opinion from the reasoning of the thing, Section 130, subsection (c) of the Revenue

Act controls in this and similar cases, and the persons who have paid the tax are not entitled to a refund even though it be paid under protest.

It is obvious that unless the Deputies of the Commissioner keep a thorough outlook, most of the slot machines will go untaxed. In the particular instance the Deputy found a slot machine in operation and required the payment of the tax. That Deputy had the same right as the Commissioner of Revenue to assume that the operation was lawful. The operator of the machine could not excuse himself upon the ground that he was operating a gambling device; and in my opinion cannot recover the tax under such a plea, according to the provisions of the Revenue Act referred to.

It is your duty, therefore, in my opinion, to deny applications of this character.

CORPORATIONS; DOMESTICATION; R. F. C. MORTGAGE COMPANY; LIABILITY FOR FRANCHISE TAX

7 September, 1935.

As we understand the situation, the R. F. C. Mortgage Company is a company organized in the State of Maryland. They have opened an office in the City of Charlotte for the purpose of loaning money to citizens of the State of North Carolina, such money being obtained from the Reconstruction Finance Corporation. This corporation was organized in Maryland. All of its capital stock is owned entirely by the Federal Government. Its entire funds are public moneys paid to it by the United States through the Reconstruction Finance Corporation. Its entire profits, if any, will be paid into the Treasury of the United States. Its entire losses, if any, will be suffered by the United States. The incorporators of this corporation are three individuals who are officials of the Reconstruction Finance Corporation and all the stock is held by the Reconstruction Finance Corporation.

The organization of this corporation was authorized by an Act of Congress vesting additional powers in the Reconstruction Finance Corporation, one of which is with the approval of the President of the United States to subscribe for stock in mortgage loan companies.

The General Counsel of the R. F. C. Mortgage Company in Washington, through its Agency Counsel in Charlotte, Messrs. Whitlock, Dockery & Shaw, have filed a brief with this Department protesting the liability of this company for franchise tax. They cite, among others, the case of Clallan County vs. the United States, 263 U. S., 341, as authority for their position; that is, that this company is an agency of the United States, and, therefore, not liable for tax. . . . Out of deference to such authorities contained in the Clallan County case and the others referred to, we must hold that the R. F. C. Mortgage Company is not liable for taxation in this State.

MOTOR VEHICLES; DRIVER'S LICENSE

9 September, 1935.

I think it was the manifest intention of Chapter 52, Public Laws 1935, that every person who operates a motor vehicle, either as chauffeur or in any other way at all, should have a license so to do.

There is, however, a distinction between an operator's license and a chauffeur's license, consisting principally in the requirements both before and after licensing, and you will observe from a reading of the Bill that a chauffeur's license and an operator's license are different things, and the terms are not at all used synonymously.

One who has a chauffeur's license is permitted to operate such cars as come within the definition contained in Section 1st of the Act.

Under the definition provided in the Act—'Operator' shall mean any person other than a 'chauffeur' who shall operate a motor vehicle or who shall be in the driver's seat of a motor vehicle when the engine is running or who shall steer or direct the course of a motor vehicle which is being towed or pushed by another motor vehicle." Such an operator is required to have a license, and the definition includes all persons other than chauffeurs (a chauffeur is a special kind of operator separately treated as to license) who operates a motor vehicle, whether a driver of state or municipally owned vehicles, or otherwise.

If the above needs further clarifying, let me say that under the definition of "chauffeur," as laid down in the Act, that term (and the license issued under it) is confined to a person who is employed for the principal purpose of operating a *passenger motor vehicle*, except school busses, and every person who drives a motor vehicle while in use *as a public or common carrier for persons or property*, and this shall apply to "city delivery motor vehicles."

Whether the term "chauffeur" be considered as extending a privilege or as containing a restriction, it is very clear that the law does not permit the licensing of any other drivers as chauffeurs.

As a practical matter I cannot see how the distinction is material so far as concerns the protection of the public. The main distinction that I can see is contained in Section 2 (f), requiring a chauffeur to wear a badge, and in Section 4 (a) which permits the issuing of an operator's license to a person sixteen years of age, while a chauffeur's license can only be issued to a person eighteen years of age, and in the procedure relating to the revocation and expiration of license contained in Section 8 (a) and (b).

However, these distinctions are sufficient to require the issuing of a different form of license.

ADMINISTRATIVE RULING; MOTOR VEHICLE LAWS

17 September, 1935.

We have examined the questions and answers submitted to this Department for approval and find them correct with the exception of the last answer, and we suggest that the same be changed to conform to the following:

Question 14: What is the speed limit for a passenger car pulling a trailer?

Answer: Section 2, Chapter 311, Public Laws of 1935, is in part as follows:

(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Where no special hazard exists the following speeds shall be lawful, but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

3. . . . and thirty miles per hour for such motor vehicle to which a trailer is attached.

A speed greater than 30 miles per hour for a motor vehicle to which a trailer is attached would, under the above law, be prima facie evidence that the speed was unlawful and that it was not reasonable or prudent, and that burden would shift to the defendant to prove to the court that the speed was reasonable and prudent under the circumstances then existing and, therefore, lawful.

We are of the opinion, therefore, that where no special hazard exists that it is entirely possible that a motor vehicle to which a trailer was attached could be driven legally at a rate in excess of 30 miles per hour. As stated above, however, the burden would be upon the defendant to show that such a greater speed was reasonable and pertinent under all of the circumstances existing at the time.

INCOME TAX—W. A. ERWIN TRUST, L. S. HOLT TRUST

19 September, 1935.

An examination of the file in the above connection discloses that Mary and Matilda Erwin have incomes from, first, the estate of W. A. Erwin and, second, from a trust fund set up by L. S. Holt. The question involved in this inquiry is whether, under the 1933 Income Tax Act, these incomes are exempt from taxation. That Act, Chapter 445, Section 317 (2) provides as follows:

The words "gross income" do not include the following items, which shall be exempt from taxation under this act, but shall be reported in such form and manner as may be prescribed by the Commissioner of Revenue:

(c) The value of property acquired by gift, bequest, devise or descent, (but the income from such property shall be included in gross income).

According to the will of W. A. Erwin, Mary and Matilda Erwin were to receive one hundred dollars each month payable out of a residium trust fund which was set up for the benefit of the children of W. A. Erwin. This money was payable "along with taxes, costs and expenses of executing the trust, etc., out of the gross income from said residium trust estate."

It is our opinion that under the terms of the above statute this fund constitutes property acquired by bequest. It is not income from such property; rather, it constitutes the bequest itself. L. S. Holt created a trust fund, the income from which was payable to Mary and Matilda Er-

win and another for life. The principal was then to go to other named purposes.

Under this trust, it seems to me that any moneys paid to Mary and Matilda Erwin constitute income derived from a gift made in trust to them by L. S. Holt, i.e., the trust fund constitutes the gift, while the money paid constitutes income derived from the gift.

We are, therefore, of the opinion that the income from this trust is not exempt from taxation.

Liability of CCC Operators of Motor Vehicles for Chauffeur's and Operator's License

1 October, 1935.

This office is of the opinion that the operators of Government-owned trucks under the provisions of the Safety Responsibility Act passed by the last session of the General Assembly would not be subject to a chauffeur's license.

We are further of the opinion, however, that since the statute specifically states that operators of CCC trucks shall be required to have a driver's license, that this particular class of operators would be required to obtain the same regardless of whether they were driving their individual trucks or trucks owned by the Federal Government. We take the position that this is not a tax on the Federal Government or any of its property, but is a police regulation which is within the power of the State to enforce with regard to the operators of motor vehicles upon the highways of the State in an effort to promote the safety and protection of life and property thereon.

This is to advise, therefore, that operators of CCC trucks should procure operator's license on or before November 1 if they desire to procure same without cost. If such licenses are not purchased on or before this date, it will be necessary, then, that such operators purchase the same at the cost prescribed by statute. As stated above, we are of the opinion that this cost should rightfully be borne by such operator and not by the Federal Government.

Sales Tax Refund

2 October, 1935.

The question has arisen as to whom a refund shall be made where a tax has been collected and paid to the State under a misinterpretation of the law, the case presented being that of a merchant who collected the tax from his customers and in accordance with his understanding of the administrative ruling, paid the same into the State, and who now makes demand of such tax to him.

Such a refund of taxes to a claimant is not authorized under the existing Sales Tax Act. Under the Emergency Revenue Act the sales tax was passed on and actually paid by the consumer and not the merchant.

We are not passing here on the question as it affects the consumer and certainly the merchant is not entitled to recover money in the form of tax which has been paid by someone else, and he can suffer no loss because of the fact that the tax was improperly collected.

Before a refund of tax can be enforced, the tax must be paid under protest and refund demanded and refused as prescribed by Section 510, current Revenue Act. This procedure was not followed in this case and the claimant, therefore, is without remedy.

INHERITANCE TAX; METHODS OF COLLECTION

15 October, 1935.

Answering your letter to Mr. T. Wade Bruton upon the above subject, I will say that the statute does not provide any summary remedy for the collection of the inheritance tax when the estate or property goes directly to a beneficiary without administration. In this particular instance, really no administration is necessary, as the proceeds of the insurance are not subject to debts. The particular situation does not seem to have been brought to the attention of the law-making body. However, there is no question but that suit might be brought to recover the tax out of the beneficiary. Whether or not any remedy may be had which will protect the State against disposition of the property until the tax is collected is a question for further study. However, your attention is called to the fact that a tax of this sort is made a debt for which the Commissioner of Revenue may sue. See general provisions of Chapter 371, Public Laws of 1935—the current Revenue Act—sections 490, 492; also remedies, sections 470, 471.

INHERITANCE TAX; ESTATE OF MARTHA T. CHATHAM, NO. 34-16

15 October, 1935.

Your letter discloses the following situation: A claim of deduction from the basis of the inheritance tax in the amount of $31,000.00 (toal amount of the estate not mentioned in your letter) has been made, which claim is based upon the following facts:

The decedent is co-maker of a note to the Wachovia Bank & Trust Company in the sum of $92,500.00, secured by a mortgage upon real estate in which the decedent had only a life interest. The real estate is sufficient to pay the note, regardless of the solvency of the co-makers, and it does not appear that there will be any diminution of the estate because of the liability, conceding that the note is paid out of the property securing it.

I am of the opinion, however, that if the decedent, a co-maker of this note, was related to the subject matter thereof in just the same way that the other co-makers are, and was primarily liable, and the equities between the parties are sufficient, the co-makers might demand a pro rata exoneration of the properties covered by the mortgage; that is, the payment of

the one-third liability on the part of the decedent. In that event, it seems to me that the $31,060.00, going to pay a debt, is not subject to the inheritance tax, but should be deducted from the basis of the assessment.

FRANCHISE TAXATION; SECTION 211 (2) CURRENT REVENUE ACT; INTERPRETATION OF INVESTMENT AND ACTUAL BOOK VALUE; RESERVE FOR DEPRECIATION.

21 October, 1935.

You submit to me the following case and request my opinion:

A foreign corporation reports the following tangible and intangible properties in this State:

Total tangible	$767,707.11
Less: Reserve for depreciation	112,525.55
	$655,181.56
Total intangibles	159,822.19
Total tangible and intangible properties less reserve for depreciation of tangible property	815,003.75

You ask whether or not, under the section above referred to, the item "reserve for depreciation" may be deducted in ascertaining the "book value of real and personal property," and the result thus secured taken as the basis of calculation of the tax.

I am assuming that the item appears this way upon the books of the corporation and on the balance sheet. Otherwise, there would be no reason for considering it here at all.

Reserves are usually classified in three general groups: (1) reserves that offset assets; (2) reserves that are actual liabilities; (3) reserves that are surplus. Reserves for depreciation ordinarily belong to the first class mentioned, but might, under some circumstances, fall into the third class. The term "reserve" to represent a charge for accrued depreciation is obviously a misnomer, but such use is common practice.

In corporation practice the subject of depreciation is dealt with in either one of two ways which, however, do not both lead to the same consequence: The better and more general practice is to carry the item as a deduction from property value on the assets side of the sheet. Such an entry would then read pretty much as you have it in your letter. In that event, in my opinion, the item would represent an actual accrued depreciation of the property, and the book value of such property would be the amount found by the subtraction thereof. The other method is to consider the reserve for depreciation on the liability side of the sheet, and in that case the depreciation merely diminishes the total general assets and is not deductible from the total valuation of the property appearing on the assets side of the account. In fact, it might represent a reserve made for the purpose of keeping the property up to its original condition and value and not a depreciation which has actually occurred.

However, I am of the opinion that the term "investment" used in this

statute is determinative of the question asked by you, and so long as the book fairly sets forth this investment, no less total may be taken as the basis for the tax.

It is true that the term "investment" is quite often used as representing the value of the current or present amount invested in the business; but I think you are correct in interpreting it here as meaning the original investment.

FRANCHISE TAXATION; EXERCISE CORPORATE FUNCTIONS AFTER CANCELLATION OF CHARTER FOR NON-PAYMENT OF TAX; APPALACHIAN REALTY CO.; VIRGINIA TRUST CO.

25 October, 1935.

With particular reference to the situation between the Virginia Trust Company and the Appalachian Realty Company, I understand that the charter of the latter corporation has been cancelled for non-payment of the franchise tax. The properties owned by it were conveyed in a deed of trust to the Virginia Trust Company; and, under the authority conveyed in such trusts, the Virginia Trust Company has taken charge of the properties through an agent, Mr. George Stephens, who was an officer of the Appalachian Realty Company at the time its charter was cancelled. My understanding of the matter is that the Virgina Trust Company confines its activities to the collection of the rents on the property conveyed in its deed of trust. I do not understand that it is doing this by virtue of any authority conferred upon the Appalachian Realty Company under its charter. On the contrary, my understanding is that the Virginia Trust Company is simply renting the property because of its legal ownership of that property.

Under these conditions, I think it would be straining the point rather far to hold that the Virginia Trust Company was exercising any of the rights of the Appalachian Realty Company under its charter, as the Trust Company would undoubtedly have the right to rent its own property, or the property of which it is the legal owner, and in which the defunct corporation had only an equity.

The question involved here is as to the liability of the Virginia Trust Company for the franchise tax; and I am of the opinion that it is not liable to such tax.

A further question has arisen as to the liability of the Virginia Trust Company under our Domestication Act. While this is not directly concerned with your inquiry, I am of the opinion that the mere renting of its property, the necessity for which is brought about in the way I have mentioned, would not subject it to liability under the Domestication Act.

SCHEDULE "B" LICENSE TAX; HOTELS AND CAFES

5 November, 1935.

Inquiry is made as to whether or not American plan hotels, which are taxed under Section 126 (a) of the Revenue Act, should also be taxed

under the provisions of Section 127, which levies a tax on restaurants, cafes, cafeterias, drug stores and hotels with dining rooms attached.

We are of the opinion that American plan hotels should not be taxed under Section 127. This kind of hotel is not specifically mentioned therein and it seems to us that the Legislature in specifically taxing the two kinds of hotels under Section 126 meant to exclude American plan hotels from the tax levied in Section 127.

Rulane Gas Company, Tax Liability

6 November, 1935.

You state that this corporation is engaged in the business of distributing both direct to the customer and through dealers a commodity known as liquid gas, which is used by the consumer for cooking, heating, gas refrigeration, incidental lighting and other uses to which natural or coke gas is commonly employed; that it is also sold to textile plants which use this gas to singe yarns in the processing of yarn products. This corporation buys this product in tank car lots and it is placed in its storage tanks for disposal. It is distributed from these tanks in drums to the consumer. The corporation now serves approximately 1,000 families, restaurants, and in addition thereto, a large number of textile mills, and is constructing at the present another plant in Lincolnton, N. C., in the name of the Industrial Gas and Produce Company, which will carry on this same type of business. Inquiry is made as to which Sections of the Revenue Act should apply to this company for the assessment of taxes.

This office is of the opinion that by the very wording of Section 203, Schedule "C," Revenue Acts of 1933 and 1935, the tax should be levied and assessed under this Section. The tax imposed under this Section is in part as follows:

> "Every person, firm, or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or gas . . ." shall file report and pay a tax of six per cent of the total gross receipts derived from such business within this State.

Throughout the Section will be found the words "total gross receipts from the sale of such commodities," the dominant action being the sale of taxable commodities or services.

We think this company comes clearly within the meaning of this Section and that a tax should be levied against it in accordance therewith.

Franchise Tax; Unorganized Corporations

8 November, 1935.

You inquire whether or not a concern which has received a corporate charter from the State, but has not organized as required under the Corporation Laws of the State, (see C. S. 1115, 1116, 1117, and especially 1118) is liable for a franchise tax.

In my opinion, it is not. The Corporation Laws require an organization in addition to the holding of a certificate of incorporation, in order that the concern may have full corporate capacity.

It is true that under the construction which the courts have given to the sections which I have cited the incorporators, who have obtained a certificate in a civil action, in some instances might be estopped from denying their corporate capacity; in other instances, the incorporators who have attempted to exercise corporate rights would be held liable, as partners. This, however, is a mere question of the civil rights between themselves and creditors or persons to whom they had incurred liabilities.

In so far as the State is concerned, I think that the use of the word "organized" in the statute, C. S. 210, is sufficient warrant for the conclusion that the section is intended to apply only to those corporations which have organized in the manner set out in the statute.

MOTOR VEHICLE LAWS; SAFETY GLASS REQUIREMENTS ON AUTOMOBILES

13 November, 1935.

Inquiry has been made by the North Carolina Automobile Dealers Association with regard to the effect of Chapter 394, Public Laws of 1935, upon the sale of automobiles after January 1, 1936, which are equipped with safety glass. Section 1 of this Chapter is in part as follows:

> ". . . on or after January 1, 1936 . . . it shall be unlawful to operate knowingly upon any public highway or street in this State any motor vehicle . . . *which shall have been manufactured or assembled* on or after January 1, 1936, unless such motor vehicle be equipped with safety glass, . . . or for a dealer to sell a motor vehicle manufactured or assembled on or after January 1, 1936, for operation upon said highways or streets unless it be so equipped . . . ."

We are of the opinion that this Chapter has application only to motor vehicles which shall have been manufactured or assembled on or after January 1, 1936, and that dealers who have automobiles which were manufactured or assembled prior to January 1, 1936, would have the right to sell the same regardless of whether they were equipped with safety glass, and by so doing, would not violate the provisions of this Chapter.

MOTOR VEHICLE LAWS; SALES TAX

23 November, 1935.

Section 404 of the Revenue Act requires payment of sales tax on all vehicles required to be registered under C. S. 2621 (6). That Section requires the registration of all cars except those permitted to be operated under C. S. 2621 (16)—(18), relating to manufacturers and dealers.

The construction of these Sections determines the problem. Section

2621 (16)-c provides that when the transferee of a vehicle is a dealer who holds the same for resale, he need not register it. Section 2621 (17) provides the means of registration by a manufacturer or dealer.

It seems that the above Sections use the term manufacturer or dealer to mean one actively engaged in the selling of cars and one using cars for demonstration purposes. In the case submitted, the representative, while he is an agent of the manufacturer and is indirectly engaged in selling cars, does not purchase them for demonstration purposes, but rather uses them just as anyone else does. Thus, it is our opinion that the representatives are not "dealers" or "manufacturers" within the exemption to C. S. 2621 (6).

TAXATION; INHERITANCE TAX, TRANSFER OF ESTATE BY ENTIRETY, RESERVATION OF LIFE ESTATE

23 November, 1935.

Dear Sir:

I understand from your letter of November 23, relating to the estate of Travis E. Hooker, that in 1929 Mr. Hooker and his wife had an estate by entirety, conveying the land to a daughter; but in the deed Mr. Hooker undertook to reserve a life estate.

It is my opinion that the reservation of a life estate, by the husband alone upon conveyance of an entirety, would not be effective so that the inheritance tax might apply upon the decease of the husband, the wife still living, as against the grantee in the deed of 1929.

The exact terms of the deed are not before me and I am basing this opinion entirely upon the facts presented in your letter.

I do not think that the tax can be applied in this case.

SCHEDULE "B" LICENSE TAX; PENALTIES; CERTIFICATE

23 November, 1935.

You inquire if the penalty charged for Schedule "B" taxes should be included in the license certificate.

The penalties imposed for infractions of the license taxes are found in the Revenue Act of 1935, Sections 187, 188, and 190 (c). Carrying on business without a license as required is made a misdemeanor, and additional taxes are levied.

In Section 187 (b), page 520, we read:

> "Such additional tax shall be assessed by the Commissioner of Revenue and paid with the State license tax, and shall become a part of the State license tax."

Section 189 (b) is on the subject of "Stamping Licenses." The license must be stamped with "State-wide License," (if good all over the State), "Issued by the Commissioner of Revenue."

Section 182 (b) provides:

> No license issued by the Commissioner of Revenue shall be valid or have any legal effect unless and until the tax prescribed by law has been paid, and the fact of such shall appear on the face of the license.

Construing together Section 187 (b) and Section 182 (b), supra, we see that the penalty is a "part of the State License tax" as "prescribed by law," and that the license is not valid until the tax as prescribed by law has been paid and the fact of payment appears on the face of the certificate. It seems that the intention of the Legislature was that the amount of the penalty and payment of same should appear and be included on the face of the certificate.

UNIFORM DRIVER'S LICENSE ACT; REVOCATION OF LICENSE

27 November, 1935.

Answering specifically the questions contained in your inquiry of November 25, we have to say:

1. The Department has authority to accept application and issue license upon the expiration of a suspension by a court order which had been issued prior to November 1, 1935. We think it should be the policy of the Department not to issue a license to any operator until the expiration of such a court order against an applicant.

2. The Department would not have the right under the provisions of the Uniform Driver's License Act to refuse to issue a license to an applicant who had been convicted of an offense under Section 12 prior to November 1, 1935, unless the sentence provided that such applicant be prohibited from operating an automobile during the period extending after November 1; that is to say, as stated under No. 1 above, the license should not be issued until the expiration of the time fixed by the court during which such applicant was deprived of the right to operate an automobile.

3. Under the provisions of Sections 12 and 13 in the case of a person who had been convicted of any of the offenses outlined in said Section after November 1, 1935, the Department would have the right to revoke such license for a period of 12 months regardless of a sentence of the court which might take such license away from such operator for less than this period; that is to say, the Department would have the right to revoke an operator's license when such operator had been convicted of any of the crimes outlined in Section 12 regardless of any sentence of the court in such cases.

As stated above, we do not think it should be the policy for the Department to issue an operator's license to an applicant where such applicant had been deprived of the privilege of operating an automobile for a period of more than one year until the expiration of such period of prohibition which had been fixed by the court in a judgment after final conviction of the offenses described in Section 12.

INHERITANCE TAX; ESTATE OF J. FRANK HARRISON

30 November, 1935.

I have the file in the above case, with inventory of the estate made by the accountants, and the observations and comments made thereon by such accountants. A controversy exists as to the imposition of the inheritance tax because of the non-residence of J. Frank Harrison and the claim put forward in behalf of the estate that the intangibles, of which the estate practically consists, are, with certain minor exceptions, all to be considered as being within the State of Tennessee, which was the residence of Harrison at the time of his death.

However, in the business transacted in North Carolina under the name "Winston Coca Cola Bottling Company," the decedent had a three-quarter partnership interest; that means, of course, that he was the owner of three-fourths of the assets of the partnership, the business of which was carried on in the State of North Carolina.

This business was located and built up largely in North Carolina by the father of the deceased, who succeeded to his father's interest by inheritance and distribution. The decedent himself was a resident of this State, but became a resident of the State of Tennessee a few years ago. During the whole time the business was carried on within the State of North Carolina, and in my opinion the intangible assets connected with this business in their entirety had thus acquired a business situs within the State of North Carolina and are, therefore, subject to the imposition of the inheritance tax under our current Revenue Act.

As only the tangible assets of the Burlington Coca Cola Bottling Company are listed for inheritance taxation in this State, it is necessary also to refer to this. In my opinion, this situation cannot be distingushed from that which obtains in the case of the Winston Coca Cola Bottling Co., and I am of the opinion that the intangible assets of this plant, or this business, also had acquired such business situs in this State and are subject to the tax.

FRANCHISE TAXATION; CANCELLATION OF CHARTER; DIXIE LAND & INVESTMENT COMPANY

3 December, 1935.

Your letter of November 26 received.

This corporation was dissolved in 1924 for failure to file franchise tax report for 1923. Since that time the corporation has filed each year an income tax return for the corporation, in spite of the fact that the cancellation of the charter rendered its corporate privileges and powers null and void.

You call our attention to Section 452 of the Revenue Act and ask us how to proceed in this matter.

Section 452, Revenue Act of 1935, provides that any persons who exercise corporate franchises after the corporate charter is cancelled shall be liable for a penalty of from $100 to $1,000 to be recovered in an action

brought by the Commissioner of Revenue in the Superior Court of Wake County. Consolidated Statutes 1143 provides that the Attorney General may bring an action in the name of the State to restrain persons from exercising franchises not granted.

We suggest that you advise the officers and directors who are operating the above company that unless such operations cease, they are subject to a suit of from $100 to $1,000 to be recovered in an action brought by the Commissioner of Revenue in the Superior Court of Wake County. If this does not get the desired result, we will at your instance start suit against them.

CHAIN STORE TAXES; ELEMENTS OF LIABILITY FOR

14 December, 1935.

The Department of Revenue assessed a chain store tax against the plaintiff in the above case for the years 1932-33, 1933-34, 1934-35. This plaintiff paid the tax for these years under protest and brought an action for its recovery, its main defense against the assessment and collection of the tax being that it was not a mercantile establishment within the meaning of Section 162 of the Revenue Act, which levies a tax on chain stores.

The pertinent part of this Section is as follows: "Every person, firm or corporation engaged in the business of operating or maintaining in this State under the same general management, supervision or ownership two or more stores or mercantile establishments *where goods, wares, and/or merchandise is sold or offered for sale . . .*"

This taxpayer, by affidavits and other information furnished this Department and which you are advertent to and which are now in the file in this case, discloses that this plaintiff does not maintain a mercantile establishment "where goods, wares and/or merchandise is sold or offered for sale." Its business consists entirely of filling orders for merchandise which are solicited by house to house canvassing. No merchandise is sold either at retail or wholesale at any of its various warehouses over the State. Its warehouses are not constructed so as to permit the sale of merchandise therein and its employees are specifically instructed not to sell any merchandise from these warehouses.

After a very careful consideration, this office is of the opinion that this plaintiff is not liable for the tax which has been assessed against it, and that a refund should be made of all such taxes assessed and paid by this plaintiff under protest and that the litigation in this connection be brought to an end.

CONSTRUCTION OF SUBSECTION 8, SECTION 322, REVENUE ACT OF 1931, RELATING TO DEDUCTIONS IN COMPUTING NET INCOMES

14 December, 1935.

Section 8 provides for a reasonable allowance for depreciation and obsolescence of property used in trade or business, and attempts to lay down the regulations for such depreciation. Division (1) of subsection 8 re-

lates to property acquired prior to 1921. The controversy here is over the construction of paragraph (a) of subsection (1) specifically relating to property acquired on or before January 1, 1916. Property acquired on or before that date, of course, comes under the general heading dealt with in Division (1) as property acquired before January 1, 1921.

The purpose of this section was to fix the value of the property at a certain date, in order that the subject of depreciation might be dealt with after that time. It selected as this date January 1, 1916. Perhaps one reason for the selection of this date is that there might be a convenient reference to the establishment on that date of the cost of the property as fixed by the United States Revenue Authorities. At any rate, it attempts to fix the maximum value of the property at that date in accordance with the value fixed thereon for Federal taxation. It fixes the value at the "depreciated cost" adjusted by the United States Internal Revenue Department as of that date. That means, of course, the cost of the property with the deduction of the depreciation which the Federal Authorities allowed at that date. This cost is not subject to any further deduction for any depreciation which may have occurred prior to that date, because that is exactly the thing which has been fixed by the Federal adjustment.

However, it appears from the Act that it was the intention to fix that value as of January 1, 1921, and not to permit the deduction of depreciation between the years 1916 and 1921. After the first of January, 1921, other rules of depreciation might apply.

As to depreciation between those years, it certainly cannot be allowed unless the statute itself is capable of such a construction. Depreciation is not allowed in so far as the application of tax laws is concerned, unless the statute clearly or by implication does allow it. The purpose is to ascertain the value of the property for the purpose of fixing the income tax, and only those elements which are permitted under the statute may be considered. In other words, when the statute plainly expresses a method by which the value may be ascertained, it must be followed. In this particular instance the clause "subject to depreciation under this act" necessarily refers to that which follows—"from and after January 1, 1921"—or else it is meaningless.

Paragraph (b) of Division (1) of Subsection 8, refers to property acquired between January 1, 1916, and January 1, 1921. In that case the statute plainly says that the maximum value is to be ascertained by taking the original cost plus the value of additions and improvements, subject to such depreciation as has occurred from and after January 1, 1921, such depreciation to be ascertained as provided in this act. Here again the clause relating to depreciation is absolutely referable to that which follows, and this exclusively applies to the years beginning with January 1, 1921, and continuing.

Here again it will be observed that there can be no allowance for depreciation for the period prior to January 1, 1921.

It was certainly within the power of the Legislature to say to what period or to what years depreciation should apply, and I think it is plainly expressed in this paragraph.

As applicable to all of the foregoing, it must be remembered that the Legislature was dealing with the tax in the year 1931, and it was dealing

with property acquired many years before. Property might have been acquired forty or fifty years before that time and certainly there is no necessity in law for the Legislature to have dealt with the subject of depreciation for the preceding period except as it deemed wise and just at the time of the enactment of the law.

FEDERAL INCOME TAXATION; LIABILITY OF TEACHER IN THE NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE OF UNIVERSITY OF NORTH CAROLINA

16 December, 1935.

I have laid before me copy of a letter written by Mr. Charles T. Russell, Collector of Internal Revenue, Greensboro, N. C., relating to the liability of Mrs. Cornelia C. Morris to Federal income taxation with respect to her salary received during the year 1934 as a teacher in the North Carolina Agricultural Extension Service of the University of North Carolina.

I do not think there is any question but that Mrs. Morris is subject to the State tax; but while it is not directly the subject of your inquiry, I am also of the opinion that she is not liable to the Federal tax.

While this is a question which, of course, will be decided by the Federal authorities, it is not improper for me in this connection to point out the reasons why I think Mrs. Morris' salary is not subject to Federal taxation.

The grants to the State under the Smith-Lever Act became the property of the State when turned over to it, with the only restriction that the funds should be used for the purposes set out in the Smith-Lever Act. (See Smith-Lever Act, 7 U. S. C. A. 341-348 (1914); King County v. Seattle School District No. 1, 263 U. S., 361, 68 L. ed., 339). No part of this salary was paid directly by the United States Government, and Mrs. Norris was not partly an employee of the United States Government and partly an employee of the State of North Carolina. The idea that the Federal Government might "follow the fund" into the hands of the State employee, upon the theory that to do so would not "burden the State," does not appeal to me as being sound. In my opinion, the matter should depend entirely upon the question as to whether the person whose income it is sought to tax is actually such an employee or officer of the state as would make the principle of non-interference by one government with the agencies of another (by which its functions are carried out) applicable.

In this case Mrs. Morris was undoubtedly such an employee. The State of North Carolina undertakes, amongst its other governmental functions, to carry on a public school system as well as a University for the education and training of its citizens. It appropriates money for this service. That it is a distinctly governmental function cannot be denied. N. C. Constitution, Article IX, particularly Sec. 6, 7, 14. This might have added emphasis from the fact that the activities in which Mrs. Morris was engaged and the activities which her services were intended to foster and encourage are vitally connected with the life of the State.

Indian Motorcycle Co. v. United States, 283 U. S. 570; Buffington v. Day, 11 Wall. 113;
See also Dobbins v. Erie County, 16 Pet. 435;
Purnell v. Page, 133 N. C., 125.

In this connection also it must be remembered that in making the grant in aid under the Smith-Lever Act, the United States Government has required matching of this fund by a similar amount raised by State taxation. So to speak, it has entered into a treaty with the State whereby the State is empowered, through its employee and the salary provided, to perform a governmental function which without such aid it might find difficult. The State, therefore, is embarrassed and burdened in the performance of this governmental function by any attempt to tax the salary of such employee, or any part of such salary, no matter from which source received.

INHERITANCE TAX; TRUST FUNDS; FOREIGN TRUSTS

20 December, 1935.

Inquiry is made concerning the status of a trust created by and between a resident of the State of North Carolina and a trustee domiciled in the State of Maryland, under which trust the North Carolina resident, grantor, was to receive income during his lifetime and at his death, the property to be divided among his children in accordance with the terms of the trust from an inheritance tax standpoint.

Reference is made to the case of Trust Company vs. Virginia, 280 U. S. 83. This decision had reference to a trust which the settler had created and under which he had given up all right to possession and enjoyment, both as to principal and income. The court held in this case that the situs for taxation is the domicile of the trustee.

Where, however, the settler retains the right to revocation and the income from the trust during his life, as in this case, an inheritance tax may be imposed upon the rest of the trust at his death by the state of his domicile. See Blodgett vs. Guaranty Trust Company (Conn.), 158 Atl. 245, affirmed 287 U. S. 509; In re Ellis 14 Pac. 2nd. 37 (Wash.); Keeney vs. New York, 222 U. S. 525.

INCOME TAX; DEDUCTIONS; CONTRIBUTIONS

20 December, 1935.

You inquire as to what is the net income of the taxpayer. Is it the sums of the dividends received from foreign corporations plus the difference between other income and allowable deductions, or is the Department of Revenue right in saying that dividends from foreign corporations shall not be considered in determining the income in relation to contributions? This is important since deductions for contributions cannot exceed 10 per cent of the net income; hence, if the dividends from

foreign corporations and the income from other sources are added before deductions are made, a larger sum for deductions will be allowed.

Section 316, Revenue Act of 1933: "The words 'net income' mean the gross income of a taxpayer less the deductions allowed by this act." Section 317, Revenue Act of 1933: "The words 'gross income' mean the income derived from any source whatever and in whatever form paid." Section 322, (9), Revenue Act of 1933: Deductions include "contributions . . . to corporations operated exclusively for religious . . . to an amount not in excess of 15 per cent of the taxpayer's net income, as computed without the benefit of this subdivision."

Sections 316 and 317, Revenue Act of 1935 are identical with the Revenue Act of 1933. Section 322, Revenue Act of 1935 is identical with Revenue Act of 1933, except that the amount of the deduction is limited to 10 per cent of the net income instead of 15 per cent.

I think that the position taken by the Department of Revenue was correct. Income from foreign corporations cannot be taken into consideration in determining the income in relation to contributions. The argument of the writer, Hammond, Lindsay & Company, would be correct except for Section 311½.

You inquire further if the taxpayer may deduct from his income, for income tax purposes, the North Carolina sales tax which he pays.

The Emergency Revenue Division, Schedule "E," the current Revenue Act, provides in Section 401, that merchants may add to the price of merchandise the amount of the tax on the sale thereof, and when so added may constitute part of such price of debt of purchaser to merchant and shall be recovered by law in same manner as other debts. It is the purpose and intent of this act that the tax levied herein shall be levied to the tax sale of merchandise and thereby to be passed on to the consumer instead of being absorbed by the merchant. Such an arrangement, in my opinion, does not constitute the sales tax, a tax paid by the merchant and, therefore, it is not a tax which he may include in deductions from the basis of the income tax under Section 322, Subsection 1 of the Revenue Act.

Gasoline and Oil Inspection Tax

28 December, 1935.

This office is of the opinion that gasoline and oil distributors are subject to and should pay inspection tax on all sales of gasoline and oils to whomever sold.

We are further of the opinion that this inspection tax should be paid upon all sales to the Federal Government or any of its agencies.

Chapter 544, Public Laws of 1933, Section 5, expresses the purpose for this inspection; that is, for the protection of the State's revenue and for the purpose of preventing frauds, substitutions, adulterations and other reprehensive practices, and the tax is due and payable upon the total quantity of kerosene, gasoline, and other motor fuels sold or used as re-

quired by the laws imposing tax under the gasoline road tax.

This Section further expressly authorized the Commissioner of Revenue to make and provide for the enforcement of such rules and regulations as the said Commissioner may find necessary to secure the inspection of all gasoline and kerosene, and to collect the inspection fee therefor.

REVENUE ACT; INCOME TAXATION; ANNUITIES

3 January, 1936.

No general rule can be given you for the handling of the subject of "annuities," because the term "annuities" has been extended to cover many contracts and transactions, some of which lead to taxable income and some of which do not.

I am of the opinion that the section of the law to which you refer, that is Section 317, subsection 2, paragraph (b), will not serve you except in the particular case of return of premiums. These, of course, are not to be included in gross income.

Ordinarily we consider an annuity as an annual installment, and it is used in this sense in our Machinery Act. Sometimes, however, it refers to the contract under which such annual installment is paid.

If the contract merely purports to return a stipulated amount for a given number of years, without reference to the expectancy of life, it is very likely that some of the returns from it may be classed as income and some of it may not. Very likely such a contract would mean a return of a part of the investment, and this should not be classed as income. It might return also a reasonable interest on the investment, and this would be classed as income.

I think it competent for the Commissioner of Revenue to make a segregation of these two kinds of return by the most reasonable method applicable to the case, which I should say would be by applying the rate of interest which appears to be used by the insurance company selling the annuity. In that case. you would separate the installment into two parts, one of which would be the return of investment, the other a return of interest on the investment, and include the latter in the gross income.

RE: A. W. MCLEAN ESTATE

4 January, 1936.

The first of these trust agreements, dated November 25, 1931, conveys the proceeds of certain insurance policies, in which the children of A. W. McLean are beneficiaries, to certain named trustees, the trust agreement to terminate when the youngest of the children arrives at the age of 21 years. At such time, the corpus of the trust is to be divided among the children, share and share alike.

One other trust agreement, executed on February 3, 1932, conveys the proceeds of two life insurance policies totalling $5,000.00 to A. T. McLean and Dickson McLean to be held in trust by them for the benefit of the wife of A. W. McLean. Two other trust agreements dated on the 4th and 7th of December, 1934, are very similar in character. The corpus of the trust in each of these agreements consists of various stocks and bonds, chattel mortgages, deeds of trust, choses in action and open accounts, totaling an appreciable appraised amount of money. Each of these last trust agreements recites in the first paragraph that the grantor therein is indebted to the beneficiaries under the trust by reason of money borrowed on certain life insurance policies in which his children are named beneficiaries. These two trusts are to terminate when the youngest of the beneficiaries named therein arrives at the age of 25 years.

Apparently in this case the decedent left a will and four trust agreements. Two of the trust agreements involve the disposition of the proceeds of insurance policies. While these insurance policies are not before us, it is evident from the manner in which they were assigned and dealt with that the policies contained a clause giving the right of the insured to change the beneficiaries. The trust agreements, at any rate, purport to deal with the proceeds of these insurance policies and, apparently, such proceeds have not come directly to the beneficiaries through the operation of the contract of insurance before the death of the assured, but they derive their right to the same by virtue of the trust agreements aforesaid.

The question before us as to the liability for tax is as to whether or not such liability attaches not only to the residue of property mentioned in the will, but to the property conveyed in the various trusts. We are of the opinion that it applies to all of the property so conveyed, and, further, that as to the insurance policies, the beneficiaries not having taken directly under the contract of insurance, the $20,000.00 exemption does not apply.

Uniform Driver's License Law; Operator's License; Suspension and Revocation

7 January, 1936.

Inquiry is made as to the authority of State Highway Patrolmen to take up and forward to the Department of Revenue the license of an operator who has been arrested for the violation of the Uniform Driver's License Law with respect to the provisions contained therein concerning the revocation or suspension of such operator's license.

It is true that in the definitions contained in the first Section of this law that the word "Department" is defined as meaning the same agency as may by law have control of the State Highway Patrol of this State, acting directly or through its duly authorized officers and agents; however, we do not think that the Highway Patrol or any of its members are clothed with the power to actually themselves revoke or suspend an operator's license.

It is true that Section 11 of the Act provides that the Department shall have authority to suspend the license of any operator or chauffeur without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee has violated any of the provisions of the Subsections appearing in said Section 11. It is uniform throughout the Act that the Department itself only has the power to suspend or revoke an operator's license. A distinction is made between the powers of a member of the Patrol and the powers of the Revenue Department in Section 23 of the Act, wherein it is provided that an officer in uniform may, in certain instances, require an operator to write his name and exhibit his operator's license; but, it provides that a person who shall refuse to surrender his license on demand of the Department shall be guilty of a violation of the Act.

Provision is made in Section 18 whereby the court before whom any person is convicted of a violation of the Motor Vehicle Laws of this State, where such conviction makes mandatory the revocation of the operator's license by the Department, the court itself shall require the surrender of such license held by the person so convicted and then shall thereupon forward the same together with the record of such conviction to the Department.

We do not mean to say by the above that the Department could not suspend the license of an operator after arrest and pending appeal, but we do mean to say that this authority does not lie within the Highway Patrol itself. The Department might, under the provisions of Section 11, having in its possession the arrest report of the Patrolman or a notice of conviction in a lower court pending appeal, issue an order of suspension. Such an order would then give the Patrolman to whom it was directed the right and authority to take up and forward to the Department the license referred to in that particular case. The Act does not even give the courts the authority to take an operator's license. As a matter of fact, Subsection (d) of Section 18 of the Act provides that pending an appeal, the court from which the appeal is taken shall make such *recommendation* to the Department relative to the suspension of the license until the appeal shall have been finally determined.

The authority conferred by Section 11 applies to the Department which has charge of the suspension or revocation of an operator's license and, in our opinion, does not extend to agencies other than the central agency located here in Raleigh; that is to say, the Division of Highway Safety where such suspensions and revocations originate.

TAXATION; FRANCHISE TAX, RUFFIN WAREHOUSE, INC.; CANCELLATION OF CHARTER UNDER SECTION 452, REVENUE ACT

14 January, 1936.

It appears from your letter that the charter of the Ruffin Warehouse, Inc., was cancelled for non-payment of franchise tax, February 1, 1925.

Subsequent to this time the officers of the corporation continued to

exercise corporate functions in various ways, in violation of the law and ignoring the authority of the Commissioner in cancelling the charter.

It is calculated that except for cancellation of its charter this concern would now owe the State of North Carolina $670.14 for franchise taxes through the years 1924 to 1935, including interest. You ask what further action the Commissioner of Revenue must take in order to follow the statutory requirements.

In my opinion, from a strictly technical point of view, no franchise tax will be due after the cancellation of the charter of the corporation, nevertheless, the corporation would scarcely be in a position to raise this point after exercising corporate power all these years.

Unfortunately the statute is not adequate in a case like this. Improvement might be made so that the Commissioner might legally collect taxes for the years during which corporate functions had been exercised after the charter had been cancelled. Frankly, however, I do not think that power now exists.

This is one of a number of instances in which it has appeared that the officers of corporations, the charters of which have been cancelled under authority of Section 452, have gone on ignoring the authority of the State in cancellation of the charter, and without paying taxes have enjoyed, or have attempted to enjoy, the rights and privileges granted by the State under the charter.

It seems to me that the proper course to pursue is to proceed under Section 452 of the Revenue Act in every case where such authority is attempted to be exercised by the officers of the corporation after cancellation of the charter without discrimination.

Your attention is called to Chapter 124, Public Laws 1933, determining the status of such a corporation under a new incorporation or, as it is called in that chapter, "reorganization." Inasmuch as this corporation cannot now be restored in the manner set forth in Section 453 of the Revenue Act, and in case the Commissioner of Revenue does not choose to resort to the drastic provisions of Section 452, an adjustment might be made of the matter whereby the taxes would be paid and the corporation re-chartered under the law above mentioned. This course might apply in all cases where the ten-year period has elapsed since the cancellation of the charter preventing the restoration of corporate power under Section 453.

REVOCATION OF DRIVER'S LICENSE; RIGHT OF APPEAL TO SUPERIOR COURT

15 January, 1936.

Inquiry is made concerning the right of a person whose driver's license has been suspended or revoked to appeal to the Superior Court when the Department has suspended or revoked such license.

Section 11 provides that such operator may request a hearing before the Department for a review of its action in suspending a license under the provisions of Section 11 of the act. Section 19 provides that an appeal lies from a revocation or suspension by the Department to the Su-

perior Court of the county in which such operator resides. It will be noted, however, that in this Section no appeal lies where a license has been revoked by the Department because of a violation of one of the mandatory provisions contained in Section 12 of the Act; that is to say, where an operator's license has been revoked because he has been found guilty of a violation of any of the provisions of Section 12, which makes mandatory the revocation of such operator's license. No appeal from this action is provided for in the Act.

The question has not arisen but we might observe that perhaps the only court action available to an operator whose license has been revoked would be in the nature of a mandamus in which such licensee would ask the court to enter an order requiring a license to be issued and in this way question the correctness of the Department's records concerning a conviction of such licensee in the courts of the State of a violation of the provisions of Section 12 above referred to.

PROPERTY CARRYING VEHICLES; FOR HIRE AND FRANCHISE CARRIERS

27 January, 1936.

You state that certain newspaper publishers in the State deliver their papers to subscribers by means of an automobile hired by them for this purpose, and you inquire if the motor vehicle so hired would be subject to the For Hire license tax prescribed by Article 5 of the Motor Vehicle Laws, being Chapter 375, Public Laws of 1933.

The taxpayer protests the payment of this tax, his defense being the last clause in Section 2 of Chapter 136, Public Laws of 1935, wherein it is provided in part that nothing in this Act shall prohibit a motor vehicle carrier under this Act nor any motor vehicle licensed under Section 209 (b) and (c) of the Revenue Act of 1927, nor motor vehicles used exclusively in the distribution of newspapers from the publishers to subscribers or distributors.

Chapter 136, supra, is what is commonly known as the North Carolina Bus Law originally enacted in 1925. The purpose of it was to regulate the operation of franchise carriers, both of passengers and property, over the improved highways of the State of North Carolina. It provided for the application by persons who wished to operate in this manner to the Corporation Commission for a franchise certificate. It provided for the issuance by the Corporation Commission of such certificates, for the control of size, weight and manner of operation of such carriers, for the purchase of insurance by them or bond, and the Commission was vested with the power to make rates, classifications and regulations, supervise the operation of stations, fix and prescribe speed limitations, regulate accounts and require reports, and a general supervision and regulation of such carriers in various other matters. It further provided that distinguishing number plates be attached to such vehicles, which came under the purview of this Act.

We construe this to mean that the operation of an automobile hired by a publisher to deliver newspapers from his office to the subscriber or

distributor would not be required to apply for and obtain a franchise before entering into this class of business.

The For Hire operation of motor vehicles is dealt with in Chapter 375, Public Laws of 1933, as amended. This Act provided, as stated heretofore in an official opinion of this office to the Revenue Department, that the definition of the "For Hire" is "shall include every arrangement by which the owner of a motor vehicle for compensation permits such vehicle to be used for the transportation of the property of another." This is still the law.

We are of the opinion that if a newspaper publisher hires an automobile for the purpose of distribution of its papers to the subscribers, this automobile would be subject to the payment of the For Hire license tax prescribed by Chapter 375, Public Laws of 1933, as amended.

Under the present law, all franchise operations are exclusively under the supervision and control of the Utilities Commission; all For Hire operations are under the direct supervision and control of the Director of the Motor Vehicle Bureau. Certainly the taxpayer could not claim exemption from paying any tax. He would either come under the supervision of one or the other of these Departments.

INCOME TAX; DEDUCTIONS; SECTION 322, CURRENT REVENUE ACT

31 January, 1936.

The question arises as to whether or not gift taxes paid to the Federal Government would be such taxes as would be deductible under Section 322, current Revenue Act.

Subsection 4 of this Section deals with deductions for income tax purposes and has particular reference to taxes which have been paid by the taxpayer during the income year. We think the exception contained in this Subsection, even though it does not specifically mention Federal gift taxes, is sufficiently broad and that the Legislature intended to except this form of taxes from the deductions contained in said Subsection. Particular attention is called to the fact that "inheritance and estate taxes are excepted from the deductions allowed."

We are of the opinion, therefore, that Federal gift taxes would not be deductible under the provisions of this Subsection.

SALES TAX RETURNS; PENALTIES FOR FAILURE TO REMIT TAX

20 February, 1936.

C. S. 7880 (156) (h) provides that the sales tax levied shall be due and payable in monthly installments on or before the 15th day of the month next succeeding the month in which the tax accrues. It provides that returns shall be made out and mailed on or before the 15th of the month and that a remittance shall accompany such return for the amount of taxes accrued.

We do not think that the mere failure of the taxpayer to enclose remittance with the return filed by him, on the date fixed as above set forth, would subject such taxpayer to the 10 per cent penalty provided for in C. S. 7880 (156) (o) (b), which is Subsection (b) of Section 414 of the 1935 Revenue Act. Before this penalty could be invoked, you would have to go further than outlined in your letter and show that the deficiency was due to negligent or intentional disregard to authorized rules and regulations, with knowledge of such rules and regulations on the part of the taxpayer.

We think that under the statement of facts as outlined by you that the taxpayer would only be subject to the penalty prescribed in Subsection (a) of Section 414, or, at most, would be subject to the penalty for delayed return as described by C. S. 7881 (56) (p) (a), which is a part of Section 415 of the Sales Tax Act. This Subsection provides that if the delinquent return is received by the Commissioner or his duly authorized agent, the taxpayer shall be assessed with a 5 per cent penalty plus interest at 1 per cent per month from the date the tax was due.

ESTATE OF DR. ALBERT DURHAM; INHERITANCE TAX LIABILITY

9 March, 1936.

Supplementing my letter to you of March 2, I beg to advise that I have examined the copy of the will of Dr. Robert Grigg Reese which you furnished me. It appears from this will that Dr. Reece devised to his trustees his personal estate to be invested and reinvested by them, and authorized them to pay income therefrom to his wife during the term of her natural life. It is understood that the widow is still living. Under the will upon the death of the wife of the testator, it is provided in Item IX as follows:

"Upon the death of my said wife, Louise del'aigle Reese, I give, devise and bequeath the following persons the gifts and sums set opposite their respective names, which sums are to be invested and the income therefrom to be paid in semi-annual installments, for the terms of their natural lives. The said sums can be willed to whomsoever they wish at their demise."

Included in the ones to whom bequests are made under this Item, is the following: "To Dr. Albert Durham twenty thousand dollars ($20,000)."

It is understood that the intangibles represented by this bequest are held by trustees in the City of New York or at least outside of the State of North Carolina.

It appears, therefore, that upon the execution of the will by Dr. Albert Durham he was exercising the power of appointment given to him by the will of Dr. Reese. The case apparently falls within the principle of the case of Wachovia Bank vs. Doughton, and therefore I am of the opinion that the twenty thousand dollar bequest by Dr. Durham, by way of execution of power of appointment as to intangibles held by the foreign trust, is not taxable by the laws of this State for inheritance tax purposes.

INCOME TAX; A.B.C. LIQUOR STORES; PASQUOTANK ACT; NATURE OF A.B.C. STORES

9 March, 1936.

You inquire in your letter of March 5th whether or not A.B.C. Stores, operated by counties in the State, are liable for tax on net income under our revenue law. The portion of the revenue law which would be applicable, if any at all, is Section 311, relating to net income on domestic corporations, and the specific inquiry is as to whether or not the A.B.C. Stores are such domestic corporations.

Under the Pasquotank Act, Chapter 493, Public Laws 1935, the A.B.C. agencies are set up for the sale of whiskey, and more particularly for its control under a public board. In my opinion, the agencies set up are municipal in their character and are not private domestic corporations within the meaning of the Act, and for this reason the State has no right to tax the net income.

In giving you this opinion I am aware that some uncertainty has been injected into the situation by reason of the holding of our Supreme Court in Board of Financial Control v. Henderson County, 208 N. C., 569, which actually goes to the extent of construing the constitutional exemption of the property of counties, cities and towns as applicable to that property only which is used for governmental purposes. Some sort of subtle distinction of this kind might be applied to the present situation, and it might be held that the activities of the A.B.C. Boards are proprietary in character and, therefore, analogous to those of a private domestic corporation, and if so, the net income would be taxable under the general income law. I am of the opinion, however, that such a distinction would not be sound.

TAXATION CANNON MILLS COMPANY; INCOME TAX

12 March, 1936.

Subsection 10 of Section 322, current Revenue Act provides "resident individuals and domestic corporations having an established business in another State, or investment in property in another State, may deduct the *net income* from such business or investment if such business or investment is in a State that levies a tax upon such net income."

The purpose of this Subsection is, of course, to prevent double taxation on resident individuals and domestic corporations. The deduction permitted, however, is not the amount of taxes paid in such other State from the amount of taxes in this State, the law having been changed in that respect since 1931. The deduction permitted for net income in such other State from net income in this State was before application of the pertinent part of the Act computing the tax.

Therefore, since the particular distinction is unwarranted, the tax must be computed in accordance with this opinion and the balance of tax, if any, collected from the taxpayer.

TRANSPORT CORPORATION OF VIRGINIA; FRANCHISE CARRIERS

13 March, 1936.

You state that the taxpayer has eliminated from his return that portion of his earnings which he receives from freight which is carried by an independent contractor under a For Hire license through an arrangement between the franchise carrier and the For Hire operator.

The taxpayer takes the position that he pays these For Hire operators upon rates which are mutually agreed upon between the parties and that their only responsibility is to pay the State of North Carolina taxes accrued from the operation of their trucks only and that the trucks to which they give business are properly licensed to operate in North Carolina. They, as franchise haulers, have no responsibility concerning taxes which are due by such For Hire operators.

It is undoubtedly true that all For Hire operators are required to pay the For Hire license prescribed by the statute; however, there is no connection between the franchise operators and the For Hire operators so far as tax liability is concerned. Section 28, Chapter 375, Public Laws of 1933, is in part as follows:

> (B) *Property Hauling Vehicles*
>
> (6) Franchise Haulers. Franchise haulers shall pay an annual license tax as per the above schedule of weight of each vehicle unit. . . . and in addition thereto, six per cent of the gross revenue derived from such operation. . . . All revenue, except as hereinbefore provided, collected by such franchise haulers, whether on fixed schedule routes or by special trips, shall be included in the gross income upon which said tax is based.

The contract submitted in the file does not alter the situation insofar as it affects the tax liability upon the gross earnings of the franchise hauler. The taxpayer collects the freight charges from the shipper and agrees to deliver the goods to the consignee. Certainly funds we collected should be considered a part of the gross earnings of the franchise hauler.

ESTATE OF HARPER B. LINGERFELDT; INHERITANCE TAX; UNITED STATES BONDS PURCHASED WITH VETERANS COMPENSATION FUND

20 March, 1936.

I have your letter of March 12. In my opinion the United States Government bonds purchased with funds received as compensation from the Federal Government paid to a disabled war veteran constitute taxable asset of the estate of the deceased.

Exemption contained in Public Laws of 1935, Chapter 371, Section 2 (d), provides for the following exemption:

"And also proceeds of all policies of insurance paid by the United States Government to the beneficiary or beneficiaries or heirs at law of any deceased soldier of the World War under the present laws of Congress or any amendment that may be hereafter made thereto."

The securities purchased as aforesaid do not come within this exemption.

In the case of Trotter v. Tenn., 290 N. C. 345, the opinion in that case on pages 356 and 357 says:

"That statute speaks of 'compensation, insurance, and maintenance and support allowance payable to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. *Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state.*"

In this State the case of Martin v. Guilford County, 201 N. C. 63, held that land purchased by a veteran with similar funds was not exempt from the County ad valorem tax.

ASSESSMENT OF CORPORATE EXCESS; CERTIFICATION TO THE HOME OFFICE; LEGAL DEFINITION OF HOME OFFICE

20 March, 1936.

I note from your letter of March 16, 1936, that the State Board of Assessment heretofore certified a corporate excess against Young Mercantile Company to the County of Wilson, that being the county in which the charter of the Company designates the home office. Under this, the County of Wilson collected the tax.

Later you were notified by this concern that its principal office was located in Greenville, N. C., but the principal office was not formally changed, according to the Secretary of State's records, from Wilson, North Carolina, to Greenville, North Carolina, until February 24, 1935. Meanwhile, however, actually the Greenville office was considered its principal office.

In this case, I think that the State Board of Assessment properly certified the corporate excess to the County of Wilson, inasmuch as the charter required the Company to have a home office at that point, and the law requires the corporate excess to be certified to the county in which such home office is located.

As the matter stands at present, I do not think that the matter could be reopened, as the taxpayer complied with the requirements of the law and paid its taxes in Wilson County.

BEER TAX; CHAPTER 493, PUBLIC LAWS 1935

25 March, 1936.

Your letter refers to Chapter 493, Public Laws 1935, imposing a tax upon the sale of beer of $3.00 per barrel of 31 gallons, or the equivalent of said tax in containers of more or less than 31 gallons, and in bottles of not more than 12 ounces per bottle a tax of one cent per bottle.

Since this law was enacted, it has become a general practice to send out beer in tin containers instead of glass bottles for retail sale.

Retailers are now demanding a refund upon the tax collected by the Department of one cent per can, contending that inasmuch as the Act provides that beer sold in containers of more or less than 31 gallons shall be taxed at proportionate rates and that the one cent tax must be confined to beer in bottles by a strict dictionary meaning. Some of these containers with neck and cap might well be classed as bottles. A bottle does not necessarily have to be glass; they may be and have been of all sorts of material—leather, horn, gourd, wood, pottery and metal.

But, aside from this, in my judgment the tax of $3.00 per barrel and of one cent per bottle was intended to recognize the difference between a sale of the product in the most convenient form for retail distribution in the container as against other forms of distribution out of bulk. This classification, of course, is sufficient to justify the difference in the tax levy.

It is my opinion, therefore, that the smaller tax levied per barrel of 31 gallons contemplated that containers might have slightly more or slightly less than the 31 gallons, but still would not be adapted for distribution to consumers at retail in the container.

For this reason, I am of the opinion that, carrying out the purpose and spirit of the law, where some other form of small container which might not be strictly classified as a bottle has been substituted, for instance a tin can containing approximately the same amount as the bottle, or, at least, which is convenient for distribution directly to the consumer, when in the hands of the retail dealer the one cent tax rate must be applied.

I agree with you, therefore, that it must have been the intention of the General Assembly to apply a tax of one cent upon the retail sale of beer in containers of not more than 12 ounces, and that you are justified in declining to make any refund upon the theory advanced by the dealers.

REVENUE LAW; INCOME TAX RETURNS; DEDUCTIONS; DIVIDENDS ON BANK STOCK OWNED BY RECONSTRUCTION FINANCE CORPORATION

2 April, 1936.

A memorandum from Mr. C. E. Cooke, Jr., of recent date, requests an opinion as to whether or not dividends on preferred stock in banks, which stock is owned by the Reconstruction Finance Corporation, may be deducted as interest under the State income tax return.

My opinion is that the dividends may not be so deducted, and I find no authority under the State law regarding such dividends as interest.

Attention is called to the fact that an act of Congress was necessary to permit the deduction of such dividends as interest under the Federal Revenue Act.

Whatever the purpose of this Federal Act (Amendment to the Revenue Act of 1934 by Public Act No. 374, approved August 27, 1935), and whatever inequalities it was intended to correct, I do not think that the dividends are the proper subject of deduction under our law.

ESTATE OF J. J. WILSON; METHODS OF ENFORCING UNPAID INHERITANCE TAX PROPERTY AND PERSONS LIABLE

2 April, 1936.

I have your letter of March 30, and note that the inheritance tax assessed against Edwin Fulghum, who received a part of the property of the deceased, has not been paid. You request my advice as to how you should proceed to collect this tax and who should be made parties in the procedure of collection and the effect thereof upon the remainder of the estate created by the will.

A method of collection is provided by C. S. 7880 (16), under which the taxes assessed are certified to the sheriff. The sheriff is required to collect the same as other taxes.

In addition to this Section, C. S. 7880(29)a, provides additional remedies for enforcement and declares a lien of the inheritance tax upon all of the property and upon all of the estate with respect to which the taxes are levied, and declares that no title or interest to such estate, funds, assets or property, shall pass, and no disposition thereof shall be made by any person claiming an interest therein, until the said taxes have been fully paid. This Section declares a tax debt which may be recovered in an action brought by the Commissioner of Revenue in any court of competent jurisdiction, against any person liable for the tax while having had any property, funds or assets of any nature with respect to which such tax has been imposed.

In C. S. 7880(169) further remedy is provided for collection of inheritance taxes imposed by the Revenue Act. This Section provides for the issuance of an execution, and the sale of the property in execution after the docketing of the same in the county in which the same is to be enforced. However, it created a lien only from the docketing of the execution.

In the present case I would advise that you should proceed under C. S. 7880(29)a by bringing a suit in the county in which the land is located, in the name of the Commissioner of Revenue against all parties having any possible interest in the property, including Edwin Fulghum and his grantees, W. H. and A. B. Farmer. It will be necessary to investigate the title to the property and make parties to the suit of record lien holders against it, including the county or city which may have ad valorem tax claims.

You could not safely proceed under Section 7880(169) as this Section declares a lien only from the date of docketing the execution. We will have to claim the lien from the date of death of the deceased to defeat the intervening conveyance to which you refer.

Under Section 7880(16), if the sheriff sold it for taxes, it would still be necessary to institute tax foreclosure suit, which would involve as much trouble as bringing the suit originally.

Upon foreclosure in the manner indicated, the entire estate, including the life estate and remainder, would be sold to satisfy the tax claim. In order to protect their interest in the property it would be necessary that any purchasers should pay the tax to avoid a loss of the property. Upon such sale the purchasers would receive a fee simple title to the property.

REVENUE LAW; SECTION 151; OUTDOOR ADVERTISING; CANDIDATES FOR OFFICE

8 April, 1936.

Replying to yours of April 7, 1936, on the above subject, I am of the opinion that advertising by candidates for public office, in promotion of their candidacy, does not come within the purview of Section 151 of the current Revenue Act, in which section a tax is levied upon those "engaged in the business of outdoor advertising," and a slightly different scale of taxes levied upon those who advertise their own "business" exclusively.

The use of the terms employed in this section, and more particularly the employment of the term "business," it seems to me, clearly indicates that the law was not intended to apply as suggested, namely, such advertising as may be done by candidates for political office in favor of their candidacy.

INHERITANCE TAX; APPLICATION OF PROPERTY HELD BY SURVIVORSHIP

10 April, 1936.

On March 11, you requested an opinion as to the application of our inheritance tax law to foreign stocks and government bonds passing by right of survivorship from the decedent to a sister with whom the deceased owned the property jointly with the right of survivorship. Usually under a statute providing for a tax in respect to property which passes by will or intestate laws, or laws regulating intestate succession, no tax may be imposed in respect to property acquired by a survivorship in case of joint tenancy in securities, in bank deposits, or in real property. 61 Corpus Juris, p. 1649. The reason for the rule is that the share which the joint tenant takes in the property upon the death of the other joint tenant does not pass by laws regulating intestate succession so as to be subject to an inheritance tax. Attorney General vs. Clark, 110 N. E. 299 (Mass.). In some jurisdictions the taxation of property or interests arising out of survivorship in the case of joint tenancies is regulated by specific statutory provisions and the courts have upheld the taxability under such statutes of the transfer of property in the case of joint tenancy in securities, bank accounts or real property. 61 Corpus Juris, p. 1650.

No provision is made in our statute for taxation for inheritance tax of property passing to a joint tenant by reason of survivorship. In the absence of such specific provision in our statute under general principles I would conclude that foreign stocks and government bonds owned by the deceased, Ida T. Munyan, jointly with a sister with the right of survivorship would not be subject to our inheritance tax.

FRANCHISE TAX; WESTERN UNION TELEGRAPH COMPANY, SECTION 206, REVENUE ACT

15 April, 1936.

I have received and have given careful consideration to your letter of April 8, attached to which letter is a proposed additional assessment of franchise taxes under Section 206 of the Revenue Act against the Western Union Telegraph Company. These proposed assessments for three years of 1933, 1934 and 1935, amount to a total of $32,412.53. It is observed from your letter that the Western Union Company reported for taxation in 1935, 2,818.04 miles of telephone properties subject to the tax. It is further observed that in a report made to the Utilities Commission, the total mileage reported for 1935, was 4,233 miles. It is further noted that the difference in the mileage, as reported for taxation and as reported to the Utilities Commission, is due to the fact that this company reported for taxation only mileage owned by them and excluded leased lines and controlled connecting lines.

After careful consideration of the language of the taxing statutes for the years in question, it is my opinion that the Western Union Company should properly be held liable for the additional taxes which you proposed to assess. I would, therefore, recommend that you should proceed to make the assessments and proceed with the collection of these additional taxes.

It is my opinion that the language in Section 206, "and/or operated" brings within the taxing provision of the statute, in addition to the mileage reported by this company, the additional mileage of leased and controlled connecting lines.

ESTATE OF W. J. FIX, INHERITANCE TAXATION

16 April, 1936.

The widow of Mr. W. J. Fix was a beneficiary of a group policy of the R. J. Reynolds Tobacco Company, amounting to $7,261.96. Upon this you have assessed the inheritance tax, under authority of the statute. C. S. 6466 (d), however, is presented to your attention by the Wachovia Bank & Trust Company, Executor, which contends that because of the exemption provided in this section the insurance should not be taxed.

In my opinion, this section of the Code has reference altogether to the ordinary debts or liabilities of the employee or his beneficiary, and has no reference to tax, although a tax, as an aid to other remedies to its collection, has sometimes been designated in the statute as a debt.

In this connection, I might say that there is no direct property tax involved, but the tax is placed upon the right to transmit and receive the property.

In my opinion, the item is subject to the tax.

MOTOR VEHICLE LAW; DRIVERS' LICENSE; EXAMINERS; POWERS AND DUTIES

25 April, 1936.

In reply to your letter of April 23:

1. In my opinion, persons designated by you to examine applicants for drivers' license, by authority of Chapter 52, Section 2 (c), Public Laws 1935, cannot be vested with authority to enforce the motor vehicle laws or to exercise the duties of members of the Highway Patrol.

2. If, in the discretion of the Department, it would tend to securing better service and to apprise the public dealing with them of their official character, and thus bring about a sense of responsibility, security and authority, it would be proper to put such examiners in uniform. However, the state of the law is such that, they not being civil officers authorized to make arrests, it would not be proper for them to carry weapons.

They could not exercise the power and authority of peace officers in any respect, not even for the enforcement of the drivers' license act.

I might add here that the provisions of Chapter 52, Section 2 (c) are rather meager; but I think that it would be permissible to designate any number of the members of the Highway Patrol to perform the duties required under this section in connection with their duties as members of the Highway Patrol. This, however, would merely add to the duties and powers which such members of the Highway Patrol already had, the additional duties of examiners under the aforesaid law.

CLAIM OF ATLANTIC GREYHOUND LINES FOR REFUND OF USE TAX PAID UNDER PROTEST UNDER SECTION 404, SUBSECTION 13, CHAPTER 371, PUBLIC LAWS OF 1935.

28 April, 1936.

Receipt is acknowledged of the letter to you from Hon. I. M. Bailey, attorney for the Atlantic Greyhound Lines, demanding refund of the $50.00 use tax paid on five motor vehicles under the provision of the act above referred to. Subsection 13 of Section 404, Chapter 371, Public Laws of 1935, requires the payment of the use tax therein imposed on "any new or used motor vehicle . . . requiring registration thereof under Section 2621(6) C. S."

Mr. Bailey correctly states that Section 2621(6) C. S. is Section 6 of Chapter 122, Public Laws of 1927, as amended by Section 1, Chapter 272, Public Laws of 1929. Section 38 of Chapter 122, Public Laws of 1927, provides that "This act shall in no way apply to automobiles, trucks, or busses operated under and by virtue of a license certificate granted by the corporation commission of North Carolina under authority of Chapter 52, Public Laws of 1925, and amendments thereto." The tax in this case was imposed upon busses which are exempt from Chapter 122, Acts of 1927, by the provision above quoted. In construing Section 2621(6) C. S. the court would properly look to the provisions of the entire Act as con-

tained in Chapter 122, Public Laws of 1927. From such examination it would appear that it was inapplicable to the busses upon which this tax is paid. I would, therefore, conclude that C. S. 2621(6) would be construed so as to not require the registration of the busses in question under the provision of that Section. As the use tax is by the express provision of Subsection 13, made applicable to the vehicles requiring registration under C. S. 2621(6), I am of the opinion that you cannot legally collect the use tax on the five busses on which the $50.00 tax was paid.

ESTATE OF J. FREDERICK KISTLER; INHERITANCE TAX; DEDUCTIONS FOR TAXES PAID; FEDERAL ESTATE TAXES

6 May, 1936.

It is noted that counsel for the estate contends that they are entitled to deduct under the provisions of Section 7, Subsection (e) of our 1933 Revenue Act, all estate taxes paid to the Federal Government, including those paid under the 1926 Federal estate tax provision and those paid under the 1932 act as amended by the 1934 act.

In my opinion the taxpayer is entitled to deduct under our act above referred to, only the federal estate taxes paid under the 1926 act. The taxpayer is not entitled to deduct the additional estate taxes paid under the act of June 6, 1932, as amended by the act of May 10, 1934, and you can afford to disregard the contention of the taxpayer in this respect.

The act of June 6, 1932, provides in part as follows:

> Section 401. ADDITIONAL ESTATE TAXES. Section 401(a) in addition to the estate tax imposed by Section 301(a) of the Revenue Act of 1926, there is hereby imposed, etc.

By the act of May 10, 1934, the act of June 6, 1932, was amended in this particular and as follows, so far as this question is concerned.

> Section 405. ESTATE TAX RATES. (a) Section 401(b) of the Revenue Act of 1932 is amended to read as follows.

The taxes imposed upon this taxpayer as additional estate taxes are still imposed by the act of June 6, 1932. The provisions of said act quoted above imposing the tax has not been repealed or amended. The only change in this respect which has been made is the amendment of May 10, 1934, which does not amend Section 401(a) of the 1932 act, but does amend Section 401(b) of the 1932 Act, which affects only the rates of tax. The taxes imposed are still "additional estate taxes levied by act of Congress," exemption of which is denied in our statute. The effective date of the act imposing additional taxes, that is to say, in addition to the taxes imposed by the Federal Revenue Act of 1926, or the additional taxes levied by the act of June 6, 1932, change only as to rates of tax by the amendment of May 10, 1934.

In no reasonable view could the taxpayer justify a claim for deduction of the additional estate taxes paid by him to the Federal Government, and deductions should be allowed only for the federal estate taxes paid under the Revenue Act of 1926.

INTOXICATING LIQUORS; SHIPMENTS IN INTERSTATE COMMERCE

7 May, 1936.

Your letter of May 4 received. You state that the Hartman Beverage Company, a foreign corporation, was engaged in the business of selling and distributing wine and beer in this State; that they accept orders only by mail but deliver the merchandise into this State by truck; that they refuse to comply with the North Carolina Beverage Control Act and take the position that they are doing interstate business and therefore not subject to the laws of this State relative to the sale and distribution of beer.

By the enactment of the Webb-Kenyon Act, and especially Sections 121 and 122, by Congress, the protection of the commerce clause is withdrawn from shipments of such articles of commerce, and the shipper is required to comply with all State laws regulating the shipment of such articles into another State and the consumption and sale thereof in such State. This act makes it unlawful for any person to ship such articles of commerce into another State without full compliance with the laws of such State, regulating the introduction of any articles into such State and the sale and consumption of such articles therein. This act may be found in Title 27, United States Code Annotated.

This beverage company, by virtue of this act, should be made to comply with the State Beverage Control Act.

TAXATION OF ROYALTIES FROM U. S. PATENTS

14 May, 1936.

We have before us for consideration the question as to whether or not income from royalties derived from United States patents is subject to taxation.

It is true that for a time such income was exempt under authority of the opinion in the case of Maxwell vs. Construction Company, 200 N. C. 500, and the case of Long, Commissioner, vs. Rockwood, 277 U. S. 145. However, this rule has been changed and the law as laid down in these decisions was reversed in the case of Fox Film Company vs. Doyle, 286 U. S. 123, 76 L. Ed. 1010, where it is said:

> The affirmance of the judgment in the instant case cannot be reconciled with the decision in Long vs. Rockwood, upon which appellant relies, and in view of the conclusions now reached upon a re-examination of the question, that case is definitely overruled.

From the above, we must say that income derived from royalties on United States patents is subject to income taxation and the tax should be assessed and collected.

MOTOR VEHICLE LAWS; TRANSFER OF LICENSE PLATES; FOR HIRE OPERATORS

19 May, 1936.

You call to the attention of this office the apparent conflict between Consolidated Statutes 2621 (14) and 2621 (31-a). This office is of the opinion that there is no actual conflict between these two Acts.

The Legislature of 1927 in passing C. S. 2621 (14) specifically provided that tags issued to For Hire operators should not be subject to the same provisions as tags attached to private motor vehicles. That is to say, this statute provides that a For Hire tag might be transferred by the owner of a motor vehicle from one vehicle to another. In other words, it might be retained by the original owner and used by him upon another vehicle which he possessed.

C. S. 2621 (31-a), passed in 1933, in general terms, provides that upon the legal transfer of a vehicle licensed under the provisions of the Motor Vehicle Act by foreclosure sale under chattel mortgage or retained title contract, the purchaser of said vehicle at such sale acquired the right to operate such vehicle for the remainder of the license period under the license plates issued for such vehicle.

This office is of the opinion that this act itself does not repeal C. S. 2621 (14) as it has no specific reference to it. The For Hire tag issued to a For Hire operator confers the privilege upon the owner of such vehicle to enter into a certain class of business and he is protected under the law when he purchases such a tag.

We are of the opinion, therefore, that where a For Hire automobile is repossessed and sold, the purchaser at such sale would not have the privilege of engaging in the business of a For Hire operator.

MOTOR VEHICLE LAW; DRUNKEN DRIVER; REVOCATION OF LICENSE; RE: G. H. KNIGHTEN, ASHEVILLE, N. C.

25 May, 1936.

Chapter 52—the drivers' license law—sections 10 to 21, inclusive, relates to the suspension or revocation of drivers' license.

The Department of Revenue has the authority to suspend or revoke drivers' licenses under certain conditions, and it is mandatory for such department to revoke licenses under certain conditions.

I have your letter of May 17, relating to the case of G. H. Knighten, of Asheville, N. C., whose license was revoked by the Department. Your record, made April 22, 1936, seems to show that Knighten's license was revoked for the following reasons:

> Offense committed and convicted . . . driving drunk;
> Date of conviction—called and failed, April 15, '36.

Unquestionably the license of this driver could have been revoked under the general authority given by Section 11 of the Act, Division 1:

> . . . has committed an offense for which mandatory revocation of license is required upon conviction.

since upon conviction of driving while drunk and report of such conviction, or upon failure to make appearance or forfeiture of bail not vacated, such revocation of license is mandatory. It will be observed in

Division (c), Section 18, that such unvacated forfeiture of bail is made equivalent to conviction.

I only mention such conviction as explanatory of subsection (1) of Section 11, and not as meaning that the conviction is actually required in order to give to the Department the power and authority to revoke the license.

In this particular case, I gather from the letter of L. R. Fisher, the patrolman in charge of this particular case, that the records in the City Court of Asheville showed that Knighten was "called and failed." There is sent to you, however, a certificate purporting to be from the record in this case, which shows that a nol pros was entered in this case.

Why a nol pros was entered and why the witnesses, Sluder and Hall, were not called, and why the case was not tried, does not appear.

To sum up the case of Knighten, I will say that you are authorized, and were authorized, to revoke his driver's license, but it should be stated upon your record, and the license should be revoked on the ground that he had, as an actual fact, driven his car while intoxicated. The law was properly intended to give the Department the right to suspend or revoke such license upon proof of the commission of this violation of the law, independently of his conviction in any court.

In this connection you have also inquired of me with regard to a list containing twenty-five names of persons reported to you by the State Patrol, and within the jurisdiction of the City Court of Asheville, where the charge is "driving drunk." As to these, I do not know what the records in the City Court of Asheville show. They may have been cases of acquittal and, if so, as to these the Clerk would not be required to make a report.

CONSTRUCTION AND APPLICATION OF CHAPTER 116, PUBLIC LAWS 1931, RELATING TO JUDGMENTS AGAINST DRIVERS OF MOTOR VEHICLES

29 May, 1936.

The Safety Responsibility Act, Chapter 116 Public Laws 1931, referred to by you in your letter, provides that where a judgment rendered for damages arising out of the ownership, maintenance, use or operation of a motor vehicle is not satisfied within thirty days the license and all registration certificates shall be forthwith suspended by the Commissioner of Revenue.

Application has been made to you to enforce the provisions of this law by taking away all of the "licenses and registration certificates" of F. C. James, of Greenville, N. C., because there is an unsatisfied judgment against him obtained in an action involving a collision with a farm tractor owned by James.

It is said that the judgment itself refers to a "motor vehicle."

In my opinion a farm tractor is not a motor vehicle within the meaning of this law.

Definitions may not be bodily taken from the Act in which they occur and in which they are set for the purpose of making clearer the pro-

visions of such Act and its application more definite, and placed in other categories without causing great confusion.

Notwithstanding the fact that the farm tractor, if it was a farm tractor, is designated in the judgment as a "motor vehicle," I think it is a question of fact to be determined by you whether it was or was not actually a farm tractor.

In my opinion, if you find that it was, you have no right to take away the license and registration certificates belonging to James' private car. I am confirmed in this opinion by the fact that no licenses are required to be issued for the operation of farm tractors.

TAXATION; REFUND OF FRANCHISE TAX, NEWS & OBSERVER PUBLISHING COMPANY; HARDWARE MUTUAL FIRE INSURANCE COMPANY v. J. W. STINSON

15 June, 1936.

I note from your letter of June 9th that the News and Observer Publishing Company is making a claim of refund for part of the 1935 franchise tax paid by it. The claim for refund is based upon the recent case of Hardware Mutual Fire Insurance Company vs. J. W. Stinson, Treasurer of Mecklenburg County, 210 N. C., 69.

It would require an examination of the return and the details of the imposition of this tax to ascertain whether the franchise tax was affected by the minimum set up in Section 210 of the current Revenue Act, under which the basis of the franchise tax could not be less than the value of property assessed for ad valorem taxes. If this minimum determined the franchise tax paid by the News and Observer, it would then be necessary to consider whether or not this taxpayer was entitled to deduct from its solvent credits, or cash on hand, the unearned subscriptions mentioned in the protest for local taxation.

I construe the opinion in the Hardware Mutual Fire Insurance Company case as probably permitting such deductions. I have advised, however, that local tax authorities continue to decline to permit such deductions unless they come strictly within the lines of this decision; and it is probable that cases of this sort will be further clarified by cases to come before the Supreme Court.

Until such Supreme Court action clearly and unmistakably points to the right of deductions of this sort, I am of the opinion that they should not be made.

TAXATION; SHARES OF STOCK IN BANKS; NON-RESIDENT OWNERS; SECTION 600, MACHINERY ACT

15 June, 1936.

Shares of stock in banks, banking associations, and trust companies are taxable under Article 6, Section 600 of the Machinery Act. They are

so taxable as property in the hands of the owners—the shareholders—and, of course, not as the property of the bank, and not as a part of the capital stock of the bank. The National Banking Act provides certain methods by which taxes may be received by a State with respect to National Banks. It is sometimes loosely stated, even in statutes, that there are three methods, by either one of which National Banks may be taxed, and that choice of one excludes taxation by either of the others. See National Banking Act. An analysis will show, however, that one of these methods is the taxation of shares of stock in the hands of the owners and not a tax upon the bank or its capital stock. There is no federal authority for direct taxation of a National Bank, and, in the absence of such authority, it cannot be done.

North Carolina chose the method of taxation of shares of stock in the hands of the owners, and as personal property, for the reason that it could not tax the capital stock of National Banks, and taxation of such stock of State Banks would, therefore, be a discrimination.

The method chosen to ascertain the taxable value of shares of stock in banks, banking associations, and trust companies is laid down in Section 600, and it will be observed that principally this consists in ascertaining the excess of the total of such shares of capital stock over certain deductions, including property subject to local assessment. This excess is prorated to the shares of capital stock and the excess is certified to the proper authorities for local ad valorem taxation. The excess is sometimes erroneously called corporation excess, from which the notion has prevailed that the tax is imposed upon the excess of capital stock of the corporation, as in the case of non-banking corporations before the 1935 Amendment.

Although in the case of Chowan County vs. Commissioners of Banks, 202 N. C., 617, the Supreme Court of our State seemed to take the view that the tax was a direct tax against the bank, if indeed that is a proper construction of that decision, it is quite impossible to accept it in any case involving the taxability of a National Bank; and it is quite true, too, that if that is a proper interpretation of our own State Banking Law, the National Banks are not required to pay any tax whatever under it, although they have not raised the question since that opinion came out.

The relation of the banks to the tax thus imposed has uniformly been held to be that of collecting and paying agent, and the imposition of the tax, and the requirement that it shall be paid by the bank itself, is in the nature of a quasi garnishment. See above authorities.

Having thus determined the nature of the tax, we should have no difficulty in deciding whether or not it may be imposed upon non-residents with respect to shares of stock owned by them.

In my opinion, non-resident owners of stock cannot be required to pay the tax on shares of stock owned by them in banks and banking institutions, not even though the bank is domestic.

I cannot agree that shares of stock held by non-residents and not having a business situs in this State are within our taxable jurisdiction.

INHERITANCE TAXES; CONTINGENT ESTATES

26 June, 1936.

You inquire as to whether or not, in my opinion, the portion of this trust willed to J. J. Efird had vested in him at the time of his death on May 27, 1935, and if the value of his share should be included in the inventory of his estate for inheritance tax purposes.

The will under Item 6 provided that the income from the trust was to be divided into five parts and that one-fifth was to be paid each year to "my son J. J. Efird; provided, however, that he is sober, industrious and law-abiding, but if in the opinion of my trustees he is not such, then said one-fifth to be invested by them*."

Item 7 of the will provided that at the termination of the trust one-fifth of the corpus should be paid to "my son, J. J. Efird; provided, however, that he is sober, industrious and law abiding, but if in the opinion of my trustees he is not such, then said one-fifth shall be paid to his children, share and share alike."

Under the language of the will above quoted and the entire will read by its "four corners," I am of the opinion that the deceased, J. J. Efird, did not have a vested interest in either the income or the corpus of the estate controlled by this will.

Notwithstanding this conclusion, the question remains as to whether or not the cutting off of the contingencies by the death of J. J. Efird, thereby vesting unconditionally in his children the said one-fifth part of said estate, gives rise to the taxable basis under the North Carolina inheritance tax law.

Please note that it is provided under Subsection 4 of Section 1 of the Revenue Act of 1935, as follows: "When any person* comes into possession or enjoinment, by transfer from a resident,* of an estate in expectancy of any kind of character which is contingent or defeasible, transfer of by any instrument taking effect after the passage of this act*."

By reason of the death of J. J. Efird, his contingent interest in the income and corpus of this estate was terminated. Upon his death, his children became vested with an unconditional ownership of this part of the estate.

If J. J. Efird had lived and had complied with the conditions of the trust, these children would have taken nothing by virtue of the will. It would have become, both as to income and corpus, the absolute property of J. J. Efird. His death having occurred and thereby making certain the interest of his children in this property. In my opinion, this gave rise to a taxable basis under the Section of our inheritance tax law above referred to.

If the interest of J. J. Efird had been cut off by mere failure to comply with the conditions of the gift, we would fail to have a taxable base, but here the determining factor was the death of J. J. Efird. I would, therefore, conclude that you might properly include his one-fifth share in the property devised by the will of J. J. Efird in the inventory of his estate for inheritance tax purposes.

OPINIONS TO STATE HIGHWAY AND PUBLIC WORKS COMMISSION (Including State's Prison)

CRIMINAL LAW; CONCURRENT AND CUMULATIVE SENTENCES; BILL JOHNSON ALIAS FRANK JOHNSON

2 January, 1935.

The above named prisoner was convicted in Scotland Superior Court for felony and sentenced to five years on the public roads. The conviction was April 29, 1929, and I assume that he began service of his sentence immediately. He escaped June 17, 1930, the greater part of his sentence incompleted. He was arrested on September 15, 1934, and convicted on a misdemeanor in Lee County and sentenced to sixty days on the roads. In the last sentence there was no reference to the then existing sentence against him. You inquire as to whether, under such circumstances, the two sentences are to be served concurrently.

In my opinion they are. I think there is a conclusive presumption in favor of the prisoner that he is serving the sentences concurrently when he is committed on account of either of them, and for such period as they may be concurrently served. Of course, there may be an overlapping of periods of service, a later imposed sentence not having been fully served at the time the earlier sentence expires. In my opinion this question is not affected by the fact that the sentences were imposed by different courts at different times.

WOMEN MISDEMEANANTS; CUSTODY

5 September, 1935.

I construe the 1935 Act—Chapter 57, Section 3—as you do, as conferring upon the State Highway and Public Works Commission the authority to provide within the bounds of the Central Prison at Raleigh, or elsewhere, suitable quarters for women prisoners, and to arrange work suitable for their capacity. I do not regard it as making this provision immediately mandatory, nor do I think that the courts have any right to sentence a woman for confinement in such quarters until they have been prepared. Therefore, I think the Commission is within its right to refuse to accept such prisoners until suitable quarters have been provided.

EMINENT DOMAIN; CHAPTER 470, PUBLIC LAWS 1935; CONSTRUCTION OF BARRIERS OR SAND BREAKS ACROSS CERTAIN LANDS

5 September, 1935.

I understand that a Federal Project is in progress in Dare County, in which it is proposed to erect or establish a series of sand breaks across

certain coastal lands in order to fix or stabilize the sands or land along the length of the project. Independently, I understood from the Department of Conservation and Development that general coöperation in this very useful project had been obtained by practically all of the landowners, only one, as I now recall, making objection. The question now arises as to whether the power of eminent domain can be exercised for this purpose.

I have read the letter of Mr. Aiken addressed to Mr. Etheridge, dated August 21, 1935. I have also read very carefully your letter of August 30th on the subject, taking a contrary view to that expressed by Mr. Aiken. You know that I regard your opinion upon any proposition of law very highly, and anything you say upon the subject is worthy of the most careful consideration; and yet, upon such careful study, I find myself in some disagreement with your letter, although I confess that I have very unwillingly come to the conclusion that the power of eminent domain cannot be exercised in this particular case.

Conceding that you are correct in the proposition that the power of eminent domain can be exercised merely to acquire an easement, and does not necessarily contemplate the acquisition of the title to the property, I cannot see that this distinction is useful in solving the question before us.

It will be very difficult to define the kind of easement which the State would have in the lands under consideration after the exercise of the right of eminent domain.

It seems to me that the State would have no more right to establish sand breaks upon this man's land—that being the only objective or condition in which the idea of easement resides—than it would have to enter upon the man's land in the interior of the State and establish terraces thereon upon the theory that erosion from his farm filled the streams with detritus or destroyed the fish.

In other words, if the easement consists simply of the use and occupation of the land until the sand barriers could be established, I think this is too remote from the legal conception of an easement to base upon it the right of eminent domain.

I would be very glad to discuss the subject with you.

WAIVER OF RIGHT OF APPEAL UPON CONVICTION IN INFERIOR COURT

28 March, 1936.

In reference to the above subject, you ask whether such waiver would be effective, and whether the Highway Commission would have a right to require such waiver. After careful consideration of this matter, may I say that in my opinion a prisoner cannot effectively waive his right of appeal upon conviction in an inferior court, so as to be precluded from withdrawing such waiver during the ten days left him to appeal, although he may have in the meantime been forced to begin his sentence.

My conclusion is based upon the fact that such right of appeal is closely associated with the policy of this State to guarantee the right of trial by jury, both as to felonies as well as to petty misdemeanors, as

to which right many decisions of the Supreme Court hold it cannot be waived. Article I, Section 13, N. C. Constitution; State v. Camby, 209 N. C. 50; State. v. Crawford, 197 N. C. 513; State v. Pulliam, 184 N. C. 681. In the light of these, and other decisions, I believe the waiver of the right of prosecuting appeal could be withdrawn at any time during the ten days.

In your letter you refer to the device of filing a notice of appeal as a method of getting the inferior court to change the sentence by striking out the prison term and inserting in lieu thereof a fine. It is true that when a prisoner is sentenced and begins his sentence, the Court, even during the term where the conviction and sentence was imposed, has no right to add to that punishment in any way. See: State v. Warren, 92 N. C. 825; In re Brittain, 93 N. C. 587. However, the rule is otherwise when it comes to shortening or lessening the sentence. During the term of court at which a prisoner is sentenced, or during such period as the court would have the right to deal with the appeal as being in fieri, the Court may modify or reduce the sentence. In re; Brittain, 93 N. C. 587; in re; Graves, 117 Fed. 798; See: 16 Corpus Juris, p. 1315. The inhibition of the court for changing the sentence after its execution has begun seems to be merely for the protection of the prisoner.

I suggest that if the prisoner is left in the county, and upon the expense of the county, until the right of appeal is lost by expiration of time, changes which really must be annoying to the Highway Commission would be less frequent. I do not know whether this is a practical solution.

I can find no way in which the expenses of the return of the prisoner to the county may be charged against the county.

OPINIONS TO THE STATE BOARD OF HEALTH

PUBLIC HEALTH; CONSTRUCTION C. S. 7050; DUTIES OF BOARD

27 August, 1934.

You inquire whether C. S. 7050, entitled "duties of board," includes in the expression "all public institutions" those institutions which belong to municipalities and counties.

This question is not without difficulty, as the inclusion of all county and municipal institutions would give the statute a much wider range than if the term "public institutions" included only "state institutions," and such jurisdiction ought not to be taken unless the intention of the statute is reasonably clear. However, the duties which are placed upon the State Board of Health with reference to the health of all of the citizens of the State, are so comprehensive in their nature that they cannot be thoroughly performed, unless that board is permitted to inspect public institutions of counties and municipalities, as well as those of the State. In fact, the statute referred to especially mentions "state institutions" a few lines above the mention of "public institutions," and I think it is fair to assume that the latter term was used advisedly in its ordinary and broader signification, and with the intent to enlarge the authority of the Board of Health and extend it to all institutions of a public nature, which alone, I think, could put the State Board of Health in a position to "take cognizance of the health interests of the peole of the State," and do the other things required of them in this very comprehensive law.

PUBLIC HEALTH; SANITARY DISTRICTS; ACT OF 1927, AMENDMENT OF 1933

31 August, 1934.

An examination of the above acts, Chapter 100, Public Laws 1927, and Chapter 453, Public Laws 1933, shows they are not in conflict and may be considered in their application to Moore County as affording alternative procedures for the creation of such districts according to the end and object in view.

Considering Chapter 453, the amendment under consideration, you will note that the caption (and sound rules of construction make it proper to refer to the caption for interpretation of the Act when it may be helpful) states that the Act is to "make further provisions for the creation and maintenance of sanitary districts, and policing the same."

An examination of Chapter 453 shows the propriety of this caption, because it makes provision for certain things which may be done in the sanitary district created thereunder, as for example, policing the district, and makes no provision for certain things which may be done, and

are indeed necessary to be done, in the creation of sanitary districts of another type, that is it makes no provision for the borrowing of money and the issuing of bonds.

It is, therefore, clear to me that the purpose of the Act was, as I have suggested, to make it possible to create a sanitary district of a different type from that authorized by the original Act, and to do this not by way of exclusion, but by way of enlargement of the Act, so that a sanitary district of either type might be created.

In this connection you will notice quite an extensive amendment to the Act of 1927, made by Chapter 8 of the laws of this same session, 1933. This amendment, however, does not alter the question we are considering.

Hemp Sanitary District

27 November, 1934.

You state that your Board has been requested to serve proceedings for the annexation of the Pinehurst Silk Mill property to the Hemp Sanitary District. You state that the first notice was published on November 7, another on November 9, and are publishing three more consecutively, and you inquire if all of these notices should have been published consecutively.

You further state that the notice states that the hearing is to be held on November 28, and you inquire if this satisfies the requirements of twenty days notice as provided in Consolidated Statutes 7077 (d).

This section provides in part as follows:

> The State Board of Health shall cause at least twenty days notice to be given of the time and place of such hearing by publishing this information at least five times in a newspaper or newspapers, published in or near the proposed district and having a general circulation therein.

We think the notices are in substantial compliance with the law. This section does not state that the notices shall be published consecutively but says that it shall be published at least five times. We also think that the proper twenty days notice was given as published.

Dead Bodies; Burial Certificates; Cremation

29 January, 1935.

You inquire as to whether or not the ashes of a dead person are to be considered the body of a dead person so as to require the burial certificate and other papers prescribed by law before such ashes can be buried.

Consolidated Statutes 7092 provides that the body of a person shall not be interred unless a permit for a burial, removal, or other disposition thereof shall have been properly issued by the local Registrar of the

registration district in which the death occurred. This statute further provides:

> Provided, that when a dead body is transported into a registration district in North Carolina for burial, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit.

An allocation of the above law in our statutes indicates that the law itself is primarily enacted for the health and safety of the public and to prevent the spread of contagious or communicable diseases. It may have prohibited also some purpose connected with police regulations. In my opinion, there is no purpose to be served by the law which would render it necessarily or logically applicable to the disposition of the ashes of a dead person brought into this State from another State.

Nor do I think the phraseology of the statute itself will admit such application. It is my understanding that the process of cremation leaves only a small residue of the human body. The handful of chemical substances remaining cannot be in any sense called a body, more especially so since in the process of cremation there is no vestige left even of the cellular structures of such a body.

In my opinion the present law, written entirely in contemplation of the prevailing mode of disposition of the dead, namely, by burying the body and permitting it to return to dust by the ordinary process of decay, was not intended to have any application to the present case.

It is to be noted here that there are various methods of disposing of the ashes of a deceased person who has been cremated. Sometimes such ashes are kept in urns. Sometimes they are placed away in vaults. Sometimes they are buried under ground, and sometimes, according to the will and desire of the deceased, they are given to the winds, sprinkled over some beloved spot, or scattered upon the sea. In my opinion, no certificate or permit is required for their disposition.

Extent of Control of State Board of Health over Public Health Funds

26 April, 1935.

You make inquiry as to the extent of the discretionary control which may be exercised by the State Board of Health over funds appropriated by the General Assembly for the various phases of public health work, more especially in regard to the fund allocated to State aid.

You are advised that the Board is vested with the inherent right to protect its own funds; not only does such right exist, but a duty is imposed to control the distribution of its funds in such manner as would reduce to a minimum the hazard of indiscreet, wasteful and useless expenditures.

Therefore, you are entirely within your right in adopting a policy of withholding or withdrawing funds from any unit wherein, by reason of inefficient personnel or inadequate administrative facilities, satisfactory results may not reasonably be anticipated.

The only limitation imposed is that the Board must act in good faith and not arbitrarily.

HEALTH LAWS; RENOVATING MATTRESSES

31 May, 1935.

Section 2 of the bedding law, relating to sterilization, provides:

> No person shall, in making, remaking or renovating a mattress for another person, use any previously used material which, since last used, was not sterilized by a process approved by the State Health Officer.

Heretofore, this law has been construed to mean that when a mattress is renovated or remade, not for sale but for return to the owner and user, that is to say "renovating a mattress for another person," the material of the old mattress must be sterilized before the mattress is made over and returned.

While this is perhaps within the strict letter of the law, I am inclined to the opinion that it was intended only that the material added to the mattress must be so sterilized. I think this would be consistent with the general purpose of the Act, and I am more inclined to the opinion that it is the proper interpretation because violation of the sterilization law would be a criminal offense and such statutes must be construed strictly in the light most favorable to the person charged with crime.

CERTIFICATES OF DEATH; INVESTIGATION BY CORONER OR "OTHER PROPER OFFICER"

29 January, 1936.

When recording the death of any person it may come to the attention of the registrar that that death has been due to unlawful act or neglect, and that the matter should be investigated, the statute, C. S. 7095, provides that the case should then be referred to the coroner or "other lawful officer" for such investigation. While I do not think that the person who drew this act had any particular "other officer" in mind, and just assumed that there might be somebody else designated by law to make such an investigation, I am of the opinion that there is no person other than the coroner, or a person specially selected to fill his place in case he is not available, who is competent to make such an investigation under the law. It might be necessary upon such an investigation to hold an inquest; and not only is the holding of an inquest an exclusive office of the coroner, but all inquiries relating to the manner of death when there

is a suspicion of any unlawful act or neglect logically come within the sphere of his official duties.

In a case of this sort, if there is no coroner available, it is my suggestion that the clerk appoint a special coroner under C. S. 1014, 1018 who may sign the certificates.

PUBLIC HEALTH; SECTION 2283 C. S.; INNS, HOTELS AND RESTAURANTS

18 February, 1936.

In response to your inquiry, I have investigated the provisions of Chapter 186, Public Laws of 1921, included in C. S. Sections 2283 (q), 2283 (r), 2283 (s) and 2283 (t).

The constitutionality of this act has not been brought in question in any suit in this State which has reached our Supreme Court. I am of the opinion that the provisions of this act are in accordance with constitutional authority and are valid.

It has been suggested, as I understand it, that under Section 2283 (q) there is a delegation of legislative authority to the State Board of Health and therefore that this Section of the act is invalid. I cannot agree with this view. The act does no more than to authorize the State Board of Health to adopt reasonable rules and regulations which are recorded in the form of official score cards. If upon inspection and scoring as provided by the statute, it is found that the inn, hotel or restaurant is not maintained in a sanitary manner, evidenced by a rating of less than 70, the owner, etc., is subjected to penalties imposed by Section 2283 (t). There is no lawmaking power delegated to the State Board of Health. The rules and regulations which they are authorized to make are merely in the nature of controlling inspections and recording results; penalties for violation are fixed by the Legislature itself. Similar provisions and laws in other states are sustained by a number of court decisions which are cited in 12 Corpus Juris 840.

CHAPTER 167, PUBLIC LAWS OF 1935, SECTION 3, RELATING TO TAGS ON MATTRESSES

25 March, 1936.

Section 3 of Chapter 167, Public Laws of 1935, entitled "An Act to Improve the Sanitary Conditions in the Manufacture of Bedding," requires that a tag at least two inches to three inches in size shall be attached to a mattress, the said tag containing certain information required in the second paragraph in this Section.

The third paragraph of the Section provides that this tag "shall be sewed to the outside covering of every mattress being manufactured *before the filling material has been inserted.*"

In order to construe the act as written, we must understand its purpose. The law provides for the inspection of the manufacture of mattresses

in the place where they are manufactured and sold by authorized representatives of the State Board of Health. See Section 6. Therefore, the requirement in the above paragraph of Section 3 has a reasonable basis, as the sale of a mattress not properly tagged might be made under circumstances that would put it beyond the power of the department to inspect or have any supervision whatever over the matter.

Here I should observe that the law not only requires that the tag should be sewed on before the mattress is filled, and therefore necessarily before it is in condition for sale, but this tag must comply with the provisions of Section 3, having upon it: (a) name or names of material to fill the mattress; (b) name of maker or vendor of the mattress; and (c) the statement that it is made of new materials, or that it is made of previously used material, or that it is second-hand if it has been used or remade. The absence of any such statement would be the equivalent of having no tag at all.

BEDDING LAWS; RENOVATION OF MATTRESSES

5 June, 1936.

Based upon the inquiry of the Pioneer Mattress Company, of Spartanburg, South Carolina, your department has inquired of me whether or not, under the State Sanitary Bedding Laws, a concern in Spartanburg may renovate mattresses for persons in North Carolina, "and have them sterilized by a North Carolina licensed sterilizer" bearing their label, stamp, etc.

Reading the entire Bedding Act, including Section 2, relating to renovation, and other portions of the Act, relating to inspection, the Act might be construed as applicable in its terms only to manufacture and renovation and sale, all within the State of North Carolina, without special reference to any law of an adjoining State relating to the subject.

The Act itself, in some of its aspects, might be difficult of enforcement if we are to consider it as excluding from the State mattresses renovated or manufactured outside of the State, where official inspection, under the law of the State, could not be had. Without discussing the constitutional question raised upon that phase of the matter, I would say that inasmuch as complete and satisfactory sterilization of the mattresses renovated outside of the State may be made within the State by persons authorized to perform such sterilization, the practice might be permitted under this law.

GRANTS TO THE UNITED STATES; RETENTION OF SOVEREIGNTY

18 June, 1936.

I understand that it has become necessary to grant the United States a right-of-way for the Blue Ridge Parkway across the Asheville Watershed; and it becomes desirable that the local authorities shall retain some

jurisdiction, in order that sanitary conditions may be maintained with relation to the grant so made.

I have had exhibited to me form of reservation of such powers, prepared by Hon. Charles Ross, General Counsel of the Highway Commission, which I attach to this letter and return.

While the first paragraph might be construed as restricting the exercise of the retained power to the mode suggested in detail in that paragraph, I think the second paragraph, at least, is quite ample to protect the reserved power; and I think both together would make the situation very clear.

Taking them both, it is clear that the State of North Carolina reserves its sovereignty with respect, at least, to enacting and enforcing sanitary legislation respecting the territory granted.

I think this sovereignty may be exercised by direct legislation of the State, or under authority of special legislation giving to the Town of Asheville the right to make rules and regulations.

Milk Ordinances; Publication

25 June, 1936.

I have your letter of June 20, attaching copy of a short form of the milk ordinance and a copy of a complete form of the milk ordinance. You inquire as to whether or not it is necessary for municipalities to publish such ordinances in the newspapers in the municipality, and, if so, what form might be used.

There is no general statute in North Carolina requiring publication in newspapers of all municipal ordinances. In the absence of special statutes often found in charters of the various towns and cities, it is not necessary that such ordinances be published in newspapers.

In each case it would be necessary to consult the legal authority of the town in which the ordinance is adopted to ascertain the legal requirements as to that city or town, which would have to be complied with.

If the controlling law requires publication of the ordinances, it will be necessary to publish the ordinance in full, unless the act specifically permitted an abbreviated statement of the same.

You inquire as to the right of the County Board of Health to adopt a milk ordinance under C. S. 7065. It is my opinion that in a territory outside of municipal corporations, the County Board of Health is authorized by this Section to adopt rules and regulations which would be the equivalent of ordinances. The violation of such rules and regulations are made misdemeanors by C. S. 7066.

Under C. S. 2795, municipal authorities are given authority to adopt ordinances for the protection of the health of citizens within the city. Such power is also granted municipal authorities under C. S. 2787, Subsection 29. I would, therefore, conclude that the municipal authority would control such rules and regulations as might be adopted from the municipality, and outside of the municipality the County Board of Health would be authorized to make rules and regulations under C. S. 2795.

OPINIONS TO LOCAL GOVERNMENT COMMISSION

BANKS AND BANKING; FEDERAL GUARANTEE OF DEPOSIT

27 October, 1934.

In a number of instances, this Department has given as its opinion that the guarantee by the Federal Deposit Insurance Corporation of $5,000.00, to cover bank deposits, goes no further than to cover the total account of a depositor, and not the separate accounts when split up. That means, of course, that where a depositor has several accounts in the same capacity, these must be totaled and the $5,000 applied to such total, and the guarantee will not be cumulative. Where the depositor has accounts in different capacities, as for example a personal account and account as trustee for some other person who has a beneficial interest, each account would be covered by the insurance as separate items; but where the different accounts—sometimes a mere matter of bookkeeping—belong to the same person in the same capacity, they are not separately covered. This latter observation applies to the accounts of county funds which are often held in a number of different accounts.

INVESTMENT OF SINKING FUNDS OF THE LOCAL UNITS IN NOTES OF SUCH UNITS

1 November, 1934.

Chapter 60, Public Laws 1931, Section 29, provides that a local unit may invest its sinking funds in its own bonds or notes. The same section further provides: "that no investment shall be made in any bonds or notes of any city, county, or school district, except with the approval of the Commission." In my opinion, this includes the instances where the sinking funds are proposed to be invested in the bonds or notes of the unit to which such sinking fund belongs, and that the approval of the Local Government Commission is strictly required.

POWER OF MUNICIPAL CORPORATION TO CONFESS JUDGMENT

23 August, 1935.

Although the Supreme Court of North Carolina has not passed on the above-entitled question, it is my opinion that a municipal corporation may avail itself of the procedure set up in Sections 623 and 625, inclusive, Consolidated Statutes of North Carolina, relating to confession of judgment.

For convenience of local counsel who may be interested in the subject, I cite you the case of Smith v. State, (Kan.) 68 Pac. 641, in which the following language is used:

> There can be no good reason why a municipal corporation may not consent to or confess a judgment in the same manner and to the same effect as a natural person or a private corporation.

Also, Freeman on Judgments, Vol. 3, page 2715, in which the following language appears:

> I can conceive no sound reasons of public policy which require the public to be burdened with the costs of litigation in every case where a claimant proceeds to put his claim into judgment.

CHAPTER 9, PUBLIC-LOCAL LAWS OF 1935; COUNTY BONDS; ACCEPTANCE OF SAME BY COUNTY IN LIEU OF TAXES; CONSTRUCTION OF WORD "CURRENT"

27 September, 1935.

You inquire if in Chapter 91 Public-Local Laws 1935 the word "current" as used in the act included only taxes current at the time of the ratification thereof or does it include taxes of subsequent levies as they become due.

It is the opinion of this office that the intention of the Legislature was to allow the bonds to be accepted in payment of taxes of subsequent levies as they become current, as well as taxes current at the time of ratification. That appears from the use of the words "to become due," there appearing no reason for limiting the operation of the act to taxes coming due in the current fiscal year of 1935 only.

From an examination of the act, we do not think the Legislature intended to take away the right of bondholders to demand payment of their bonds in cash. The act only says that the collector of taxes shall accept the bonds in payment of taxes. It does not say that the bondholders shall pay their taxes by the surrender of their bonds and so lose the right to demand cash for them.

INTEREST FUNDING BONDS TO FUND INTEREST OF BONDS ISSUED FOR OTHER THAN A NECESSARY EXPENSE

17 February, 1936.

You inquire: "Is an interest bearing bond valid which is issued for the purpose of funding past due interest coupons and accrued interest on past due bonds of a bond issue representing debt created for a purpose which was not a necessary expense within the meaning of Article VII, Section 7 of the Constitution of North Carolina?"

After a municipal bond is due, it bears interest, notwithstanding the fact that all of the coupons on the bond may have been paid. This is, of course, true when the interest coupons are not paid; that is to say, the delinquent bond continues to bear interest.

The interest is a part of the original obligation and must be treated entirely as the bond so far as any legal or constitutional restrictions

are concerned. The coupons are negotiable and they bear interest themselves after maturity. Therefore, there is no legal objection to funding them in separate bonds from that point of view, nor is there any objection as being unauthorized by Article VII, Section 7 of the Constitution.

I have referred here both to the funding of the coupons which represent interest and funding of the interest on the delinquent bond, which is not represented by coupons.

Bonds funding such interest are not required to be submitted to a vote of the people, where the original bonds were so authorized.

Bolick v. Winston-Salem, 202 N. C., 786.

OPINIONS TO STATE BOARD OF ELECTIONS

ELECTION LAW; RECANVASS OF VOTES; CERTIFICATION

20 December, 1934.

In your letter of December 17, you submit to me the following question:

> Whether, after certificates of election have been issued by a County Board of Elections, and the holders of same have qualified and been inducted into office, the State Board of Elections has the power to order a county board, upon satisfactory proof of the illegality of a sufficient number of votes to change the result of an election, to revoke its certificates theretofore issued and to recanvass the votes of said election and to certify the results as found by the recanvass.

I am unable to find anything in our election laws authorizing action such as you suggest. Normally, neither the County Board of Elections nor the State Board of Elections can determine an election contest. That is a matter for the courts in an action in the nature of quo warranto, as authorized by C. S. 871, et seq. Such an action may be brought in the name of the State by consent of the Attorney General, which consent is granted as a matter of course when the formalities of application and giving bond are complied with.

By Chapter 165, Public Laws of 1933, a number of changes were made in our election law. None of these, however, undertakes to substitute a proceeding before the County Board of Elections or the State Board of Elections for the long established action in the nature of quo warranto to try title to an office.

It is suggested that the power to act, in accordance with the procedure outlined in your question, may be found in C. S. 5986, as amended in Section 8 of Chapter 165, Public Laws of 1933. That section as so amended is as follows:

> The County Board of Elections at their said meeting required to be held on the second day after every primary or election, in the presence of such electors as choose to attend, shall open the returns and canvass and judicially determine the results of the voting in the respective counties, stating the number of legal ballots cast in each precinct for each candidate, the name of each person voted for and the political party with which he affiliated, and the number of votes given to each person for each different office, and shall sign the same. The said County Board of Elections shall have the power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the result of the same. And they shall have power and authority to send for papers and persons and examine the same, and to pass upon the legality of any disputed ballots transmitted to them by any precinct officer.

As amended, it is cognate with Section 2694 of the Code of 1883 and Section 4350 of the Revisal. The cases relating to the section before

it was amended are uniform in holding that action in the nature of quo warranto in the courts is the proper remedy for determination of an election contest. There is nothing in the section as amended which attempts to place determination of such contests in the hands of a County or State Board of Elections.

A sentence from the opinion of Justice Merrimon in Gatling v. Boone, 98 N. C., 578, is of significance here:

> Moreover, the brief time within which the board of canvassers must discharge their official duties goes to show that it is not their province to exercise such jurisdictional functions.

Only by the most strained implication could it be held that a County Board of Elections would have the power to take actions of the nature suggested. Any action it might take in the premises would be nugatory. If it should find and declare a result different from that which it originally reached, it would have no authority to remove the persons who have already been inducted into office. No court would issue an order to that effect, upon such declaration of a different result. It follows that the State Board of Elections is not authorized to adopt the procedure outlined in your question quoted above.

ELECTION LAW; NAMES OF CANDIDATES; FILING

16 April, 1936.

I am requested to pass upon the duty of the State Board of Elections in accepting notices of candidacy of candidates filing for State positions, in which notices of candidacy modifications of the names of the candidates occur, some of which contain the former surname with initials and an addition of the nickname, or sobriquet, by which candidate is ordinarily known or called; others contain simply such sobriquet without the ordinary initials, and others, perhaps, some prefix to the name.

After studying this question very carefully and realizing that in our State the name of a man is merely a means of identification, I have come to the conclusion that the State Board of Elections is authorized to accept these names as they appear in the notices of candidacy, and receipt for the filing fee to such person under the name given in the notice.

The election law requires that the name of the person be printed upon the ballots. Nothing else appearing, in my judgment the Board of Elections would be justified in putting upon the ballots these names as presented in the filing notices, leaving entirely to the candidates themselves such risks as might be involved therein and such complications as might further ensue in determining legal questions relating to the election.

However, I wish it understood that I do not mean to say that the Board of Elections would be justified in receiving or printing upon the ballots anything except such names as are ordinarily used by the candidates and by which they may be popularly known.

ELECTION LAW; FILING CANDIDACIES FOR PRIMARY ELECTION; C. S. 6022

20 April, 1936.

In your letter of April 20, 1936, you say you received in the mail on April 19th the notice of candidacy of Mr. Luther M. Carlton, of Roxboro, N. C., for the Democratic nomination as Judge of the Superior Court in the 10th Judicial District, together with his filing fee of $65.00. This notice was not placed in the possession of the State Board of Elections by the expiration of the filing time, to-wit: 6:00 P.M., Saturday, April 18th; nor was the notice in the post office box of the State Board of Elections at that time. When the filing book was closed Saturday at 6:00 P.M., Mr. Carlton's notice, not having been received, was not entered.

The postmark on the envelope in which the notice is sent is:

"Roxboro, N. C., April 16th, 1936, 1:30 P.M."

This letter, in the ordinary course of the mail, should have reached its destination before the filing time, but for some reason was delayed, and your investigation at the post office, after Mr. Carlton called you, developed the fact that the letter was not in the post office box on Saturday evening after filing time. Again I note that the post office box was examined at 6:00 P.M. at the expiration of the filing time and no such mail was in it.

You now ask the office whether or not you may accept the notice of candidacy of Mr. Carlton as having been "filed with and placed in the possession of the State Board of Elections" before the expiration of the filing time.

This question is no longer open for decision by this Department, it having been on more than one occasion already decided by my predecessor in office. Precisely the same situation arose with respect to the candidacy of Mr. W. K. McElwee as Democratic nominee for Solicitor of the 17th Judicial District in the 1934 primary, and before that time it arose with respect to another candidate in the 1930 primary, and in each instance it was held that the filing came too late.

I conclude, therefore, that you have no authority at this time to accept Mr. Carlton's notice as having been filed before you within the time permitted by law, to-wit: before 6:00 P.M. on April 18th.

ELECTION LAWS; PRIMARY ELECTIONS; CHANGE OF PARTY AFFILIATION

8 May, 1936.

You inquire of me whether or not a voter who has been duly registered and has declared his party affiliation upon such registration, may, subsequent to the closing of the books and upon the day of voting, change his party affiliation so as to render him eligible to cast his vote in the primary held for another party, with which he was not theretofore affiliated and contrary to his declaration at the time of registration.

In my opinion he cannot.

The General Assembly of 1915, established a statewide primary for

the selection of candidates by the several parties under the provisions of that act. This law was enacted for the purpose of enabling the members of the particular party to have an opportunity to directly participate in the selection of the candidates of the party for whom they intended to vote at the General Election. The law confers certain privileges upon the party organization and also provides certain restrictions. The most outstanding feature of this law is that it intends to permit only the bona fide members of the party for whom the primary is held to participate therein, and intends to definitely exclude members of any other party from a spurious participation in the selection of a candidate for a party to which he does not belong.

In order that this purpose may be carried out in a reasonable manner, the law requires certain things to be done on registration. Not only does the law require that the registration books contain the name of the party and such facts as may show his eligibility to vote at the General Election, but it also requires that the person presenting himself for registration shall declare his party affiliation. It is the registration of this fact which gives him the right vote in the primary.

There is no particular method adopted by any party for initiation into its membership. No particular insignia or password is required of any person who desires to join a party or be entitled to its privileges; but the law definitely fixes a means of separation between the parties and in the primary it has established. It is definitely required that this be done in the formal and solemn manner of a declaration of party affiliation at the time of registration and the record thereof. This is the means set up in the law for the identification of such person when he presents himself to vote in the primary of that party, and the law fixes no other.

It does require, as a matter of convenience merely and not for the purpose of permitting the expectant voter to then change his affiliation, that he shall upon the presentation of his ballot make known the party with which he is affiliated; which declaration can then be verified by reference to the registration book; and it does provide that at that time his bona fide membership in the party in which primary he desires to vote, that is to say, his affiliation therewith, may be challenged and determined as a matter of fact.

The law provided for the transition period, when many voters were already on the registration list, so that in due time the party affiliation of each might be ascertained and recorded. It evidently looked forward to a time when such affiliation, as to every voter, should be properly on record during the registration period, and there is no authority in the law for a change after the registration period closes.

Further, as to the participation in the General Election, the law is careful to provide that no voter entitled to vote on that day shall be excluded, and it might have made express provision for any person who desired to change his affiliation on primary day, that is after the registration books had closed, to do so, but no such provision is made.

Both on account of the reasoning in the case and because there is no law to warrant it, I reach the conclusion that no person can change his party affiliation so as to permit him to participate in the primary of another party after the registration books have closed. Such change of

party affiliation, if made at all, should be made during the registration period.

I understand from your letter that you are still receiving inquiries as to whether an Independent, who has not declared his affiliation with either party, may participate in the primary of the Democratic or Republican parties. The answer is no. The primary law is intended to protect the rights of members of the parties to which it applies and to restrict the voting in the primary to such members. Those who are not members of the party, that is to say, are not affiliated therewith, have no right under the law to participate in either primary.

ELECTION LAW; ELIGIBILITY OF CANDIDATES

21 May, 1936.

I understand from your letter of May 19th that a citizen of Rowan County who is registered on the regular registration books of the precinct in which he resides, as a Republican, has filed notice of his candidacy for a county office in the Democratic Primary to be held on June 6th. The notice includes the pledge of party affiliation, as required by C. S. 6022, pamphlet Election Law Section 87. The proposed candidate, however, has not declared and had recorded in the registration book the fact that he affiliated with the Democratic Party, as required by C. S. 6027, Election Law Section 91, which is necessary to permit a party to vote in the Primary.

My opinion of the matter is that the whole election law contemplates the selection of candidates by a party from its own membership, at least from those who are qualified to vote in its primaries. It follows that a person who desires to become a candidate would have to comply with both sections of the law, and I agree with you that upon his failure so to do, the County Board of Elections might rightfully decline to put his name on the official ballot.

ELECTION LAW; COUNTING PRIMARY VOTES; SELECTION OF CANDIDATES FROM A GROUP; C. S. 6045

17 June, 1936.

Your inquiry as to the rights of unsuccessful candidates to demand a second primary relates to candidates running for office in groups where two or more offices are to be selected. The method of deciding the majority is set out in the third paragraph of C. S. 6045, which is as follows:

> The total vote cast for all such candidates must be divided by the number of positions to be filled and the result divided by two.

Those who have obtained that number of votes have the majority. Those who have not are unsuccessful.

Where by this method it appears that some of the places are not filled, then only the members of the group corresponding in number to these positions to be filled, having the next highest number of votes, have the right to call for a run off. No candidates may run in this primary except that number having the highest number of votes, representing the unfilled place, and the same number of persons having the next highest number of votes. Should a person thus having the right to demand a primary either decline to do so or refuse further to become a candidate, this does not have the effect of nominating any of those of the high number group who did not obtain a majority, unless all having the right to demand a primary should fail to do so, nor does it have the effect of extending the privilege of calling the primary to a person who did not have it before the abandonment of the race by a higher man, that is, a person of a group still lower.

For instance, in the County of Wake, where there were three members to be selected, only one, Arch T. Allen, was nominated, leaving two places to be filled. In the run off those two having the highest number of votes and the two having the next highest number of votes would be upon the ticket in case each or either of the lower group demanded it. The fact, however, that the high man in the lower group gets out of the race does not nominate any one of the formerly unsuccessful two, unless no one demanded a second primary; nor does it extend the privilege of demanding a primary to one still lower than this group.

Also in the County of Lee, where there are five Commissioners to be selected, and the result showed the selection of only three, the two having the next highest number of votes would be in the run off with the next group of two having the next highest votes to these, or either of them which demanded a second primary. No resignation or abandonment of the race by any of these persons who have the right to demand a second primary would either elect one of these persons having the higher number of votes. (unless no one demanded a second primary), nor would it extend the privilege of demanding a primary to any one of the still lower group, who did not have it by virtue of the statute and the count thereunder. This comes about by reason of the fact that when two groups are running, or more than one position of precisely a similar kind is to be filled, it is impossible to say for exactly which place any one of the group is running. To be nominated, a candidate must, therefore, be successful as obtaining a majority, not over a particular individual with whom he supposes himself as contesting in the race, but a majority averaged as indicated in the statute, without reference to any particular position.

OPINIONS TO BOARD OF CHARITIES AND PUBLIC WELFARE

STATE PRISON; CHARITABLE INSTITUTIONS; FEDERAL PROCESSING TAX

21 November, 1934.

The question as to whether or not the State Prison Department may be classified as a charitable institution under our laws, with relation to Federal processing taxes on commodities purchased by that Department, has been presented to us.

The policy of the State of North Carolina with regard to the State Prison, and the manner in which it is regarded under our law, may be understood from the fact that the State Welfare Department participates in making the rules with regard to the discipline and control of prisoners, and is clothed with power of inspection. While it is not directly classed as a charitable institution in the appropriations, the laws intended to secure the welfare and improvement of the prisoners are couched in such terms, and the administration is such, that the institution could hardly be regarded as entirely penal.

OPENING OF LETTERS ADDRESSED TO PRISONERS OF STATE INSTITUTIONS BY PRISON OFFICIALS

18 March, 1936.

So far as I have been able to discover, there is no federal statute prohibiting officials of State prisons or correctional institutions from opening and inspecting letters addressed to inmates of said institutions. I have been advised by the Assistant Postmaster of the United States Postoffice in Raleigh that there is no such federal statute. Furthermore, the postoffice officials are aware that prison officials and officials of correctional institutions do inspect mails which are sent to prisoners. It seems that the person who mails a letter to an inmate of such an institution may demand that the letter be sent back to him unopened if he wishes, but he cannot compel the letters to be sent to the addressee unopened.

OPINIONS TO DEPARTMENT OF CONSERVATION AND DEVELOPMENT

STATE; LIABILITY FOR TORTS

23 October, 1934.

It is a uniform and general rule of law that the State is not liable for torts of its agents or its employees. Therefore, should the State be sued for damages on account of injury occasioned by an automobile driven by one of its employees' this Department would demur to the complaint and I am confident the Court would sustain the demurrer and dismiss the action as against the State.

However, every individual is responsible for torts committed by himself. Therefore, where another is injured by the negligence of an employee, such employee would be liable just as any other individual.

I do not know of any group insurance covering these matters.

STATE LANDS; EASEMENT OF RIPARIAN OWNER IN SHORE OF NAVIGABLE STREAM

2 November, 1934.

You inquire what department might have authority in leasing to Mr. H. S. Mish a part of the shore of the river near Washington.

My impression is that Mr. Mish probably owns to the low watermark, unless there is something unusual about the boundary of the property in his grant or deed. State v. Eason, 114 N. C., 787. As I understand the letter, this would not be sufficient to prevent stock from passing around the end of a fence through the water.

While the State of North Carolina owns the bed of a navigable stream, or at least lands covered by navigable waters, I do not think that any part thereof is subject to entry, and it does not seem to me that any part thereof can be made the subject of a lease to any person, in the absence of statutory authority, and I can find no statute directing that it should be done. It was thought necessary to pass an enabling statute—C. S. 7543—in order to permit the erection of wharves on the shores of navigable streams, and the extension of those facilities to adjacent property.

It is true, however, that I have not had the time or opportunity of making an extensive investigation into this matter, and it is possible that I have overlooked some statute.

As far as I can at this time see, there seems to be no authority vested in any department to make the lease to Mr. Mish.

If you will communicate with Mr. Scott, perhaps he may be able to point out some authority.

OFFICE HOLDING; DEPUTY GAME WARDEN; DUAL CAPACITY

11 December, 1934.

I am of the opinion that a State Deputy Game Warden is forbidden by the Constitution to serve as a United States Deputy Game Warden. The office of Deputy Game Warden is such an office or place of trust as would render him ineligible to act in a dual capacity, with or without compensation.

STATE PROPERTY; LEASE OF MINERAL RIGHTS; MINING

16 March, 1935.

A lease of mineral rights on any property involves, of course, the right to take the minerals from the ground or to mine for them. It involves depletion and reduction of the value of the property, and is analogous to a sale. I do not find any statutory authority for the Department to make a lease of this kind upon State Park property.

I would say, of course, that if the State owned mining property, suitable and usable only for such purpose, and upon which mines had actually been opened, perhaps such lease might be made. I am decidedly of opinion, however, that if you have in mind such leases an enabling act be passed at this Legislature.

FIRE CONTROL LEGISLATION

14 June, 1935.

Replying to your recent inquiry relative to the effect of legislation enacted by the 1935 session in regard to fire control, you are advised that under Section 6134, Michie's North Carolina Code, as amended by Chapter 178, Public Laws of 1935, the State Forester is empowered to establish a forest fire organization in any county in which, in his judgment, after careful investigation, the amount of forest land and the risk from forest fires warrant the establishment of such organization.

Section 6136, as amended, makes it the duty of the County Commissioners of any county within which a forest fire organization has been so established to bear one-half of the expense incurred in establishing and maintaining such organization. Such Commissioners are required to make annual appropriation for meeting the county's share of fire control costs. However, there is a limitation that the total payments by the county in any one year shall not exceed five mills per acre of total woodland area in such county, unless specifically authorized by the County Commissioners to meet an emergency. The duty of the Commissioners to make such appropriation and to pay one-half of the expense hereinbefore set out is made mandatory.

However, as suggested in your letter, it would seem to be wise to adopt a policy of securing the voluntary coöperation of the counties in this work. Especially so in view of the fact that without the consent of any

particular county the question of notice might be raised and collection of the share of the county's expense would, in all probability, be delayed until the next budget was set up. The county might readily raise the question that without notice no appropriation for this purpose had been made.

On the other hand, in the event the Commissioners in any particular county refused to extend coöperation, there is no doubt but that the department has the right, under the strict letter of the law, to set up the organization and eventually recover from the county one-half of the expense incurred in setting up and maintaining such organization. I would suggest, however, that signed agreements be obtained in every possible case in order to avoid the element of surprise which might otherwise be raised.

FISH AND FISHERIES; PUBLIC-LOCAL LAWS IN CONFLICT WITH PUBLIC LAWS

18 September, 1935.

You inquire if Chapter 52, Public-Local Laws of 1935, which permits the citizens of Swain County to take fish from certain streams of that county, was repealed by Chapter 35, Public Laws of 1935, which in effect reinvested the Department of Conservation and Development with all the rights, duties, and powers conferred upon the Fisheries Board by Consolidated Statutes 1878.

C. S. 1878 authorizes the Fisheries Commission Board "to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State . . .; and to make such rules . . . and all regulations, prohibitions, restrictions, and prescriptions, after due publication . . .; and any person violating the provisions of this Section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court."

We think both House Bill 146 and all previous conflicting acts were automatically repealed by Chapter 35, Public Laws of 1935. Section 1878 of Consolidated Statutes gives the Fisheries Commission Board power to make all regulations, prohibitions, restrictions, prescriptions, and to regulate, prohibit, or restrict the use of any means employed in taking or killing fish. Chapter 35, Public Laws 1935 specifically gives that power to the Department of Conservation & Development Board and re-enacts C. S. 1878; furthermore, it specifically repeals all laws and clauses of laws in conflict with C. S. 1878, to the extent they may have affected C. S. 1878. When H. B. 146 purported to allow the citizens of Swain County to fish without a license, it in effect purported to take away some of the powers of the Conservation Board to regulate the means used in taking fish; to that extent, it conflicted with and affected C. S. 1878 as re-enacted by Chapter 35, Public Laws of 1935, and to that extent it is automatically repealed by Chapter 35. The same reasoning applies to previous conflicting acts. The repeal, in this case, is express and certain.

Liability of Game Wardens for Funds Deposited in Closed Banks

26 September, 1935.

An examination of the bond of Game Wardens held by the State discloses that these bonds are fiduciary in character, and that neither the Game Warden nor his bond would be liable as a guarantor of the funds coming into his possession by virtue of his office as a Game Warden provided he had used ordinary care for the protection of the same.

We take the position that in the cases of Game Wardens, who deposited funds in good faith in banks which closed for reasons beyond their control, that the State would be the loser of such funds to the extent and to the amount of the same which were not reimbursed by the State Banking Commissioner in the final liquidation of such banks.

Jurisdiction of Game Wardens to Enforce Public-Local Acts Regulating Fishing

26 February, 1936.

It is the opinion of this office that game wardens properly holding office as such under the Department of Conservation and Development are clothed with the power to enforce regulations issued by the Department, as well as to enforce public-local acts regulating fishing in counties where such public-local acts are in force. The jurisdiction of the Board extends to all the public waters of the State over which it has control.

We quote from an annotation in Michie's 1935 Code:

> C. S. 1878: "'The several waters of the State' is the precise language of the section referred to, and the numerous portions of the law in which places are expressly mentioned are not in restriction of the general words of the principal section, but these places are only mentioned because special provision is made as being desirable or necessary for those places. State v. Dudley, 182 N. C., 822."

In an official opinion of this office, with reference to Chapter 35 Public Laws 1935, to your Department, of date 22nd of January, 1936, appears the following:

> In my opinion, Chapter 35 Public Laws 1935, re-enacting C. S. 1878, has the effect of repealing such parts of C. S. 1879 as are inconsistent with said chapter and of destroying the limitations upon the power of the Board placed upon it by this section.

Interstate Shipment of Game Fish

15 May, 1936.

The federal law contained in 16 U. S. C. A. Section 851-855 prohibits shipments of large or small mouth black bass into any state whose laws forbid it. This act in effect withdraws these particular game fish from

the protection afforded by the commerce clause. There is apparently no other law of Congress which controls shipments of other types of game fish. In the absence of such Congressional Legislation, it would seem that you would have no authority to adopt a regulation prohibiting shipment of recognized articles of commerce from another State into this State. This would include the interstate shipment of fish of all types, including game fish.

I might suggest to you the advisability of making an effort to get Congress to include, by amendment in the law above referred to, the other types of game fish included within your regulation. In the absence of such Legislation, the silence of Congress upon the subject would be construed as prohibiting the States from regulating interstate commerce in other types of fish.

OPINIONS TO COMMISSIONER OF BANKS

MODERNIZATION CREDIT LOANS AND INDUSTRIAL BANKS

17 September, 1934.

C. S. 225 (a), 225 (f), 225 (g), and 225 (h) cover the lending powers of Industrial Banks in this State. It will be observed that a more liberal treatment has been given Industrial Banks in the matter of charges upon loans, and to the extent laid down in the sections above mentioned, their practices may result in taking more than six per cent interest.

Section 225(a) and section 225(f), subsection 2, permit them to receive payments in periodical installments. Section 225(f), subsection 1, permits such banks to loan money on real or personal security, and reserve interest in advance on such loans. Subsection 3 permits them to charge for loans made pursuant to the section:

> One dollar for each $50.00, or a fraction thereof loaned, up to and including loans of $250.00, and for loans in excess of $250.00, one dollar for each $250.00 excess, or fraction thereof, to cover expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker, or surety.

They may charge an additional fee of $5.00 in case of loans secured by real estate. So far, I find nothing suggested in your letter that would prevent an Industrial Bank from making loans of the character authorized by the Federal Housing Administration, so long as the interest rate does not exceed the above limits, except for the limitations I now note.

A limitation is placed upon the power of Industrial Banks to lend money by section 225 (g), and, of course, by section 225 (h), the latter relating, however, to a different subject. The limitations under subsection 1 of 225 (g) prevent the loan for a longer period than one year from its date, except in case of a loan on real estate security, which may extend to a period of two years.

There is also a limitation in section 225 (f), which confers upon Industrial Banks the power only "to loan money on *real* or *personal* security," thereby making it impossible for an Industrial Bank to make a loan of the type mentioned on page 8 of Bulletin No. 1, of the Federal Housing Administration, quoted by you, that is to say a note without collateral, co-makers or endorsers.

Within the extent of the above limitations, I think it competent for Industrial Banks to make loans of the character suggested by the Federal Housing Administration Bulletins, but only for a period of one year where the loan is not secured by real estate, and only for a period of two years where the loan is so secured.

BANKS; EXAMINATION FEES; C. S. 223 (f).

28 December, 1934.

Section 223(f) of the Consolidated Statutes fixes the fees for examination of banks, providing that the same shall be $50.00 for the first $100,000.00 of assets or less, $7.00 for each $100,000.00 or fraction in excess thereof, and other fees proportioned on amount of trust assets, as disclosed in the report made to the Commissioner of Banks at the close of business December 31st, or upon the date most nearly approximating thereto. It so happens that the Wachovia Bank & Trust Company upon this date has in its custody several million dollars deposited to meet principal and interest on bonds maturing in New York City, which deposit is only temporary, probably not covering but a few days. This, of course, very materially increases the bank examination charge. The question has arisen as to whether or not the fees for examination may not be reduced by a proportional amount.

While I feel that such a reduction might be appropriate from the point of view of fairness and justice, as the transaction is purely one for the convenience of the State, I am unable to find any authority for it in the law; and I regret to have to advise you that I think the deposits referred to must be included in fixing the amount of the fees.

COMMISSIONER OF BANKS; INFORMATION REQUESTED BY MEMBERS OF GENERAL ASSEMBLY

21 January, 1935.

I understand from your letter of January 21, that a member of the General Assembly has requested detailed information with regard to certain matters of record concerning one of the banks of this State in liquidation. I understand also that the information required is now a matter of public record and is available at several places.

I will say that Consolidated Statutes Section 224(b) does not, in my judgment, relate to banks in liquidation, and has no connection, therefore, with this subject.

In the absence of a resolution of the General Assembly, the giving of such information to a member of the General Assembly rests, of course, within the discretion and convenience of the Commissioner of Banks. It is my understanding that a resolution was introduced in the General Assembly with regard to this matter. As to whether or not such resolution passed, and to its exact contents as passed, I have no information and suggest that you make a further investigation so that you may be guided by it as to your action.

H. B. 545, RELATING TO OFFICE OF COMMISSIONER OF BANKS

18 March, 1935.

In your letter of March 14, you ask me to examine House Bill 545, relating to the office of Commissioner of Banks and now pending before

Judiciary Committee No. 1, and request that I compare it with the present banking laws, particularly Chapter 243 Public Laws 1931, so as to interpret its provisions and give an opinion as to its effect upon the present law by way of repeal or addition, and also its effect with relation to the older legislation contained in Chapter 5 of the Consolidated Statutes, 216 (a) and following, relating to banks.

The bill in question is very brief, does not appear to be completely coordinated with the laws which it seeks to alter, and is very difficult of construction. Perhaps it would take a number of cases before the Supreme Court, in case the law is enacted, in order to determine its effect, but I will answer the specific questions you ask as best I can. In order that these may be understood, and in order that I may make the answers as brief as possible, I append to this letter a copy of yours of March 14.

Section first of the bill referred to repeals outright Chapter 243, Public Laws 1931, and although in terms it attempts to transfer the duties of the office of Commissioner of Banks to the Utilities Commissioner, it does not in effect transfer those duties, but puts the Utilities Commissioner in somewhat the same category as the old Corporation Commission, that is to say, that none of the provisions of Chapter 243, Public Laws 1931, are preserved in the exchange of administration.

Section 2 re-enacts all the laws and clauses of laws repealed by Chapter 243, Public Laws 1931, in terms, although the repeal of the latter chapter would probably have had that effect. It then substitutes the words "Utilities Commission" for the words "Corporation Commission," both in the old law and in amending statutes passed since 1931. It will be found upon a close comparison of the proposed new law with the old law that the result of such substitution is very confusing, more especially because the functions of the Banking Department, and the officers operating under it, had become and were under the old law to some extent subdivided and parceled out. Under the old law a very decided emphasis was placed upon the Chief State Bank Examiner, and the effect of the new law is to deprive the present Banking Act and its administration of the simplicity and directness which placed all the functions of the office in the Commissioner of Banks and return to the complex operation under the old law, with further confusion arising out of the mere substitution of the words "Utilities Commissioner" for "Commissioner of Banks." It will be found that the terms "Utilities Commission" and "Utilities Commissioner" are so used in section 2 of the new bill as to be in entire conflict, and it will be impossible to know which is meant or which to insert in the amended act.

It is impossible for me at this time to follow out the consequences of such an amendment.

Section 3 of the proposed act authorizes the appointment of two examiners to examine those banks not examined by "The Federal or Insurance Examiners." Inasmuch as the setup for examination of banks obtaining under the old law is re-enacted, this must be considered as an addition thereto, and not as a substitution.

Answering your questions now, as far as I can, categorically, I will say:

(1) Section first of the proposed bill abolishes every feature of Chapter 243, Public Laws 1931, and, therefore, does directly abolish the Advisory Commission to the Commissioner of Banks and destroys any right of appeal to anybody from the rules and orders of the proposed Utilities Commission.

(2) Section first takes out of the hands of the Advisory Budget Commission the power to fix compensation for the performance of the duties of Commissioner of Banks with the addition of the clause "who shall perform all the duties now imposed upon the Commissioner of Banks, except as hereinafter provided, at a salary of $6,000.00 per annum." It is a question not easily to be decided whether or not the effect of this is to give the Utilities Commissioner, for the performance of these duties, a fixed amount of $6,000.00 in addition to the salary already provided him by law for his other duties, or whether it is the intention of the bill to provide a salary of $6,000.00 for the performance of all the duties of his office. At present the Utilities Commissioner receives an annual salary, fixed by law, at $4,500.00 per year.

(3) As stated above, the proposed bill repeals Chapter 243, Public Laws 1931, in its entirety, and it, therefore, takes away from the Governor the power given to him by section 11 of that law to examine into the affairs of closed banks, employ counsel for such purpose, etc., thus preventing action of that sort in case of bank failures.

(4) Section first takes away from the Governor the power to appoint or employ legal assistants to the Commissioner, as provided in the 1931 act.

(5) As I have already stated, the proposed act, that is the bill we are considering, will not transfer to the Utilities Commissioner any of the new functions or powers given to the Commissioner of Banks under the 1931 law. It appears, however, that it was the intention of the bill to transfer the duties of "Commissioner of Banks" under the 1931 act to the "office of Utilities Commissioner," who shall perform them all. But the duties and powers of the Commissioner of Banks are, by the proposed bill, completely abolished by the repeal of Chapter 243, Public Laws 1931. In making the substitutions of terms, the proposed bill seems to use indiscriminately the terms "Utilities Commission" and "Utilities Commissioner." The laws creating and governing the present setup in the Utilities Department provides for the appointment of two Associate Commissioners, but their duties are specifically set out in that act and are not consistent with or adapted to bank supervision. It is a question, therefore, of reconciling a conflict which will inevitably arise under this bill, if it becomes a law, as to whether bank supervision is handed over to the Utilities Commissioner or to the entire Commission provided in that law. In my opinion, this conflict is irreconcilable and it will be impossible to determine, under the law, who has the supervision of banks.

(6) The present 1931 law abolished the office of Chief Bank Examiner and transferred the functions, which had gradually grown up about him and had been transferred to him, to the Commissioner of Banks, just as the other administrative functions of the Corporation Commission had

been transferred. The repeal of this chapter will restore the position of Chief Bank Examiner as it existed under the old law.

(7) As the effect of the proposed bill is to repeal all of the amendments to the law affected by the 1931 act, it will, of course, restore the power and duty to levy and collect fees, as provided in section 223 (f).

(8) There is nothing in the proposed new law inconsistent with the procedure of bank examination which it restores and, therefore, the appointment of two examiners to "devote their time to banks not now members of the Federal Insurance Corporation" would, in my opinion, be considered as an additional provision and not substituted for any part of the old procedure as to examination, and these examiners would, therefore, be an extra force.

(9) In my opinion, the effect of the bill, if passed, would be to reenact section 223 (a) with all of its consequences, requiring examinations to be paid for out of fees collected out of 223 (f), and that in addition to the examinations there provided, the special examiners named in the bill will have to make the examinations provided for them as to the banks to which such examinations are applicable.

Escheats; Accounts in Bank

11 September, 1935.

The Constitution of North Carolina provides that escheated property shall be appropriated to the use of the University. Constitution Art. IX, section 7. In pursuance thereof certain statutes were enacted covering the subject of escheats, particularly C. S. Sections 5784 to 5787.

Section 5786 provides:

> Other unclaimed personalty to university. Personal property of every kind, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for five years after the same shall become due and payable, shall be deemed derelict property, and shall be paid to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such property or dividend shall be received by it, then the same shall be held by it absolutely.

It will appear from the foregoing that the statute provides for a change in the custody of the property, which is the subject of escheat, requiring that where it has remained unclaimed for five years "after the same shall become due and payable," it shall be paid to the University of North Carolina and held by it until a just claim has been preferred by the parties entitled thereto; complete ownership of the property does not vest in the University until the expiration of ten years after the property has been received. From this it will appear that the property does not really escheat under a minimum period of fifteen years; but that its

custody changes hands after the expiration of five years from the time it shall become due and payable.

This is important as providing a reasonable time before the property is held to have escheated; and the period provided in this statute is much longer than that which the decisions of the court have held to be reasonable.

Upon a careful consideration, I am of the opinion that the terms of the statutes above mentioned are sufficient to cover deposits in banks, no part of which has been claimed for a period of five years, and that it would be lawful to turn over such deposits into the custody of the University of North Carolina under authority of the said statutes, subject, of course, to provision that such funds may be paid over to the parties thereto entitled upon a proper showing within ten years after the same has been received by the University.

BANKING LAWS: RIGHT OF ONE BANK TO OWN STOCK IN ANOTHER

11 September, 1935.

I understand from your letter that the American Trust Company, a banking organization of Charlotte, North Carolina, owns practically all of the stock of the American Title and Guaranty Company of Charlotte. The American Title and Guaranty Company, meanwhile, owns a large amount of the stock of the American Bank and Trust Company of Monroe and the Bank of Mount Holly at Mount Holly.

Under the banking laws of this State—C. S. Section 220 (c)—one bank is not permitted to hold stock in another bank; and also under subsection 3 of Section 290 (a), Consolidated Statutes, a restriction is placed upon banks as to the holding of real estate. Such real estate can be held only under the restrictions and conditions set out in this subsection.

In my opinion, the present status of the American Trust Company of Charlotte is not justified under the State Banking Laws, as such an institution cannot be permitted to do indirectly that which it cannot do directly. This I feel quite sure no one concerned in the management of the American Trust Company would wish to do.

BANKING LAWS; POWER OF BANKS; UNDERWRITING AND SALE OF SECURITIES

22 October, 1935.

You inquire an opinion upon the following question:

> Are banks incorporated under the laws of North Carolina authorized by law to underwrite or participate in the marketing of securities of a public utility.

The powers of banking institutions are set out in Article V of the Banking Law, C. S. 220 (a) and following. This section, after giving such

banks the powers ordinarily conferred upon private corporations, sets up in detail certain powers which the banks may exercise.

Subsection 4 provides as follows:

> Nothing contained in this section shall be deemed to authorize banking corporations to engage in the business of dealing in investment securities . . . Provided, however, that the term "dealing in investment securities," as used herein, shall not be deemed to include the purchasing and selling of securities without recourse, solely upon order, and for the account of customers; and provided further, that "investment securities," as used herein, shall not be deemed to include obligations of the United States, etc.

It is clear from this that such banks have no authority to deal in investment securities of the character mentioned, except under the restrictions provided in this subsection; that is to say, to buy these securities when ordered by a customer, and that without recourse.

The bank has no authority whatever to underwrite these securities.

Escheats; Unclaimed Bank Accounts

25 October, 1935.

As you know, the subject of escheat of unclaimed bank deposits is a matter which I have endeavored to handle with extreme care. I have an inquiry from you, which has been held in abeyance for quite a period of time, which asks some supplemental advice with regard to the time at which the bank "should" turn over such unclaimed deposits. My former letter to you was only to the effect that such unclaimed deposits might be classified as escheated property and turned over to the University, after remaining unclaimed for a period of five years, that is to say, five years after any demand had been made upon the bank by the owner of the money.

In my opinion, any bank *may* turn over such funds at any time after the expiration of the five years from demand of the owner, and *should* do so when the balances are demanded by the University or its representatives.

Public Banks and Banking; Limitations on Investments

28 October, 1935.

You inquire as to whether or not under the language contained in Chapter 71, Public Laws of 1935, mortgage loans actually insured under the provisions of Titles II and III of the Federal Housing Act are subject to the limitations imposed by C. S. 220, b, c, d, and e.

It is our opinion that under C. S. 220(b) and Section 1 of Ch. 71, P.L. 1935, loans secured by the Federal Government in pursuance to the

Housing Act are not subject to the limitations expressed in C. S. 220 (b). The 1935 Act states that banks can invest in such funds to the same extent they can in Government obligations. The qualifying words, "which are eligible for investment," seem to us to apply to the limitation upon a bank's right to invest part of its funds in any sort of security (C. S. 220-f) rather than upon its right to invest in private securities.

BANKING LAWS; SUITS AGAINST FORMER RECEIVERS; PROSECUTION OF SUCH SUITS BY COMMISSIONER OF BANKS, AS LIQUIDATOR

21 December, 1935.

Chapter 231 Public Laws 1935, as amended by Chapter 277 Public Laws 1935, provides for the taking over, by the Commissioner of Banks, of banks theretofore in the hands of receivers under the State Court, and the liquidation thereof, under certain circumstances, when the liquidation of the bank in the State Court has not been completed or reached the point described in Section 3:

> Where the said receiver has filed his final report and same has been approved by the court, and all matters of said liquidation have been closed.

It is necessary to note this language because it is evident that the statute applies to receiverships where the whole matter has not been closed out by final judgment. In other words, the statute arrests the liquidation by the receivers, that is to say, liquidation by the court process, as provided in the old procedure, and places the liquidation in the hands of the Commissioner of Banks, to be controlled by the provisions of C. S. 218 (c) and following.

The only distinction that I can see here between the status of this proceeding and one originally brought under C. S. 218 (c) is that under the terms of this latter statute the filing of a notice with the Clerk of the Superior Court that the Commissioner has taken charge of the bank under 218 (c), really is the equivalent of a summons and complaint, and an action is thereby constituted in the Superior Court. Incidentally, I may say that out of abundant precaution, it seems to me that the filing of such a notice might be proper even when the possession of the bank is delivered over to the Commissioner of Banks under the 1935 laws.

That the liability of the receivers for any negligence or misconduct injurious to the bank or its creditors is fully preserved, both under the statutes mentioned and under the general laws on the subject, seems to me very clear. The only question is one of procedure.

Even if we consider the procedure as a continuation of the original action under the old law, or as the beginning of a new action under 218 (c), does not seem to me to make any material difference.

In my judgment, whatever remedy might be had in the action already instituted, nevertheless, the Commissioner of Banks has the right to

sue the former receivers and their surety in an independent action to recover for losses occurring through the misconduct or negligence of the receivers, if such exists.

INCOME TAX; STATE OFFICERS AND EMPLOYEES; WHEN SO CLASSED; LIABILITY FOR FEDERAL INCOME TAXES

24 January, 1936.

For the purpose of specific reference, I am quoting yours of January 23rd as follows:

> I am authorized under the provisions of Section 218 (c), subsection 16, as receiver of closed banks, to employ Liquidating Agents, Accountants and Clerks to assist me in my work as said receiver. I would like to have an opinion as to whether these Liquidating Agents, Accountants and Clerks are employees of the State of North Carolina. This opinion is desired in connection with the payment of income taxes.

Perhaps no question considered by the courts requires such nicety of distinction as that you have raised. A study of the question as it relates to the application of income tax laws and the immunity of officers and employees of the one government—state or federal—from the other adds other complications and, generally speaking, each case has to stand upon its own merits.

The confusing nature of this inquiry may be better understood by reading Metcalf & Eddy vs. Mitchell, 269 U. S., 514, which may be considered a direct authority in point.

In that case you will see that a distinction is made between officers and employees of the State Government, and those who perform service under contractual relations which would not quite make them employees.

I doubt whether you could take any one paragraph or limitation or distinction in the opinion in the Metcalf case and apply it in some of the cases which will arise with reference to persons serving you, as Commissioner of Banks, in the various capacities listed by you; and yet from a reading of the whole case I am convinced that a number of these persons perform services substantially similar to those concerned in this case, and under it would not be entitled to immunity from Federal income tax. In my opinion accountants and auditors performing service to the Department in the auditing of particular banks, employed for the purpose of completing the auditing of that bank only and not in the permanent employment of the Department for any and all such work necessary to be done, would have such a contract relation to the Banking Department and to the State as that held by Metcalf and Eddy in the case above referred to.

It seems to me, however, that whole-time liquidating agents, although they may be employed for the liquidation of a particular bank, together with the clerks employed in such liquidation, should properly be considered employees of the State and, therefore, immune from Federal taxes.

I suggest that you have Mr. Taylor read closely the decision that I have mentioned above, and then I will be glad to get your reaction to the same.

CERTIFYING CHECKS; REQUEST OF THIRD PARTY

27 April, 1936.

You ask my advice as to whether or not, in certifying a check at the request of a third party, it is necessary for the bank to have written instructions from the drawer.

Checks may be certified either at the request of the drawer or the payee or holder. Commercial Investment Trust Co. v. Windsor, 197 N. C. 208. The effect of the certification varies according to the party who has it done. The rule is stated in Michie's Banks and Banking, V. 5, p. 467, as follows:

> Certification at the request of the drawer, before delivery, does not discharge him from liability thereon. The certification under such circumstances merely operates as an assurance that the check is genuine and the certifying bank becomes bound with the drawer. But where a check is certified, after delivery, at the request of the holder, the drawer is discharged from further liability, and the check then circulates as the representation of so much money in bank payable on demand to the holder of the check.

It is my opinion that the bank need not have any authority other than the check to certify it at the request of a third party who is either the payee or holder thereof. The check itself, when presented for certification by the third party, authorizes and empowers the bank to certify it when the drawer has sufficient funds available for the payment of the check.

BANKS AND BANKING; WAREHOUSE RECEIPTS ON WHISKEY

23 June, 1936.

I have your letter of June 22, attaching copy of a letter from the Kentucky Bonded Products Company. You inquire as to whether or not a North Carolina State Bank can accept warehouse receipts on whiskey of reputable distilleries stored in the United States Bonded Warehouses as collateral for loans made by such banks. In my opinion, such collateral should not be accepted by a North Carolina State Bank. Should it become necessary to reduce to actual possession, the security thus offered, the same could not be imported into the State as this would be a violation of our law. In my opinion, the acceptance of such warehouse receipts as collateral for loans would be in violation of the present public policy of North Carolina contained in the prohibition laws in effect in this State.

SELF-INSURER; BOND SIGNED BY CONE EXPORT AND COMMISSION COMPANY

30 June, 1936.

I have your letter of June 29, which I have examined carefully, together with the file to which your letter was attached.

When this question arose during the time that Mr. Brummitt was Attorney General, he appears to have expressed the opinion that under the charter of the Cone Export and Commission Company, they might be authorized to guarantee the payment of compensation liability of other corporations in which they own a controlling interest.

It appears that in the case of the Cliffside Mills, your Commission has accepted guaranty of the Cone Export and Commission Company, authorized by resolution reciting that the guarantor owned the controling interest in the Cliffside Mills Company and were directly interested in saving the costs to the insured for compensation insurance premiums.

It appears from your letter that the Cone Export and Commission Company is a holding company and not an operating company, holding stock in several corporations, including Cliffside Mills, Proximity Manufacturing Company and Revolution Cotton Mills. It further appears that the ownership of the various corporations is limited and held by a few individuals largely in the Cone family.

Under the circumstances stated, I am of the opinion that the Commission would be taking very little risk in accepting this guaranty when properly authorized by the unanimous vote of the Board of Directors of the Cone Export and Commission Company. If the question of ultra vires should arise, which is quite doubtful, I am of the opinion, under the circumstances stated, the court would probably sustain the authority for making the guaranty. I am frank to say, however, there is in my mind some question about this as the provisions of the charter do not clearly authorize such a guaranty. If the Commission is of the opinion that it is desirable to accept the guaranty, I do not believe the legal question involved would justify as to change the ruling formerly made by my predecessor.

OPINIONS TO THE DIVISION OF PURCHASE AND CONTRACT

COMMISSIONERS TRADING WITH THEMSELVES; VIOLATION OF C. S. 4388

28 August, 1934.

In your letter of August 23, you say that the Shell Oil Co. is represented in Anson and Union Counties by the Pee Dee Oil Co., of which Mr. Jim Hardison is one of the officers. The Pee Dee Oil Co. is a commission agent, not selling the gas directly, but delivering it and getting a commission on each gallon delivered. Mr. Hardison is also a member of the State Highway Commission.

While I cannot say that there is no doubt about the matter, still it seems to me that if Mr. Hardison was concerned in carrying out for the Shell Oil Co. any contract made with the Highway Commission, that might be construed under C. S. 4388 as making a "contract for his own benefit," within the meaning of the law, although that benefit does not directly result but is obtained in an indirect manner.

The same reasoning would apply to Mr. Luther Hodges, a member of the Highway Commission, with respect to the situation in Rockingham County.

The courts have been very strict in the application of this statute, and every decision which they have made on it is in the direction of enlarging, rather than diminishing, its application.

While as I said, the application of the statute to a case of this sort is not free from doubt, I think the better opinion is that the proposed action would constitute a violation of the law.

OPINIONS TO STATE SCHOOL COMMISSION

SCHOOL LAW; CAPITAL OUTLAY BUDGET; SCHOOL BUSES

1 October, 1934.

Has a county the right to include in its capital outlay budget funds for purchasing school buses for transporting children heretofore provided for by contracting with an individual who furnished the equipment?

It is most difficult to construe the School Machinery Act of 1933 in connection with other acts in the effort to reach a definite opinion on this question. However, in view of the fact that the original purchase of buses was carried as part of capital outlay before operation of schools was taken over by the State, the Supreme Court would probably hold that a county may now levy taxes for such purposes.

As stated, construction of the statute is doubtful, and I regret that I cannot aid you more definitely than I am here stating.

SCHOOL LAW; ALLOTMENT OF TEACHERS; SEGREGATION OF RACES

3 December, 1935.

The determination of the racial status of persons attending the public schools of North Carolina is the determination of a question of fact which must be done by the Administrative Board, or the courts according as the question presents itself.

Insofar as the matter affects the State School Commission in allotting teachers for the white, Indian and colored races, it is a question which that Board or Commission must first determine. Of course, the ultimate decision of such matters, when they are properly contested, is for the courts. It might become a question for the courts in the last instance, even on a matter of allotment, because, of course, where public or private rights are involved, the action of Administrative Boards may usually be reviewed in the courts.

The State laws, as you know, do not permit members of the colored race to attend the white schools. That is true also of the so-called Croatan Indians who have so far succeeded in having a racial status recognized by the law that they are not required to attend the negro schools, although they cannot attend the white schools; but certain counties have separate schools provided for them.

Recently it has come to my attention that a number of so-called Croatan Indians live in the County of Cumberland and that no separate school has been provided for them.

I am mentioning these facts because it may throw some light on the duties of your Commission in considering this matter, and I repeat what

I have above said, that in the first instance, in the question of allotting teachers to the different races, it is the duty of the State School Commission to settle the matter. See Consolidated Statutes 5384 and 5445. You will note that in Sections 5445 and 5384, at least in Robeson County, a record is kept of these Croatan Indians and I suppose that there are other records to which you might resort in making your allotment.

SCHOOL LAW; CHAPTER 245 PUBLIC LAWS 1935; PERSONAL INJURIES TO SCHOOL CHILDREN

2 March, 1936.

I understand from your letter that Nettie Edwards, a pupil in the public schools, was transported by a school bus regularly to and from a school in Person County. Between her home and the school the bus stopped at a store located near the school building, and she went in to make some purchases. As she came out of the store, and while walking toward the bus, the driver backed the bus against her, causing injuries from which she died. The question is whether or not these facts will support a claim for compensation under Chapter 245 Public Laws 1935.

With every inclination to be sympathetic in this matter, and by liberal construction of the Act to make it cover the situation in question, I fear that the Legislature itself has not put enough into the Act to enable us to do so. The Act limits compensation to those sustaining injury or death "while such child is riding on a school bus." Section 6 expressly disclaims liabilities for "personal injuries sustained while not *actually* riding on the bus to and from the school, and for personal injuries received otherwise than by reason of the operation of such bus." In this case it could not be said that the child was actually riding upon the bus. It is true that she sustained injuries on account of the operation of the bus but, in my judgment, the statute requires both conditions before compensation is allowed, to-wit, that the child must be riding upon the bus and the injury sustained must also be by reason of its operation.

SCHOOL LAW; TITLE TO INSURANCE MONEY FOR BURNED SCHOOLHOUSE; DISPOSITION OF FUND; DISTRICT INDEBTEDNESS

4 March, 1936.

Answering your inquiry based upon the letter of Hon. W. D. Pruden of February 28, 1936, I will say that I understand that the Edenton schoolhouse was burned and insurance money collected therefor. The Edenton District is indebted on bonds, possibly for the bonds for the erection of this schoolhouse. The district is therefore preserved for the purpose of taxation and debt service under Section 4 of the School Machinery Act of 1933, and corresponding provisions of the School Machinery Act of 1935.

However, inasmuch as old school districts have been abolished for all purposes other than the collection of taxes therein to be applied to the debt of the district, and since this constituted a virtual repeal of all laws of 1923, and amendments thereto, which permitted a school district to create a debt for the building of schoolhouses, we are now relegated to Article IX, Section 3 of the Constitution, for authority to build schoolhouses and this authority resides in the Board of County Commissioners.

It is true that under the School Machinery Acts referred to, the legal title to school property within a special charter district included within the boundaries of a city administrative unit is permitted to remain in the trustees of the former special charter district. I do not understand this, however, to necessarily involve the consequence that the proceeds arising from the insurance could be applied by such Board to the debt service of that district.

Conceding that some difficult questions arise in the construction of the school law, and conceding also that some portions of it seem rather repugnant when we try to follow all their implications logically, it is clear to my mind that this money should now go to the Board of Commissioners of Chowan County, upon which Board rests the obligation to rebuild the schoolhouse.

SCHOOL LAW; ELECTIONS FOR SCHOOL SUPPLEMENTS; CONSTRUCTION OF SECTION 14, SCHOOL MACHINERY ACT OF 1935; DUTY OF STATE SCHOOL COMMISSION RELATING THERETO

10 April, 1936.

In response to an inquiry as to the function and office of the State School Commission, with regard to calling special elections under Section 14, Chapter 455, Public Laws 1935, (the School Machinery Act) it may be observed that such elections are called "upon request of the County Board of Education in a county administrative unit and/or the school governing authorities in a city administrative unit." Upon such request, it is mandatory upon the tax-levying authorities of the unit to provide for an election upon the question of local supplements to the public school fund provided by the State. It is true that the State School Commission is mentioned in this section, but not as having any duties or authority with respect to the said election, but only with regard to the approval of the supplements themselves, which will be presented in the orderly way by the budget provided for in Section 15.

In other words, the section in question in the first part looks to the approval of the supplements, but in the second part, under the proviso, requires an election where such subject may be submitted to the people before such supplements are allowed, and in this proviso no mention whatever is made of the State School Commission.

OPINIONS TO COMMISSIONER OF VETERANS LOAN FUND

FORECLOSURES; MORTGAGES; RIGHTS OF BIDDERS

21 February, 1935.

You state that foreclosure was had on the above mortgage on December 31, 1934; that at the sale the holder of the second mortgage bid in the property, bidding over and above the amount of your bid, but before the expiration of ten days from the time of the sale, B. H. Parker, the owner of the property and mortgagor, raised the bid and deposited the necessary per cent of the bid with the Clerk of the Court.

You inquire how long a time you may wait before advertising this property again for resale. The statute is not specific on this point; however, a reasonable time would suffice. The deposit for the up-set bid placed with the clerk of the Court by the mortgagor would go to the liquidation of the expenses of the first sale or to the court costs. If there be a surplus of such up-set bid deposit and the land would be sold to a third party, not the depositor, the person depositing such up-set bid would be entitled to his money back. (Harris vs. American Banking Trust Company, 198 N. C., 605.)

You further inquire if, after having proceeded thus far with the foreclosure, that is to say, a sale of the property and an up-set bid filed, are you authorized to withdraw the foreclosure proceedings by virtue of an acceptable arrangement between your Board and the owner, mortgagor.

It was held in Cherry vs. Gilliam, 195 N. C., 233, that the last and highest bidder at a foreclosure sale of a mortgage was but a proposed purchaser under the provisions of Consolidated Statutes 2591, acquiring no right until the statutory provision of ten days had expired, and that the payment of full mortgage indebtedness to the mortgagee within that time would cancel the instrument and all rights arising thereunder.

We think that a satisfactory arrangement between your Board and the mortgagor or owner would be within the law as laid down in the opinion in the case cited above.

WORLD WAR VETERANS LOAN FUND, REFINANCING LOANS ASSUMED BY PARTY OTHER THAN VETERAN

18 September, 1935.

You make inquiry as to whether or not the Department is permitted to refinance a loan which has been assumed by a party purchasing from the original mortgagor.

It is my opinion that unless such refinancing is necessary to conserve the investment, a loan may be refinanced only in the interest of the original mortgagor or in the interest of a purchaser who at the time the property was conveyed to him would have been eligible for the loan originally made.

On the other hand, if necessary to conserve the investment the Department may refinance either upon application of the original mortgagor or upon application of a subsequent grantee.

FORECLOSURES MADE BY NORTH CAROLINA BANK AND TRUST COMPANY; CONSOLIDATION OF THE CITIZENS NATIONAL BANK WITH THE NORTH CAROLINA BANK AND TRUST COMPANY; POWER TO EXECUTE FORECLOSURES BY CONSOLIDATED BANKS

11 February, 1936.

Referring to our conference with you regarding the power of the North Carolina Bank and Trust Company to execute as trustee, deeds of foreclosure, foreclosing deeds of trust originally made to the Citizens National Bank of Raleigh, North Carolina, which was in 1929 consolidated with and became a branch of the North Carolina Bank and Trust Company, we understand the fact to be that there was a merger and consolidation of the Citizens National Bank, a banking corporation created and organized under the national banking laws with the North Carolina Bank and Trust Company, a bank created under the laws of the State of North Carolina, and that this merger or consolidation occurred in 1929. Subsequent to the merger or consolidation of these banks, the North Carolina Bank and Trust Company in its name executed various deeds of foreclosure under deeds of trust made by veterans to the Citizens National Bank, as trustee for the Treasurer of the State of North Carolina. It is understood that this foreclosure assumed that the powers vested in the Citizens National Bank had become vested in the North Carolina Bank and Trust Company by the merger, and that they had the power under law to validly execute foreclosures of the original deed of trust to the Citizens National Bank. Our investigation is confined to this proposition. We are referred to the copy of a letter from Messrs. Kellum and Humphrey, directed to Mr. Richard Braak, Castle Hayne, N. C., under date of February 4, 1936, in which they conclude that title passed through such a foreclosure deed was invalid for want of power on the part of the North Carolina Bank and Trust Company to execute trust.

In the communication, Messrs. Kellum and Humphrey referred to Section C. S. 217 (k) and C. S. Section 217 (l). Section 217 (k) provides that, "A bank may consolidate with or transfer its assets and liabilities to another bank providing the machinery by which this may be done." Section 217 (l) provides, "In case of consolidation the consolidated banks shall be deemed one company, possessing all the rights, privileges, powers and franchises of the several companies, etc."

The attorneys did not, however, refer to Sections 217 (o) and 217 (p) C. S.

Section 217 (o) provides that any bank or trust company, incorporated under the laws of North Carolina, may consolidate with any national banking association and that when the consolidation is effected all the rights, franchises, interests of such trust company so consolidated with the national banking association in and to every species of propetry, real personal and mixed, shall be deemed to be transferred to and vested in such national banking association, into which it is consolidated without any deed or other transfer, and the said consolidated national banking association shall hold and enjoy the same and all rights or property, franchises and interests *including the right of succession as trustee*, executor, administrator or any other fiduciary capacity in the same manner and to the same extent as was held and enjoyed by such bank or trust company so consolidated. This provision was adopted, Chapter 148, Section 1, Acts of 1929.

Section 217 (p) C. S. provides that:

"Whenever any bank or trust company, organized under the laws of North Carolina or the acts of Congress, and doing business in this state, shall consolidate or merge with any other bank or trust company doing business in this state, as provided by the laws of North Carolina or the Acts of Congress, all and every the then *existing fiduciary* rights, powers, duties, and liabilities of such consolidating or merging banks and/or trust companies, including the rights, powers, duties, and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of such consolidation or merger, vest in, devolve upon, and thereafter be performed by, the consolidated or merged bank or trust company." (1931, c. 207).

The National Banking Act provides in Section 12 U. S. C. A. 34 (a) for consolidation of State and National banks and that all the rights, franchises and interests of each of the constituent banks in and to each species of property, real, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such consolidated national banking association. Commenting upon this Section, it is said in Fletcher's Encyclopedia of Corporations, page 60, Volume 15, "The provisions of the act under consideration 12 U. S. C. A. 34 (a) that the consolidated national bank shall hold and enjoy the right of succession as trustee, executor or any other fiduciary capacity in the same manner and to the same extent as enjoyed by the State bank, seems to carry the import that in case of consolidation, the national banking association shall possess and enjoy all of the appointments as executor, administrator or other fiduciary capacity held by the absorbed bank." In the case of Bayer v. Barrett, 15 P (2d) 801 (Cal.) it was held that where a State bank, a trustee under a deed of trust, was consolidated with the national bank, the latter succeeds to the trusteeship.

In the case of Adams v. Bank, 116 So., 648 (Fla.) it was held that where a national bank consolidated with a bank created under the laws of the State of Florida, the consolidated bank succeeded to the Florida bank's status as executor and trustee in various deeds of trust.

Arguing against the validity of the foreclosure deeds executed by the

consolidated bank, Messrs. Kellum and Humphrey cite Mitchell v. Shuford, 200 N. C. 321, in which it was pointed out that in the absence of controlling statute a commissioner of banks was unauthorized to execute a power of sale given to a defunct bank. It is also argued by these attorneys that a consolidated bank could not succeed to the powers created by a deed of trust. Under the theory that a trust relationship implies confidence and discretion cites Ruling Case Law.

In 15 Fletcher's Enclyclopedia of Corporations, page 94, dealing with the subject on succession of constitutent company's status and powers as trustee or executor, it is said:

"The selection of a trustee implies personal confidence in his discretion and judgment, and as a general rule he cannot delegate his authority to another. Some question has arisen as to whether this rule presents an obstacle to the exercise of power by a consolidating or merging company to act as trustee or executor, where one of the constituent corporations was named as such. A corporation, it has been said, is without personality, and if it is selected as trustee or executor, there can be no reliance upon individual discretion. The element of trust in the judgment and discretion of an individual being entirely wanting, the rule against delegation of authority cannot apply, and does not operate to prevent the new or continuing corporation from succeeding to the status and powers of the old corporation as trustee or executor, even though the instrument creating the trust itself specifically prescribes the method or means whereby a vacancy occurring for any reason in the office of trustee may be filled."

In Section 7086, page 77 f, this writer says:

"The corporation resulting from a consolidation or merger acquires all the property, rights, powers, franchises, and privileges of the constituent companies. (p. 77). . . . Generally, the statutes authorizing the combination prescribe or define the rights and powers of the new or absorbing company, declaring usually that it shall possess all the rights, privileges, powers, franchises, and all the property of the several corporations, and be subject to all the restrictions, disabilities and duties of such corporations."

See case of Chicago Title and Trust Company v. Zinzer, 105 N. E. 718 (Ill.) in which this court holds that the consolidated corporations by virtue of the merger become entitled to execute, as trustee, powers conveyed to the constitutent corporations, and point out that in naming the corporation as trustee, the element of personal trust and confidence, which incident to personal trustees, is entirely lacking.

Apparently, we have direct and sufficient statutory authority for the execution and powers contained in the several deeds of trust provided by Consolidated Statutes Section 217 (p). Upon general principles when statutory power is thus created, it is within constitutional limits and the power of the legislature to so provide, and to all intents and purposes would be effectual.

It may be noted that Section 217 (p) was adopted by the legislature of 1931, Chapter 262, Public Laws of 1931, effective March 30, 1931. As to foreclosure deeds subsequent to this enactment, we have ample and

direct statutory support. As to foreclosures executed prior to enactment of this statute, it would appear that Section 217 (o) C. S. contemplates the merger of a State bank with a national bank, whereby the State bank becomes a national bank. This enactment was by Chapter 148, Section 8, Acts of 1929. Sections 217 (k) and Section 217 (l) were enacted in 1921. Under controlling principles of common law as well as the direct statutory provisions herein cited, we conclude that upon the merger of the Citizens National Bank with the North Carolina Bank and Trust Company, the powers and trust conveyed to the Citizens National Bank at once became vested in the merged bank and that it had the power and authority to execute in the proper form and in compliance with the powers set out in the various deeds of trust, the powers thereunder created..

The purposes indicated in the banking laws in the Sections hereinbefore referred to are in accord with the provisions of law applying to other corporations. See C. S. 1224.

OPINIONS TO COMMISSION FOR THE BLIND

OPTOMETRY; WHOLESALE RATE ON GLASSES

26 February, 1936.

Supplementing an opinion of this office to you, of date 8th January, 1936, we are of the opinion that where your Department purchases supplies, such as glasses or other instruments used in the practice of optometry, it would be entirely proper and not in violation of the law regulating optometry where such equipment is purchased or work done upon prescription by a regular or licensed optometrist for your Commission to purchase this equipment and/or have such work done at a wholesale rate, that is to say, such supplies, equipment and work could be furnished to your Commission by a wholesale house at such rates as your Commission and such company should agree upon.

AID TO THE BLIND; CHAPTER 53 PUBLIC LAWS 1935

2 March, 1936.

You inquire whether under the authority given in Chapter 53 Public Laws 1935, your Commission may establish a blind person in the poultry business, building the necessary poultry houses. The appropriate part of this chapter, to which reference must be made for such authority, if it exists, is Section 5, the pertinent part of which reads as follows:

> . . . The Commission may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or machinery to them . . .

I cannot see how this language could be expanded into authority for building poultry houses. I do not think it was the intention of the Legislature to go to this extent. It was probably the intention of the Legislature to furnish to individual blind persons machinery necessary to engage in a particular occupation, as well as the material which might be manufactured into a finished product on such machinery.

Having gone thus far, it does not seem to me that it is necessary to consider the matter of establishing on other people's land buildings of a permanent character, even though a part of such structure might be salvaged during the term of rental by agreement.

CHAPTER 53, ACTS OF 1935

4 March, 1936.

I have your letter of March 3. Section 5 of Chapter 53, Public Laws of 1935, in part provides as follows:

> The Commission may also, whenever it thinks proper, aid an individual blind person or groups of blind persons to become self-supporting by furnishing machinery or material to them, and may also assist them in the sale and distribution of their products; but this shall not be deemed to authorize the making of gifts by the commission.

Under this provision, I am of the opinion that you would be authorized to furnish materials to the blind individuals to enable them to become self-supporting, for which they are to reimburse you. It would appear from the statute quoted that you would have authority to furnish them material or machinery which would aid them in becoming self-supporting. In view of the provision that you should not make a gift in furnishing the machinery and equipment it would perhaps be well that it should be understood that the title to such property should remain in the Commission and as conditions might require that it should be returned to them.

STATE AID TO THE BLIND; RELATION TO REQUIREMENTS OF SOCIAL SECURITY BOARD

2 April, 1936.

I regret that my necessary absence from the office has delayed answer to your letter of March 28.

On arrival today, I find telegram of Miss Amy P. Tapping on this subject, and reference in the telegram to our interview of last Friday.

Outside of the provision made for the blind in Chapter 53, Public Laws 1935, under which the Commission of which you are Executive Secretary was established, and outside of certain other provisions made under the laws relating to charitable institutions, and particularly the State Hospital for the Blind, we must look to the general laws of the State relating to the care of indigent persons to find authority for relief of the blind.

In other words, in the enactment of its poor laws and its laws for the relief of indigent persons the State has not segregated or classified blind persons as a class. They receive relief as other indigent persons of the State under the poor laws.

The Constitution of the State authorizes taxation for the care of all of its poor, and this duty has been placed upon the Commissioners of the several counties and is, therefore, a county activity. Municipalities, likewise, have the power to raise and disburse funds for the poor.

The care for the poor is, of course, mandatory. A large discretion must be, and of necessity is, given to the governing bodies of counties and cities with regard to the definition of the poor and the classification of those who are entitled to receive public relief. These bodies could be reviewed only or dealt with because of an abuse of this discretion. There is no question in my mind but that these public officers would be guilty of a violation of law if they arbitrarily and in abuse of such discretion refuse to extend relief to eligible persons.

At our conference last Friday, I gave it as my opinion, and I still adhere to that opinion, that it would be feasible to have the blind of the county, for the purpose of administration of the State and Federal Funds, classified so that it might be definitely ascertained what portion of the poor fund, according to experience or in exact accordance with computations from the lists, were receiving help or might expect to receive help under these laws, and the amount which they were receiving.

Our budgetary laws and practices do not contemplate the establishment of a contingent fund in this respect.

While I see no reason that the plan under which this relief work for the blind is carried on in this State might not, for administration purposes, at least, be correlated with the requirements of the Social Security Act, I can only state the law just as I find it.

The telegram of the Governor of December 30, 1935, relating to assistance to persons residing in the State five years during the nine immediately preceding the application, and one year continuously preceding the application, doubtless referred to the question of settlement of paupers or indigent persons required in this State in order to be eligible for county support. This is Section 1342 of the Consolidated Statutes, which fixes the time required for eligibility as actual domicile for one year, and speaks for itself. It seems somewhat more liberal than the requirements under the Social Security Act.

OPINIONS CONCERNING THE GREATER UNIVERSITY

CROATAN INDIANS; RIGHT TO ADMISSION TO THE UNIVERSITY AS STUDENTS

8 September, 1934.

In your letter of September 7, you say that three Croatan Indians from Robeson County have applied for admission into the North Carolina State College of Agriculture and Engineering of the University of North Carolina, and you inquire whether or not these men are entitled to admission. I note that it is your understanding that the Indians of Robeson County have all the rights and privileges of white people in this state. Referring exclusively to the civil rights and privileges under the 14th Amendment to the Constitution, this position is probably correct, but our Court in McMillan v. School Committee, 107 N. C., 609, has not considered that as prohibitive as regards segregation of the races in the schools; and in this respect the Croatan Indians of Robeson County stand upon no better footing than any other person, regardless of race.

The question as to whether or not the provisions of the law requiring a separation of the races in public schools apply to the University and its branches, has been a matter of controversy, and occasionally, as you know, as in the instance of Hocutt v. Wilson, persons of the colored race have attempted to enforce an alleged right to be admitted to the University. The case I refer to resulted in a judgment in the Superior Court adverse to the applicant's claim, and the case was not carried further by the applicant. However, the case yields no principle which might be applied to a real solution of the matter.

A very difficult situation would be produced, beyond any doubt, and one which would not be helpful to any of the races involved, by an attempt to admit persons of color to any branch of the University, and to attempt to apply to these schools any other policy than that which is applied to other public schools of the State through positive law. It has been the policy and the purpose of the State to afford to persons excluded from the white public schools of the State equal educational facilities in other schools provided for them. As far as has been possible, and presumably in exact proportion to their needs, this policy has also been pursued with reference to the higher educational institutions of the State. and the segregation principle preserved as a part of said policy.

The Croatan Indians of Robeson County are not admitted to the public schools for the white race. C. S. 5384, 5385.

In my opinion, before taking action of such a nature, it is highly important that the views of those responsible for the policy of the University as a whole be considered, as I regard the matter as being of extreme importance in its every aspect.

STATE COLLEGE EXTENSION WORK; POWER UNDER ITS CHARTER AND PERTINENT STATUTES TO RECEIVE GRANTS FROM THE WPA, AND TO TAKE TITLE TO PROPERTY

19 November, 1935.

The State College of Agriculture and Engineering, a branch of the University of North Carolina, is proposing to enter into a project whereby about $500,000.00 is to be received as a grant from the Federal Government, under the WPA, upon an expenditure by the college of about $115,000.00, the grant to be used in the acquisition of sites and the construction of buildings at desirable points scattered over the State of North Carolina where the marketing of farm products, except tobacco, may be made, under conditions which would enable the college both to study and direct methods of marketing, to establish and cause to be applied methods therefor, and more particularly to foster and encourage immediate methods of the preparation of farm products for market, and to cause such methods to be applied in actual practice.

It is further stated that such a scheme would include the marketing in such buildings of farm supplies.

In my opinion, the project, as I have simply outlined it, is within the scope of the purposes for which the State College of Agriculture and Engineering was created, and sufficiently related to the recognized functions and activities of this institution, more especially under the statutes transferring to the college a large part of the experimental work done under authority of the laws relating to the Department of Agriculture to be justified as a legal exercise of authority.

The college may receive grants and endowments. While it may not have authority to create a debt for the initial $115,000.00 necessary to secure the Federal grant, and while it may not be at present possessed of any funds available for that purpose, it is my understanding that it is possible to receive an endowment in such amount for this purpose, or that the necessary funds may be raised by rental of the property which the college acquires, so it is unnecessary to consider this phase of the subject.

Any question as to the use of the property thus acquired by the college is, in my opinion, a question of policy and does not affect the right to receive the grant and to use it in the erection of buildings, in accordance with the requirements and conditions under which the grant is allowed.

C. S. 4217-4220; HAZING; READMISSION OF STUDENT EXPELLED AT A LATER TERM

10 March, 1936.

I am of the opinion that the expulsion of Mr. Taylor on January 1, 1932, on account of engaging in hazing under the provisions of C. S. 4218 would not prevent you from readmitting him as a student upon his

application at this time, provided you find he is otherwise qualified for admission.

The statute under consideration goes no farther than to require that a student should be expelled who had violated the provisions of Section C. S. 4217. There is no prohibition against his being readmitted at a later date in the same college or in another college. The public policy involved would not indicate any reason why he should not be admitted now following being expelled on January 1, 1932.

CHAPTER 400, PUBLIC LAWS 1933; BIDDING ON CONSTRUCTION; DEPOSIT ACCOMPANYING BIDDING; IN RE: INSTITUTE OF GOVERNMENT BUILDING AT CHAPEL HILL

28 March, 1936.

I find from your inquiry upon the above subject, and from the accompanying data, that a competitive bidding was instigated in connection with the constructing at Chapel Hill of a building for The Institute of Government. The low bidder at such bidding seems to have been J. L. Powers. This bid was accompanied by certified check on a South Carolina Bank, and protests have been filed by certain competitors, including Carolina Heating and Engineering Company and Bagwell Plumbing & Heating Company, based upon the fact that the certified check was not, as required by statute, "on some bank or trust company authorized to do business under the laws of the State of North Carolina." These protesting competitors do not suggest in their letters whether or not the award should be made to the next low man, or whether a new bidding should be instigated. While the bid is protested by the next lowest bidders, it is not clear whether they are seeking to enforce a right to the contract as low bidders, or otherwise. In the view I take of the matter, this is immaterial.

The pertinent part of the statute is quoted above. In my judgment, this provision of the statute requiring a deposit was intended to protect the Board, or Governing Body, against imposition by a bidder who might refuse to enter into the contract after his successful proposal. I do not think that it was intended to be a condition precedent to the acceptance of the bid, but, on the contrary, in my opinion, this provision is purely directory and a valid contract may be made with the low bidder, notwithstanding the fact that a certified check on a South Carolina bank was deposited instead of a check on a bank or trust company doing business in this State, or authorized to do business therein.

OPINIONS TO STATE HOSPITALS AND INSTITUTIONS

CASWELL TRAINING SCHOOL; LIABILITY OF COUNTIES FOR SUPPORT AND TREATMENT OF INMATES; WHO MAY BE INMATES

17 July, 1934.

In your letter of July 13, you asked to be advised as to whether the Directors of your institution have a right to charge the counties for the support and treatment of children entering the institution in cases where the parents are unable to pay the cost. You also asked whether the Superintendent and Board of Directors of the Caswell Training School have the sole power to determine who may, or may not, be received as inmates of the institution.

With respect to the first question, I find that there is no law existing which requires the counties to be responsible for the cost of the support and treatment of inmates committed from the counties into your training school. Section 8 of Chapter 266 of the 1915 Public Laws did provide that the County Commissioners of the counties committing inmates to your institution could be held responsible for the cost of their support and treatment therein, but this section was specifically repealed by Section 5, Chapter 224 of the Public Laws of 1919. I can find no act since that time requiring the counties to be responsible for this cost.

Chapter 120 of the 1925 Public Laws placed all of the State's charitable institutions upon the same basis relative to the payment of the cost of the support and treatment of inmates in such State institutions. The general effect of that act was to require all inmates, or their parents or guardians or any other person responsible therefor, to pay this cost to the institution in which such patient is an inmate, who were able to pay same, and that in those cases where such inmates or persons responsible therefor were unable to pay this cost, same should be borne by the State.

With respect to the second question, I refer you to Chapter 34 of the 1923 Public Laws, which repeals Section 2 of Chapter 266 of the 1915 Public Laws, and which now provides as follows:

> Section 2. That hereafter there shall be received into Caswell Training School, subject to such rules and regulations as the Board of Directors may adopt, feeble-minded and mentally defective persons of any age when in the judgment of the officer of the Public Welfare and the Board of Directors of said institution it is deemed advisable. All applications for admission must be approved by the local County Welfare officer and the Judge of the Juvenile Court or Clerk of the Court in the county wherein said applicant resides.

The above is the present law in regard to this subject. Prior to the passage of Chapter 34 in 1923, the law then provided that the Board of Trustees of the institution had the sole right to determine what inmates

might be received into the institution, subject only to the approval of the County Commissioners, but that was changed by the 1923 Legislature as above shown.

TAXATION; BLIND PERSONS; FREE PRIVILEGE LICENSE

31 October, 1934.

Chapter 53 of the Public Laws of 1933 provides the method whereby certain blind persons may obtain free privilege licenses for carrying on business in this State. The terms and methods upon which these free privilege licenses may be obtained are set out in that statute, which you no doubt have. The application must be made to the Board of County Commissioners.

Section 146 of the Revenue Act of 1933 provides for a State license tax of $100 on dealers in cap pistols and fireworks, and also provides that counties, cities and towns may levy a license tax on the business not in excess of twice that levied by the State.

It would seem from these statutes that the free license privileges granted under Chapter 53, Public Laws of 1933, apply to all the privilege or license taxes when the applicant comes within the terms of the statutes and meets the conditions as therein set out.

STATE HOSPITAL; OVERCROWDING OF PATIENTS

11 May, 1935.

There is no obligation on your part to receive a patient in your institution when the same is already filled to capacity. However urgent the case may be, if your facilities be already taxed to capacity, and, as a result of such congested condition, the receiving of an additional patient would tend to jeopardize the welfare, not only of such patient, but also of those already admitted, you are clearly within the exercise of your discretionary power in refusing to receive such additional patient.

MISCELLANEOUS OPINIONS

CONSTITUTIONAL LAW; ASSUMPTION BY COUNTY OF DEBT INCURRED FOR BUILDINGS NECESSARY FOR SIX-MONTHS SCHOOL TERM

12 July, 1934.

In your letter of July 6, you submit certain inquiries, based upon the opinion of the Supreme Court in Hickory v. Catawba County, 206 N. C., 165, which I undertake to answer as follows:

If the county has assumed no debt of any school district incurred for buildings to provide the minimum six-months school term, must the county assume this debt at the request of a municipality lying within the county?

The answer to this question cannot be definitely and specifically predicated upon the Catawba County case. However, the reasoning in that case supports the view that where the county has incurred indebtedness for the erection in some districts of buildings necessary for the six-months school term, it may be required to take over and assume the indebtedness incurred by other districts in the county for school buildings found to be necessary for the conduct of the constitutional six-months school term. This question is not necessarily decided by the Catawba County case, but it is my opinion that the court would hold as just stated in a case properly presented involving such a situation.

PLUMBING AND HEATING CONTRACTORS, CHAPTER 52, PUBLIC LAWS OF 1931

23 July, 1934.

You state that a plumber resides within the corporate limits of a town of more than 3,500 population and engages in a contract with an owner for the installation of plumbing and heating in a building to be located outside of the city limits, and inquire if such a plumber has violated the provisions of the above Chapter, particularly in regard to Section 6 thereof.

This Section, as you know, provides that every person, firm or corporation desiring to enter into or carry on the business of plumbing and heating contracting shall apply to the State Board for examination and license. It further provides that requirements of said Section shall not apply to persons engaged in the plumbing and heating business in towns or cities having a population of not more than 3,500.

This is to advise that it is our opinion that if this plumber carries on his business entirely outside of the corporate limits of your town, he would not be subject to the provisions of the law referred to. If, how-

ever, he engages in the business within the corporate limits of your town, he would be subject to the provisions of the act.

STATE BOARD OF COSMETIC ART; APPROVAL OF SCHOOLS; EXAMINATION OF APPRENTICES

28 November, 1934.

Section 10 of Chapter 179 Public Laws 1933, relates to the issuing of Certificates of Registration as Registered Apprentices by the State Board of Cosmetic Art Examiners, and it prohibits the issuing of such certificates except under certain conditions. One of those conditions in subsection (c) is that such person must have completed at least 480 hours in classes in a reliable cosmetic art school or college, approved by the Board of Cosmetic Art Examiners.

In my opinion, the question of approval of the school or college in which an applicant has been prepared comes up at the time that such applicant presents himself or herself for examination. I do not think that it was in the contemplation of the law that the Board of Cosmetic Art Examiners should make a general order approving any particular school. This, however, would not be objectionable, perhaps, with the understanding that the effective approval would be made at the time of the examination of the applicant, and in that connection.

My interpretation of the law is that such a school need not necessarily be within the State of North Carolina. Therefore, if the school outside of the State meets the requirements, I do not think that the Board would be justified in refusing the certificate to an applicant simply because the school, otherwise acceptable, is outside of North Carolina.

COSMETOLOGY; CHAPTER 179 PUBLIC LAWS 1933, SECTION 20

16 February, 1935.

A proper construction of section 20, Chapter 179 Public Laws of 1933, relating to the practice of the cosmetic art, in my judgment will permit a person who was practicing the cosmetic art on the 27th day of March, 1933—the date of the ratification of the act—to file the affidavit, comply with the provisions of the act, and receive the license. The fact that such person has not practiced the cosmetic art since that date would not affect the situation.

WORKMEN'S COMPENSATION ACT; EMPLOYMENT BY COUNTY; SHERIFF; DEPUTY SHERIFF

7 March, 1935.

You have inquired of me in regard to rulings of this Department relating to insurance coverage under the Workmen's Compensation Act. The direct questions involved are:

(a) Whether or not a sheriff can, under any circumstances, be considered an employee of a county.

The answer is no. The sheriff is a constitutional officer and gets his authority through election by the people. Notwithstanding the fact that he may be on a salary, and that salary provided for by the County Commissioners, this fact would, in my opinion, be contradictory to any relation of employment between the County Commissioners or the county and the sheriff.

(b) Is a deputy sheriff an employee of the sheriff or the county?

Ordinarily, the deputy sheriff is an employee of the sheriff who appointed him, because there is no real relation between such deputy and the county. However, this situation may be altered, and often is altered by public-local acts relating to deputy sheriffs. In my opinion, the public-local act relating to Moore County, whereby the deputy sheriff is not paid by fees from the office but must turn these into the county and is paid a salary provided by the county, would make such deputy sheriff an employee of the county and entitled to be included in a policy of insurance taken out by the county.

GASOLINE TAX, HAYDEN-CARTWRIGHT ACT

11 April, 1935.

I find memorandum on my table containing request by you for an opinion on the adoption of the section of the Budget Revenue Bill applying three per cent sales tax to the gross price of gasoline with tax added, the particular inquiry being as to whether or not this would offend against the Hayden-Cartwright Act so as to penalize the State for diversion of highway funds. It is the duty of this Department, of course, to answer as far as it can any such question propounded by you as Chairman of your Committee, and I may also add that I am equally anxious to comply with any personal request of yourself. I fear, however, that my answer to your question may not be as complete and satisfactory as you could desire, for reasons explained in this letter.

The tax imposed by Chapter 145, Public Laws 1931, Section 24, subsection (5)—six cents per gallon on motor fuels—is, under the interpretation given the law by our courts (Stedman v. City of Winston-Salem, 204 N. C., 203), an excise tax upon the use of the gasoline which, of course, is to be paid by the consumer, and the tax levied under Division E of the Revenue Act (the sales tax) is also paid by the consumer. In both instances the tax is not a part of the purchase price as such, but is added to the purchase price. The imposition of the three cents sales tax upon gasoline sales to be credited upon the six cents road tax on gasoline, therefore, has the effect, as we all can readily understand, of transferring a proportional amount from the funds raised by the road tax to the General Fund, and this transfer is, of course, accomplished by encroaching upon the six cents road tax proceeds.

According to the experience of four years' average price of gasoline

at fourteen cents, this will amount to a transfer of about $1,083.00. Calculated upon the total amount paid by the consumer, including tax, I understand the total would be approximately $1,630,000.00. This exceeds by $630,000.00 the transfer under the legal setup in existence at the time of the enactment of the Hayden-Cartwright Act, and would be a transfer of the total amount from the road fund.

As to whether this is a violation of the Hayden-Cartwright Act or not, I do not think it is any longer for me to say, since the direct point has been presented to the Federal Bureau of Roads, which has the final interpretation of this Act and the administration of the Federal Fund, and the Chief of that Department has written a letter about the matter. While it may be said that this letter itself requires interpretation, it is apparently as far as the Federal Department was willing to go, and I cannot be expected to give an opinion independently of the authority which has the final word, and by which that authority would not be in any manner bound.

I did undertake to pass upon this matter before the question was submitted to Washington, but I consider that the attitude of the Washington Department towards the matter is final and controlling.

I think, too, that it would not be safe for me to draw any inferences from the conversations which we had with Mr. Boykin and Mr. MacDonald while we were together in Washington, because I did not understand that these gentlemen had consulted together about the matter and there were some differences as to the extent to which each would recognize a diversion of funds as not being offensive to the Hayden-Cartwright Act. Also, I take it that Mr. MacDonald's letter is upon mature consideration of the matter, and whatever more liberal views he may have had are either expressed in the letter or controlled by it.

CONSTITUTIONAL LAW, ARTICLE II, SECTION 29; FIXING THE HOURS OF OPENING AND CLOSING OF BARBER SHOPS IN DURHAM COUNTY

13 April, 1935.

You inquire whether or not in my opinion an act of the Legislature which would prohibit barber shops in Durham County from opening sooner than eight o'clock in the morning or staying open later than six o'clock in the evening would be void as violating Section 29 of Article II of the State Constitution.

In my opinion, it would. The section of the Constitution referred to prohibits the Legislature from enacting local, private or special laws relating to the subjects enumerated therein. Amongst the subjects listed we find the following:

Regulating labor, trade, mining or manufacture.

I am of the opinion that the proposed legislation would regulate labor and trade in the County of Durham by special or local act.

The restrictions proposed would probably render the act unconstitutional in other respects, but I am not asked to pass upon this.

Usually, when local conditions are such as to justify it, municipalities

must deal with such local conditions under the police powers invested in them, and not through legislative enactment of this kind. I am not, however, suggesting that the purpose of this bill may be accomplished by a local ordinance. I am only saying that such an ordinance would probably have a better chance of survival in the courts than the proposed bill.

NORTH CAROLINA RURAL REHABILITATION CORPORATION

9 July, 1935.

You have presented to me the proposed "Resolution of the Stockholders and the Board of Directors of the North Carolina Rural Rehabilitation Corporation" for attention to subsection "A," which is designed to transfer all of the assets of the corporation to "the United States of America and/or the Resettlement Administration," the transfer to become effective, however, upon the written approval of the Attorney General of this State.

I regret that upon the facts of the case and applicable law, I am unable to find authority for this transfer.

The North Carolina Rural Rehabilitation Corporation appears to have been incorporated under the laws of the State of North Carolina for the specific purpose of receiving and administering grants of money and "financial and/or other aid" from the Emergency Relief Administration of the State of North Carolina, and grants from such other sources, State and Federal, as might be available.

These funds were, and are, to be used for the public purposes enumerated in the Certificate of Incorporation, Article III, subsection A—in brief, for rural rehabilitation. Very broad powers were given to the Corporation in carrying out these purposes, in the way of acquisition and disposal of property, incurring obligations, lending money, dealing in notes, and evidences of debt—making almost every conceivable kind of contract, and entering into all sorts of business. My understanding of the matter is that this type of Corporation was acceptable to the Government, and indeed probably suggested by one or other of the Authorities, because of the extended privileges which were given to it under the North Carolina law, and the facilities for service which might be afforded thereby.

The North Carolina Rural Rehabilitation Corporation received large grants of money from the Emergency Relief Administration of the State of North Carolina, which grants were originally made to the State through its Governor, to be expended in the manner above set out. These grants, as I understood it, were irrevocable and have been considered absolute and unconditional.

By Chapter 314 Public Laws 1935, the North Carolina Rural Rehabilitation Corporation was recognized as a State agency and its powers with regard to grants of money for the purposes set out in its charter were confirmed and perhaps extended; and by virtue of its status as a State agency, this Department has held it to be immune from taxation.

In the Certificate of Incorporation, Article VI, it is specifically stated that the balance of funds on hand upon dissolution of this Corporation, and after the discharge of its obligations, "shall become a part of the General Fund of the State of North Carolina, subject to appropriation by the State Legislature." This clause of the charter, recognized by all Authorities which have dealt with the Corporation, creates an equity in favor of the State of North Carolina with respect to the funds in the possession of the Corporation when it ceases to function. It is not necessary to consider whether that equity is impressed with a trust, as we are considering an agency of the State and an incorporation under its laws.

Considering the foregoing, I am of the opinion that this corporation is without authority to transfer its funds and to terminate its trust by devolving the same upon another agency by transfer of such funds; nor do I think that it has the power to transfer funds to the United States of America, or the Resettlement Administration, which its charter expressly provides should be turned over to the State of North Carolina, thus destroying such equity as the State might have in such funds, whether beneficial or in trust. Such transfer, in my opinion, could be made only by legislative authority, which is now wanting.

APPLICATION FOR PLUMBING AND HEATING LICENSE; LOCAL ORDINANCES REQUIRING EXAMINATION

23 August, 1935.

Chapter 52, Public Laws 1931, created the State Board of Examiners of Plumbing and Heating Contractors. The Act provided for state regulation and licensing of all such contractors operating in towns of more than 35,000 population.

In my opinion, the passage of the above Act did not repeal the provisions of Section 2819, C. S., authorizing municipalites to regulate and license plumbers and electricians, and, by implications, heating contractors. There is nothing in the Act of 1931 which is inconsistent with the powers given to municipal corporations in this respect.

A municipal corporation, of course, has no authority to license a person who has not met the requirements and regulations established by the State Board under the 1931 Act.

INTERPRETATION OF SECTION 15, SUBSECTION (d), OF CHAPTER 119, PUBLIC LAWS 1929

1 October, 1935.

In my opinion, Section 15, subsection (d), Chapter 119, Public Laws 1929, exempting from the provisions of the Act "students in schools, colleges and universities who follow the practice of barbering upon the school, college, or university premises for the purpose of making a part

of their school expenses," applies to students in bona fide schools where barbering only is taught just as it applies to other schools of whatever character; in other words, students of such barber schools would not violate Section 1st of this Act, prohibiting the practice of barbering without certificate; and, in fact, would violate no other provision of the Act from which they are completely exempted.

HISTORICAL COMMISSION; AUTHORITY TO MAKE EXPENDITURE FOR OPENING INDIAN MOUND

15 November, 1935.

I understand that an application has been made to the Historical Commission for an allowance of $25.00 to be used in the excavation of an Indian mound in Randolph County, supposed to contain material of historical interest pertaining to the early history of this State. You inquire whether or not the Historical Commission is authorized to make such expenditure.

In this connection, I understand that there is a sufficient sum in the General Fund of the Commission not budgeted or earmarked for other purposes. The only question is as to whether or not, under the law, the expenditure can be made out of this fund.

I think it can. Section 2, of Chapter 714, Public Laws 1907, amendatory of other pertinent laws, has to do with the authority and duty of the Commission.

That section says in part:

> It shall be the duty of the Commission to have collected from the files of old newspapers, court records, church records, private collections, and elsewhere, historical data pertaining to the history of North Carolina, and the territory included therein, from the earliest times.

Amongst the purposes for which the Commission has been created, as will further appear from this section, we find this:

> To encourage the study of North Carolina history in the schools of the State and to stimulate and encourage historical investigation and research among the people of the State.

In this connection, the Commission is required to make a biennial report of its receipts and disbursements. It is very clear to my mind that disbursements for these purposes are expected to be made, and the only inquiry is as to whether the project proposed comes within the purposes of organization and the duty of the Commission, as outlined in the laws to which I have referred.

In my opinion, very clearly it does. I do not interpret the term "historical data" as relating entirely to written records. Following the course of recent historical investigation, we find that the most fertile field for such investigation and for acquiring data bearing upon the very earliest history of the country is found in projects of this kind; in the excavation, study and classification of the burial grounds of by-gone races and the implements and objects found therein.

BARBERS ACT; CERTIFICATE ISSUED THROUGH ERROR; REVOCATION

17 December, 1935.

In reply to your letter of December 16, may I say that it is the opinion of this office that a certificate of registration issued through error, to one who is under seventeen years of age and who has not taken the training course or examination prescribed by Section 3 (c) and (d) of Chapter 119, Public Laws 1929, may be revoked by the Board of Examiners, even though Section 19 does not specifically list such issuance through error as one of the causes for revocation; nor would the fact that such person is now over seventeen years of age alter the matter. This opinion is based on the apparent intention of the Legislature, as shown in Sections 3 and 13, that all those ineligible to practice barbering at the time the Act went into effect should take the course and pass the examination in order to become eligible.

The correct procedure is clearly set out in Section 20. The defendant must have twenty days notice in writing and a public hearing by the Board of Examiners, with right of appeal to the Superior Court.

BARBERS; PRACTICING WITHOUT LICENSE

28 January, 1936.

It is the uniform rule of this Department not to interfere in any way with a pending lawsuit when the matter is in the Court. Such advisory letters as we ordinarily write are obviously improper.

However, advising you as a State Board, I will say that in my judgment the conviction of a person for a violation of Chapter 119, Public Laws 1929, for practicing barbering without license, and an appeal thereupon, does not give the convicted person the privilege of further practicing until his appeal has been heard. In my judgment, such person would be subject to a new indictment for continuing in the practice or for practicing without license subsequent to his conviction.

OFFICE HOLDING; CHAIRMAN, RURAL ELECTRIFICATION AUTHORITY; MEMBER OF SENATE

24 March, 1936.

In my opinion, the office which you now hold and the office of Senator in the General Assembly are both offices within the Constitution, Article XIV, Section 7. It is generally accepted as law that the acceptance of a subsequent office vacates the first. In my opinion, resignation of the office later accepted and filled will not restore the one previously held.

However, in this matter I will say that the question you are presenting is one purely for the General Assembly itself, as it is the sole judge of its membership in a matter of this sort.

Contractors; When License Required

27 March, 1936.

I have your letter of March 26, referring to the construction of a new jail building in Stanley County and the installation of certain jail equipment therein.

It is noted that the jail equipment is being let under separate contract under a bid directly made to the County. The bid requires that the person selling the equipment shall install it. You inquire as to whether or not a license is required under Chapter 92 (a) entitled "Contractors," of the firm making the bid for the equipment and installation of the same.

The requirement for license under this Section will depend upon what is required of the bidder in the installation. If the installation requires a substantial amount of work, it would be in my opinion, regarded as construction. If, upon the other hand, the installation consists merely of setting down inside of the building equipment which is constructed outside of the State, the transaction would be lacking the element of construction required to bring the bidder within the provisions of Chapter 92 (a).

The facts as to this are not revealed in your letter and, therefore, I am unable to express any opinion about it. If the installation requires any substantial work on the part of the contractor, in my opinion, it would be properly termed construction, and makes the bidder subject to the act. Otherwise, it would not.

The same consideration would apply in the construction and application of Section 122 of Chapter 371, Public Laws of 1935, of the 1935 Revenue Act.

If the bidder contemplates bringing into the jail knockdown equipment and is therein put together and built into the jail as a part of the construction of the building, and the equipment therein involving a substantial amount of assembling and putting together, in my opinion, this would be probably considered as subjecting the bidder to a license tag provided in Section 122 and the contractor's license required in Chapter 92 (a).

Lotteries and Gift Enterprises

16 April, 1936.

Your inquiry involves a question as to the legality of the following scheme under our State laws against lotteries and gift enterprises:

It is proposed by the Merchants Association of a certain town that a ticket will be given for each fifty cents spent with the merchants of the town in the purchase of merchandise, which ticket will entitle "the holder of a free chance on every prize." The tickets are good for a drawing and chance on the grand prizes to be offered at the conclusion of the period designated. It is proposed that every three weeks cash and other prizes will be given and the grand prizes at the final drawing.

This scheme violates the State lottery laws, rendering the participants therein liable to indictment.

It might not be proper in a letter of this sort to be so technical as to cite the court authorities; but in brief I will say that it has been held in this State that where a ticket is given in the purchase of merchandise, although it may be that the price of the article is no greater, nevertheless, the price paid for the article will be considered a valuable consideration paid for the ticket or chance to participate in the lottery drawing. As, therefore, a chance has been purchased to engage in the drawing for a prize or thing of value, it is clearly against the lottery law.

APPLICABILITY OF BARBERS' ACT TO TOWNS OF LESS THAN 1,000 AND 500 OR MORE

7 May, 1936.

Upon your inquiry of May 7, I have examined the laws applicable to the State Board of Barber Examiners and the practice of barbering, and compared the different acts with some care.

I am of the opinion that the effect of the 1931 amendment was to apply the law to towns of less than 2,000 and of 500 or more in population; in other words, that it was the intention of the Legislature to amend the law so as to make it apply to towns of a population of 500 or more. It will be observed that Chapter 341, Public Laws 1935, struck out Mitchell County from the exception in the bill, thereby causing Mitchell County, and the towns within it, to come within the Act.

This would require barbers practicing in towns in Mitchell County, of 500 population or more, to comply with the law.

A. B. C. STORES; WHOLESALE; RETAIL

15 May, 1936.

I have your letter of May 14, asking my advice as to the maximum amount of whiskey that can be sold to one customer at one time by your stores so as not to be construed as wholesale.

The quantity of intoxicating beverages sold to one customer does not determine whether or not it is a retail or wholesale sale. Under Chapter 493, Public Laws of 1935, you are prohibited from selling in your stores any quantity less than one pint. There is no direct provision as to the maximum quantity which could be sold to one customer at one time. Under Section 19 of the Act, you are authorized to refuse to sell to any one purchaser an amount in excess of one quart in any one day, regardless of the amount applied for. There is, however, no provision limiting the amount which may be sold to one person at one time.

Under the sales tax law, a sale to another merchant for the purpose of resale by such merchant, as a merchant, is defined and classified as

a wholesale transaction. As used in the sales tax law, a wholesale merchant or a wholesale sale is the sale to a merchant for the purpose of being resold by him at retail. This is the only statutory definition afforded for the determination of the difference between a wholesale and retail sale, and this course is stated in the sales tax law.

State of North Carolina
Department of Attorney General
Raleigh

July 1, 1936.

Hon. A. A. F. Seawell,
Attorney General,
Raleigh, N. C.
Dear Sir:

I beg to submit herewith a report of the work of the Legislative Reference Library from July 1, 1934, to June 30, 1936.

During the foregoing period the following publications have been prepared and distributed among state and county officials and a large number of interested citizens throughout the State:

1. Following the 1934 election, a directory of State and County Officials containing 53 pages was compiled, published and distributed. This booklet continues to be in great demand and it is hoped that its biennial publication may be continued.

2. The North Carolina Manual for 1935, containing 200 pages. Due to lack of finances, it was necessary to continue the reduced size of the Manual, which had been made necessary in 1931. However, essential material bearing on the political and civic life of the State and of peculiar interest to our legislators and other public officials was retained.

3. In June, 1935, a Court Calendar covering the biennium, July 1, 1935, to June 30, 1937, was prepared and published and distributed to court officials, practicing attorneys and others interested. This publication has long been regarded as indispensable by judges, solicitors and lawyers in keeping up with the changes in terms of court made at each session of the Legislature.

A number of matters of a legislative nature have been investigated and compiled for municipalities and persons throughout the State.

During the session of the 1935 General Assembly, 550 bills were drafted for legislators and much assistance rendered them in securing information desired on various matters of proposed legislation. This form of service is being appreciated more and more at each session of the Legislature.

Following the State Primaries held on June 6 and July 4, 1936, a list of legislative nominees was compiled and published.

An explanation of the five proposed constitutional amendments to be voted on at the November, 1936, election was compiled and distributed.

After each November election a list of the newly-elected members of the General Assembly is printed.

Respectfully submitted,

Henry M. London,

Legislative Reference Librarian.

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